

117TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPORT
117-

MENTAL HEALTH MATTERS ACT

JUNE --, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

____ VIEWS

[To accompany H.R. 7780]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 7780) to support the behavioral needs of students and youth, invest in the school-based behavioral health workforce, and ensure access to mental health and substance use disorder benefits, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Mental Health Matters Act”.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—EARLY CHILDHOOD MENTAL HEALTH ACT

Sec. 101. Short title.
Sec. 102. Identification of effective interventions in Head Start programs.
Sec. 103. Implementing the interventions in Head Start programs.
Sec. 104. Evaluating implementation of interventions in Head Start programs.
Sec. 105. Implementing the evaluation framework for Head Start programs.
Sec. 106. Best Practice Centers.
Sec. 107. Funding.

TITLE II—BUILDING PIPELINE OF SCHOOL-BASED MENTAL HEALTH SERVICE PROVIDERS ACT

Sec. 201. Short title.
Sec. 202. Definitions.

Sec. 203. Grant program to increase the number of school-based mental health services providers serving in high-need local educational agencies.

TITLE III—ELEMENTARY AND SECONDARY SCHOOL COUNSELING ACT

Sec. 301. Short title.
Sec. 302. Definitions.
Sec. 303. Allotments to States and subgrants to local educational agencies.
Sec. 304. Authorization of appropriations.

TITLE IV—SUPPORTING TRAUMA-INFORMED EDUCATION PRACTICES ACT

Sec. 401. Short title.
Sec. 402. Amendment to the SUPPORT for Patients and Communities Act.

TITLE V—RESPOND, INNOVATE, SUCCEED, AND EMPOWER ACT

Sec. 501. Short title.
Sec. 502. Perfecting amendment to the definition of disability.
Sec. 503. Supporting students with disabilities to succeed once enrolled in college.
Sec. 504. Authorization of funds for the National Center for Information and Technical Support for Postsecondary Students With Disabilities.
Sec. 505. Inclusion of information on students with disabilities.
Sec. 506. Rule of construction.

TITLE VI—STRENGTHENING BEHAVIORAL HEALTH BENEFITS ACT

Sec. 601. Short title.
Sec. 602. Enforcement of Mental Health and Substance Use Disorder Requirements.

TITLE VII—EMPLOYEE AND RETIREE ACCESS TO JUSTICE ACT

Sec. 701. Short title.
Sec. 702. Unenforceable arbitration clauses, class action waivers, representation waivers, and discretionary clauses.
Sec. 703. Prohibition on mandatory arbitration clauses, class action waivers, representation waivers, and discretionary clauses.
Sec. 704. Effective date.

TITLE I—EARLY CHILDHOOD MENTAL HEALTH ACT

SEC. 101. SHORT TITLE.

This title may be cited as the “Early Childhood Mental Health Support Act”.

SEC. 102. IDENTIFICATION OF EFFECTIVE INTERVENTIONS IN HEAD START PROGRAMS.

(a) INTERVENTIONS THAT IMPROVE SOCIAL-EMOTIONAL AND BEHAVIORAL HEALTH OF CHILDREN.—

(1) IN GENERAL.—The Secretary of Health and Human Services acting through the Assistant Secretary for the Administration for Children and Families (in this section referred to as the “Secretary”) shall identify and review interventions, best practices, curricula, and staff trainings—

(A) that improve the behavioral health of children; and
(B) that are evidence based.

(2) FOCUS.—In carrying out paragraph (1), the Secretary shall focus on interventions, best practices, curricula, and staff trainings that—

(A) can be delivered by a provider or other staff member in or associated with a Head Start program or Early Head Start center;

(B) are demonstrated to improve or support healthy social, emotional, or cognitive development for children in Head Start or Early Head Start programs, with an empirical or theoretical relationship to later mental health or substance abuse outcomes;

(C) involve changes to center-wide policies or practices, or other services and supports offered in conjunction with Head Start programs or Early Head Start centers, including services provided to adults or families (with or without a child present) for the benefit of the children;

(D) demonstrate effectiveness across racial, ethnic, and geographic populations or demonstrate the capacity to be adapted to be effective across populations;

(E) offer a tiered approach to addressing need, including—

(i) universal interventions for all children;

(ii) selected prevention for children demonstrating increased need;

and

(iii) indicated prevention for children demonstrating substantial need;

(F) incorporate trauma-informed care approaches; or

(G) have a proven record of improving early childhood and social emotional development.

(b) INTERVENTIONS THAT SUPPORT STAFF WELLNESS.—In carrying out subsection (a), the Secretary shall identify and review interventions, best practices, curricula, and staff trainings that support staff wellness and self-care.

(c) CREDENTIALS.—In carrying out subsections (a) and (b), the Secretary, in consultation with relevant experts, shall determine the appropriate credentials for individuals who deliver the interventions, best practices, curricula, and staff trainings identified by the Secretary.

(d) CONSULTATION; PUBLIC INPUT.—In carrying out this section, the Secretary shall—

(1) consult with relevant agencies, experts, academics, think tanks, and non-profit organizations with expertise in early childhood, mental health, and trauma-informed care, including the National Institute of Mental Health, the Administration for Children and Families, the Substance Abuse and Mental Health Services Administration, the Institute of Education Sciences, and the Centers for Disease Control and Prevention; and

(2) solicit public input on—

(A) the design of the reviews under subsections (a) and (b); and

(B) the findings and conclusions resulting from such reviews.

(e) TIMING.—The Secretary shall—

(1) complete the initial reviews required by subsections (a) and (b) not later than 2 years after the date of enactment of this Act; and

(2) update such reviews and the findings and conclusions therefrom at least every 5 years.

(f) REPORTING.—Not later than 1 year after the date of enactment of this Act, and every 5 years thereafter, the Secretary shall submit a report to the Congress on the results of implementing this section.

SEC. 103. IMPLEMENTING THE INTERVENTIONS IN HEAD START PROGRAMS.

(a) IN GENERAL.—The Assistant Secretary for the Administration for Children and Families shall award grants to participating Head Start agencies to implement the interventions, best practices, curricula, and staff trainings that are identified pursuant to section 102.

(b) REQUIREMENTS.—The Assistant Secretary shall ensure that grants awarded under this section are awarded to grantees representing a diversity of geographic areas across the United States, including urban, suburban, and rural areas.

SEC. 104. EVALUATING IMPLEMENTATION OF INTERVENTIONS IN HEAD START PROGRAMS.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Assistant Secretary for Planning and Evaluation and in coordination with the Assistant Secretary for the Administration for Children and Families, shall—

(1) determine whether the interventions, best practices, curricula, and staff trainings implemented pursuant to section 103—

(A) are effectively implemented pursuant to section 103 and other relevant provisions of law such that the anticipated effect sizes of the interventions, best practices, curricula, and staff trainings are achieved; and

(B) yield long-term savings;

(2) develop a method for making the determination required by paragraph (1);

(3) ensure that such method includes competency and testing approaches, performance or outcome measures, or any other methods deemed appropriate by the Assistant Secretary, taking into consideration existing monitoring components of the Head Start and Early Head Start programs; and

(4) solicit public input on the design, findings, and conclusions of this process and shall consider whether updates are necessary at least every 5 years.

(b) PROCESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall—

(1) conduct any research and evaluation studies needed; and

(2) solicit public input on—

(A) the design of the method developed pursuant to subsection (a)(2); and

(B) the resulting findings and conclusions.

(c) TIMING.—The Secretary of Health and Human Services shall—

(1) develop the method required by subsection (a)(2) and make the initial determination required by subsection (a)(1) not later than 2 years after the date of enactment of this Act; and

(2) update such method and determination at least every 5 years.

SEC. 105. IMPLEMENTING THE EVALUATION FRAMEWORK FOR HEAD START PROGRAMS.

(a) **EVALUATION METHOD.**—The Assistant Secretary for the Administration for Children and Families shall implement the evaluation method developed pursuant to section 104(a) in the Head Start program as a voluntary mechanism for interested Head Start programs or Early Head Start centers to evaluate the extent to which such programs or centers have effectively implemented the interventions, best practices, curricula, and staff trainings identified pursuant to section 102, with minimal burden or disruption to programs and centers interested in participating.

(b) **TECHNICAL ASSISTANCE.**—The Assistant Secretary for the Administration for Children and Families shall provide guidance, tools, resources, and technical assistance to grantees for implementing and evaluating interventions, best practices, curricula, and staff trainings identified pursuant to section 102 and optimizing the performance of such grantees on the annual evaluations.

SEC. 106. BEST PRACTICE CENTERS.

The Assistant Secretary for the Administration for Children and Families may fund up to 5 Best Practice Centers in Early Childhood Training in universities and colleges to prepare future Head Start agencies and staff able to deliver the interventions, best practices, curricula, and staff trainings identified pursuant to section 102.

SEC. 107. FUNDING.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$100,000,000 for the period of fiscal years 2023 through 2032 for carrying out sections 103(b), 104, and 106.

(b) **AVAILABILITY OF APPROPRIATIONS.**—Amounts authorized to be appropriated by subsection (a) are authorized to remain available until expended.

TITLE II—BUILDING PIPELINE OF SCHOOL-BASED MENTAL HEALTH SERVICE PROVIDERS ACT

SEC. 201. SHORT TITLE.

This title may be cited as the “Building Pipeline of School-Based Mental Health Service Providers Act”.

SEC. 202. DEFINITIONS.

In this title:

(1) **BEST PRACTICES.**—The term “best practices” means a technique or methodology that, through experience and research related to professional practice in a school-based mental health field, has proven to reliably lead to a desired result.

(2) **ELIGIBLE INSTITUTION.**—The term “eligible institution” means an institution of higher education that offers a program of study that leads to a master’s or other graduate degree—

(A) in school psychology that prepares students in such program for the State licensing or certification examination in school psychology;

(B) in school counseling that prepares students in such program for the State licensing or certification examination in school counseling;

(C) in school social work that prepares students in such program for the State licensing or certification examination in school social work;

(D) in another school-based mental health field that prepares students in such program for the State licensing or certification examination in such field, if applicable; or

(E) in any combination of study described in subparagraphs (A) through (D).

(3) **ELIGIBLE PARTNERSHIP.**—The term “eligible partnership” means—

(A) a partnership between 1 or more high-need local educational agencies and 1 or more eligible institutions; or

(B) in any region in which local educational agencies may not have a sufficient elementary school and secondary school student population to support the placement of all participating graduate students, a partnership between a State educational agency, on behalf of 1 or more high-need local educational agencies, and 1 or more eligible institutions.

(4) **HIGH-NEED LOCAL EDUCATIONAL AGENCY.**—The term “high-need local educational agency” means a local educational agency that—

(A) is described in section 200(10) of the Higher Education Act of 1965 (20 U.S.C. 1021(10)); and

(B) as of the date of application for a grant under this title, has ratios of school counselors, school social workers, and school psychologists to students served by the agency that are not more than 1 school counselor per 250 students, not more than 1 school psychologist per 500 students, and not more than 1 school social worker per 250 students.

(5) HISTORICALLY BLACK COLLEGE OR UNIVERSITY.—The term “historically Black college or university” has the meaning given the term “part B institution” in section 322 of the Higher Education Act of 1965 (20 U.S.C. 1061).

(6) HOMELESS CHILDREN AND YOUTHS.—The term “homeless children and youths” has the meaning given such term in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

(7) INDIAN TRIBE; TRIBAL ORGANIZATION.—In this section the terms “Indian tribe” and “tribal organization” have the meanings given those terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)).

(8) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(9) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(10) MINORITY-SERVING INSTITUTION.—The term “minority-serving institution” means, as defined in section 371(a) of the Higher Education Act of 1965 (20 U.S.C. 1067q(a)), a Hispanic-serving institution, an Alaska Native-serving institution or a Native Hawaiian-serving institution, a Predominantly Black Institution, an Asian American and Native American Pacific Islander-serving institution, or a Native American-serving nontribal institution.

(11) OUTLYING AREA.—The term “outlying area” has the meaning given the term in section 8101(36)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(36)(A)).

(12) PARTICIPATING ELIGIBLE INSTITUTION.—The term “participating eligible institution” means an eligible institution that is part of an eligible partnership awarded a grant under section 203.

(13) PARTICIPATING GRADUATE.—The term “participating graduate” means an individual who—

(A) has received a master’s or other graduate degree in a school-based mental health field from a participating eligible institution and has obtained a State license or credential in the school-based mental health field; and

(B) as a graduate student pursuing a career in a school-based mental health field, was placed in a school served by a participating high-need local educational agency to complete required field work, credit hours, internships, or related training as applicable.

(14) PARTICIPATING HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term “participating high-need local educational agency” means a high-need local educational agency that is part of an eligible partnership awarded a grant under section 203.

(15) SCHOOL-BASED MENTAL HEALTH FIELD.—The term “school-based mental health field” means each of the following fields:

(A) School counseling.

(B) School social work.

(C) School psychology.

(D) Any other field of study that leads to employment as a school-based mental health services provider.

(16) SCHOOL-BASED MENTAL HEALTH SERVICES PROVIDER.—The term “school-based mental health services provider” has the meaning given the term in section 4102 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7112).

(17) SECRETARY.—The term “Secretary” means the Secretary of Education.

(18) STATE EDUCATIONAL AGENCY.—The term “State educational agency” has the meaning given the term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(19) STUDENT SUPPORT PERSONNEL TARGET RATIOS.—The term “student support personnel target ratios” means the ratios of school-based mental health

services providers to students recommended to enable such personnel to effectively address the needs of students, including—

(A) at least 1 school counselor for every 250 students (as recommended by the American School Counselor Association and American Counseling Association);

(B) at least 1 school psychologist for every 500 students (as recommended by the National Association of School Psychologists); and

(C) at least 1 school social worker for every 250 students (as recommended by the School Social Work Association of America).

(20) **TRIBALLY CONTROLLED COLLEGE OR UNIVERSITY.**—The term “tribally controlled college or university” has the meaning given such term in section 2 of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801).

(21) **UNACCOMPANIED YOUTH.**—The term “unaccompanied youth” has the meaning given such term in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

SEC. 203. GRANT PROGRAM TO INCREASE THE NUMBER OF SCHOOL-BASED MENTAL HEALTH SERVICES PROVIDERS SERVING IN HIGH-NEED LOCAL EDUCATIONAL AGENCIES.

(a) **AUTHORIZATION OF GRANTS.**—

(1) **GRANT PROGRAM AUTHORIZED.**—From amounts made available to carry out this section, the Secretary shall award grants, on a competitive basis, to eligible partnerships, to enable the eligible partnerships to carry out pipeline programs to increase the number of school-based mental health services providers employed by high-need local educational agencies by carrying out any of the activities described in subsection (e).

(2) **RESERVATIONS.**—From the total amount appropriated under subsection (j) for a fiscal year, the Secretary shall reserve—

(A) one-half of 1 percent for the Secretary of the Interior to carry out programs under this title in schools operated or funded by the Bureau of Indian Education, Indian tribes and tribal organizations, or a consortium of Indian tribes and tribal organizations;

(B) one-half of 1 percent for allotments to outlying areas based on the relative need of each such area with respect to mental health services in schools, as determined by the Secretary in accordance with the purpose of this title;

(C) not more than 3 percent to conduct the evaluations under subsection (h); and

(D) not more than 2 percent for the administration of the program under this title and to provide technical assistance relating to such program.

(b) **GRANT PERIOD.**—A grant awarded under this section shall be for a 5-year period and may be renewed for additional 5-year periods upon a showing of adequate progress, as determined by the Secretary.

(c) **APPLICATION.**—To be eligible to receive a grant under this section, an eligible partnership shall submit to the Secretary a grant application at such time, in such manner, and containing such information as the Secretary may require. At a minimum, such application shall include—

(1) an assessment of the existing (as of the date of application) ratios of school-based mental health services providers (in the aggregate and disaggregated by profession) to students enrolled in schools in each high-need local educational agency that is part of the eligible partnership; and

(2) a detailed description of—

(A) a plan to carry out a pipeline program to train, place, and retain school-based mental health services providers in high-need local educational agencies; and

(B) the proposed allocation and use of grant funds to carry out activities described in subsection (e).

(d) **AWARD BASIS.**—In awarding grants under this section, the Secretary shall—

(1) ensure that to the extent practicable, grants are distributed among eligible entities that will serve geographically diverse areas; and

(2) give priority to eligible partnerships that—

(A) propose to use the grant funds to carry out the activities described under paragraphs (1) through (3) of subsection (e) in schools that have higher numbers or percentages of low-income students (determined using any of the measures of poverty described in section 1113(a)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6313(a)(5))), in

comparison to other schools that are served by the high-need local educational agency that is part of the eligible partnership;

(B) include 1 or more high-need local educational agencies that have fewer school-based mental health services providers, in the aggregate or for a particular school-based mental health field, per student than other eligible partnerships that have submitted a grant application under subsection (c);

(C) include 1 or more eligible institutions of higher education which are a historically Black college or university, a minority-serving institution, or a tribally controlled college or university;

(D) propose to collaborate with other institutions of higher education with similar programs, including sharing facilities, faculty members, and administrative costs; and

(E) propose to use grant funds to increase the diversity of school-based mental health services providers.

(e) USE OF GRANT FUNDS.—Grant funds awarded under this section may be used—

(1) to pay the administrative costs (including supplies, office and classroom space, supervision, mentoring, and transportation stipends as necessary and appropriate) related to—

(A) having graduate students of programs in school-based mental health fields placed in schools served by participating high-need local educational agencies to complete required field work, credit hours, internships, or related training as applicable for the degree, license, or credential program of each such student; and

(B) offering required graduate coursework for students of a graduate program in a school-based mental health services field on the site of a participating high-need local educational agency;

(2) for not more than the first 3 years after a participating graduate receives a master's or other graduate degree from a program in a school-based mental health field, or obtains a State license or credential in a school-based mental health field, to hire and pay all or part of the salary of the participating graduates working as a school-based mental health services provider in a school served by a participating high-need local educational agency;

(3) to increase the number of school-based mental health services providers per student in schools served by participating high-need local educational agencies, in order to meet the student support personnel target ratios;

(4) to recruit, hire, and retain culturally or linguistically under-represented graduate students of programs in school-based mental health fields for placement in schools served by participating high-need local educational agencies;

(5) to develop coursework that will—

(A) encourage a commitment by graduate students in school-based mental health fields to work for high-need local educational agencies;

(B) give participating graduates the knowledge and skill sets necessary to meet the needs of—

(i) students and families served by high-need local educational agencies;

(ii) students at risk of not meeting State academic standards;

(iii) students who—

(I) are English learners (as defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801));

(II) are migratory children (as defined in section 1309 of such Act (20 U.S.C. 6399));

(III) have a parent or caregiver who is a member of the armed forces, including the National Guard, who has been deployed or returned from deployment;

(IV) are LGBTQ+, including students who are lesbian, gay, bisexual, transgender, queer or questioning, nonbinary, or Two-Spirit;

(V) are homeless children and youth, including unaccompanied youth;

(VI) have come into contact with the juvenile justice system or adult criminal justice system, including students currently or previously held in juvenile detention facilities or adult jails and students currently or previously held in juvenile correctional facilities or adult prisons;

(VII) are a child with a disability (as defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801));

(VIII) have been a victim to, or witnessed, domestic violence or violence in their community;

(IX) have been exposed to substance misuse at home or in the community;

(X) are in foster care, are aging out of foster care, or were formerly in foster care; or

(XI) have been a victim to or witnessed trafficking in persons; and

(iv) teachers, administrators, and other staff who work for high-need local educational agencies; and

(C) utilize best practices determined by the American School Counselor Association, National Association of Social Workers, School Social Work Association of America, and National Association of School Psychologists and other relevant organizations;

(6) to provide tuition credits to graduate students participating in the pipeline program supported under the grant;

(7) to fund high-quality “Grow Your Own” teacher preparation programs that provide pathways to State licensure or certification as a school psychologist, school counselor, school social worker, or other school-based mental services provider to recruit and prepare local community members, career changers, para-professionals, after-school program staff, and others currently working in schools to become school-based mental health services providers;

(8) to cover the costs of licensure and preparation for required licensure exams; and

(9) for similar activities to fulfill the purpose of this title, as the Secretary determines appropriate.

(f) SUPPLEMENT NOT SUPPLANT.—Funds made available under this section shall be used to supplement, not supplant, other Federal, State, or local funds available for the activities described in subsection (e).

(g) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Each eligible partnership that receives a grant under this section shall prepare and submit to the Secretary an annual report on the progress of the eligible partnership in carrying out the grant. Such report shall contain such information as the Secretary may require, including, at a minimum, a description of—

(A) actual service delivery provided through the grant funds, including—

(i) descriptive information on the participating eligible institution, the educational model used, and the actual academic program performance;

(ii) characteristics of graduate students participating in the pipeline program supported under the grant, including—

(I) performance on any examinations required by the State for credentialing or licensing;

(II) demographic characteristics; and

(III) graduate student retention rates;

(iii) characteristics of students of the participating high-need local educational agency, including performance on any tests required by the State educational agency, demographic characteristics, and graduation rates, as appropriate;

(iv) an estimate of the annual implementation costs of the pipeline program supported under the grant; and

(v) the number of public elementary and secondary school students, public elementary and secondary schools, graduate students, and institutions of higher education participating in the pipeline program supported under the grant;

(B) outcomes that are consistent with the purpose of the grant program under this title, including—

(i) internship and post-graduation placement of the participating graduate students;

(ii) graduation and professional career readiness indicators; and

(iii) characteristics of the participating high-need local educational agency, including with respect to fully certified and effective teachers

and school-based mental health services providers employed by such agency—

(I) changes in the rate of hiring and retention of such teachers and providers (in the aggregate and disaggregated by each such profession); and

(II) the demographics, including the race, ethnicity, and gender, of such teachers and providers.

(C) the instruction, materials, and activities being funded under the grant; and

(D) the effectiveness of any training and ongoing professional development provided—

(i) to students and faculty in the appropriate departments or schools of the participating eligible institution; and

(ii) to the teachers, paraprofessionals, school leaders, school-based mental health services providers, and other specialized instructional support personnel of the participating high-need local educational agency.

(2) PUBLICATION.—The Secretary shall publish the annual reports submitted under paragraph (1) on the website of the Department of Education.

(h) EVALUATION.—

(1) INTERIM EVALUATIONS.—The Secretary may conduct interim evaluations to determine whether each eligible partnership receiving a grant under this section is making adequate progress as the Secretary considers appropriate. The contents of the annual report submitted to the Secretary under subsection (g) may be used by the Secretary to determine whether an eligible partnership receiving a grant is demonstrating adequate progress.

(2) FINAL EVALUATION.—The Secretary shall conduct a final evaluation to—

(A) determine the effectiveness of the grant program in carrying out the purpose of this title; and

(B) compare the relative effectiveness of each of the various activities described in subsection (e) for which grant funds may be used.

(i) REPORT.—Not earlier than 5 years, nor later than 6 years, after the date of enactment of this Act, the Secretary shall submit to the Congress a report containing—

(1) the findings of the final evaluation conducted under subsection (h)(2); and

(2) such recommendations as the Secretary considers appropriate.

(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$200,000,000 for fiscal year 2023 and each succeeding fiscal year.

TITLE III—ELEMENTARY AND SECONDARY SCHOOL COUNSELING ACT

SEC. 301. SHORT TITLE.

This title may be cited as the “Elementary and Secondary School Counseling Act”.

SEC. 302. DEFINITIONS.

In this title:

(1) ESEA DEFINITIONS.—The terms “elementary school”, “local educational agency”, and “secondary school” have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) HIGH-NEED SCHOOL.—The term “high-need school” has the meaning given the term in section 2211(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6631(b)).

(3) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms “Indian tribe” and “tribal organization” have the meanings given those terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)).

(4) OUTLYING AREA.—The term “outlying area” means an outlying area specified in section 8101(36)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(36)(A)).

(5) SCHOOL-BASED MENTAL HEALTH SERVICES PROVIDER.—The term “school-based mental health services provider” has the meaning given the term in section 4102 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7112).

(6) SECRETARY.—The term “Secretary” means the Secretary of Education.

(7) STATE.—The term “State” means each of the 50 States, the District of Columbia, and Puerto Rico.

SEC. 303. ALLOTMENTS TO STATES AND SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.

(a) PROGRAM AUTHORIZED.—The Secretary shall carry out a program under which the Secretary makes allotments to States, in accordance with subsection (c), to enable the States to award subgrants to local educational agencies in order to increase access to school-based mental health services providers at high-need schools served by the local educational agencies.

(b) RESERVATIONS.—From the total amount made available under section 304 for a fiscal year, the Secretary shall reserve—

(1) one-half of 1 percent for the Secretary of the Interior for programs under this title in schools operated or funded by the Bureau of Indian Education, Indian tribes and tribal organizations, or consortia of Indian tribes and tribal organizations;

(2) one-half of 1 percent for allotments for the outlying areas to be distributed among those outlying areas on the basis of their relative need, as determined by the Secretary, in accordance with the purpose of this title; and

(3) not more than 2 percent for the administration of the program under this title and to provide technical assistance relating to such program.

(c) ALLOTMENTS TO STATES.—

(1) IN GENERAL.—

(A) FORMULA.—From the total amount made available under section 304 for a fiscal year and not reserved under subsection (b), the Secretary shall allot to each State that submits a true and complete application under paragraph (3) (as determined by the Secretary) an amount that bears the same relationship to such total amount as the amount received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) by such State for such fiscal year bears to the amount received under such part for such fiscal year by all States that submit such applications.

(B) SMALL STATE MINIMUM.—No State receiving an allotment under this paragraph shall receive less than one-half of 1 percent of the total amount allotted under this paragraph.

(2) MATCHING REQUIREMENTS.—In order to receive an allotment under paragraph (1), a State shall agree to provide matching funds, in an amount equal to 20 percent of the amount of the allotment, toward the costs of the activities carried out with the allotment.

(3) APPLICATION.—A State desiring an allotment under paragraph (1) shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require. Each application shall include, at a minimum—

(A) an assurance that the State will use the allotment only for the purposes specified in subsection (d)(1);

(B) a description of how the State will award subgrants to local educational agencies under such subsection;

(C) a description of how the State will disseminate, in a timely manner, information regarding the subgrants and the application process for such subgrants to local educational agencies; and

(D) the ratios, as of the date of application, of students to school-based mental health services providers in each public elementary school and secondary school in the State, in the aggregate and disaggregated to include—

(i) the ratios of students to school counselors, school psychologists, and school social workers; and

(ii) as applicable, the ratios of students to other school-based mental health services providers not described in clause (i), in the aggregate and disaggregated by type of provider.

(4) DURATION.—An allotment to a State under paragraph (1) shall be for a 5-year period and may be renewed for additional 5-year periods upon a showing of adequate progress on meeting the goals of the program under this title, as determined by the Secretary.

(d) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

(1) IN GENERAL.—A State receiving an allotment under subsection (c) shall use the allotment to award subgrants, on a competitive basis, to local educational agencies in the State, to enable the local educational agencies to—

(A) recruit and retain school-based mental health services providers to work at high-need schools served by the local educational agency; and

(B) work toward effectively staffing the high-need schools of the local educational agency with school-based mental health services providers, including by meeting the recommended maximum ratios of—

- (i) 250 students per school counselor;
- (ii) 500 students per school psychologist; and
- (iii) 250 students per school social worker.

(2) **PRIORITY.**—In awarding subgrants under this subsection, the State shall give priority to local educational agencies that serve a significant number of high-need schools.

(3) **APPLICATION.**—A local educational agency desiring a subgrant under this subsection shall submit an application to the State at such time, in such manner, and containing such information as the State may require, including information on how the local educational agency will prioritize assisting high-need schools with the largest numbers or percentages of students from low-income families (as counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c))).

(e) **ALLOTMENT AND SUBGRANT REQUIREMENTS.**—

(1) **SUPPLEMENT, NOT SUPPLANT.**—Amounts received from an allotment under subsection (c) or a subgrant under subsection (d) shall supplement, and not supplant, any other funds available to a State or local educational agency for school-based mental health services.

(2) **COMBINING FUNDS ALLOWED.**—A local educational agency receiving a subgrant under subsection (d) may combine such subgrant with State or local funds to carry out the activities described in subsection (d)(1).

(f) **REPORTS.**—

(1) **LOCAL EDUCATIONAL AGENCIES.**—A local educational agency that receives a subgrant under subsection (d) shall submit an annual report to the State on the activities carried out with the subgrant funds. Each such report shall—

- (A) describe the activities carried out using subgrant funds;
- (B) enumerate the number of school-based mental health services providers (in the aggregate and disaggregated by profession) who—
 - (i) were employed by or otherwise served in high-need public elementary and secondary schools under the jurisdiction of the local educational agency over the year covered by the report; and
 - (ii) were supported with funds from the subgrant or matching funds during such year; and
- (C) include the most recent student to provider ratios, in the aggregate and disaggregated as provided in subsection (c)(3)(D), for high-need schools under the jurisdiction of the local educational agency that were supported with the subgrant or matching funds.

(2) **STATE.**—A State receiving an allotment under subsection (c) shall annually prepare and submit a report to the Secretary that—

- (A) evaluates the progress made in achieving the purposes of the program under this title;
- (B) includes the most recent student to provider ratios, in the aggregate and disaggregated as provided in subsection (c)(3)(D), for high-need schools in the State that were assisted with subgrants under subsection (d); and
- (C) describes any other resources needed to meet the required recommended maximum student to school-based mental health services provider ratios.

(3) **PUBLIC AVAILABILITY.**—The Secretary shall make all reports submitted under this subsection available to the public, including through the website of the Department.

SEC. 304. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title—

- (1) \$5,000,000,000 for fiscal year 2023; and
- (2) such sums as may be necessary for each succeeding fiscal year.

TITLE IV—SUPPORTING TRAUMA-INFORMED EDUCATION PRACTICES ACT

SECTION 401. SHORT TITLE.

This title may be cited as the “Supporting Trauma-Informed Education Practices Act”.

SEC. 402. AMENDMENT TO THE SUPPORT FOR PATIENTS AND COMMUNITIES ACT.

Section 7134 of the SUPPORT for Patients and Communities Act (42 U.S.C. 280h-7) is amended to read as follows:

“SEC. 7134. GRANTS TO IMPROVE TRAUMA SUPPORT SERVICES AND MENTAL HEALTH CARE FOR CHILDREN AND YOUTH IN EDUCATIONAL SETTINGS.

“(a) AUTHORIZATION OF GRANTS.—

“(1) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS AUTHORIZED.—The Secretary, in coordination with the Secretary of Health and Human Services, is authorized to award grants to, or enter into contracts or cooperative agreements with, an eligible entity for the purpose of increasing student, teacher, school leader, and other school personnel access to evidence-based trauma support services and mental health services by developing innovative initiatives, activities, or programs to connect schools and local educational agencies, or tribal educational agencies, as applicable, with community trauma-informed support and mental health systems, including such systems under the Indian Health Service.

“(2) RESERVATIONS.—From the total amount appropriated under subsection (1) for a fiscal year, the Secretary shall reserve—

“(A) not more than 3 percent to conduct the evaluation under subsection (f); and

“(B) not more than 2 percent for technical assistance and administration.

“(b) DURATION.—With respect to a grant, contract, or cooperative agreement awarded or entered into under this section, the period during which payments under such grant, contract or agreement are made to the recipient may not exceed 5 years.

“(c) USE OF FUNDS.—An eligible entity that receives or enters into a grant, contract, or cooperative agreement under this section shall use amounts made available through such grant, contract, or cooperative agreement for evidence-based initiatives, activities, or programs, which shall include at least 1 of the following:

“(1) Enhancing, improving, or developing collaborative efforts between schools, local educational agencies or tribal educational agencies, as applicable, and community mental health and trauma-informed service delivery systems to provide, develop, or improve prevention, referral, treatment, and support services to students.

“(2) Implementing trauma-informed models of support, including trauma-informed, positive behavioral interventions and supports in schools served by the eligible entity.

“(3) Providing professional development to teachers, paraprofessionals, school leaders, school-based mental health services providers, and other specialized instructional support personnel employed by local educational agencies or tribal educational agencies, as applicable or schools served by the eligible entity that—

“(A) fosters safe and stable learning environments that prevent and mitigate the effects of trauma, including through social and emotional learning;

“(B) improves school capacity to identify, refer, and provide services to students in need of trauma-informed support or mental health services, including by helping educators to identify the unique personal and contextual variables that influence the manifestation of trauma; and

“(C) reflects the best practices for trauma-informed identification, referral, and support developed by the Interagency Task Force on Trauma-Informed Care (as established by section 7132).

“(4) Providing trauma-informed support services and mental health services to students at full-service community schools served by the eligible entity.

“(5) Engaging families and communities to increase awareness of child trauma, which may include sharing best practices with law enforcement regarding trauma-informed services and working with mental health professionals to provide interventions and longer term coordinated care within the community for

children and youth who have experienced trauma and the families of such children and youth.

“(6) Evaluating the effectiveness of the initiatives, activities, or programs carried out under this section in increasing student access to evidence-based trauma support services and mental health services.

“(7) Establishing partnerships with or providing subgrants to early childhood education programs or other eligible entities, to include such entities in the evidence-based trauma-informed or mental health initiatives, activities, and support services established under this section in order to provide, develop, or improve prevention, referral, treatment, and support services to children and their families.

“(8) Establishing new, or enhancing existing, evidence-based educational, awareness, and prevention programs to improve mental health and resiliency among teachers, paraprofessionals, school leaders, school-based mental health services providers, and other specialized instructional support personnel employed by local educational agencies or tribal educational agencies, as applicable, or schools served by the eligible entity.

“(d) APPLICATIONS.—To be eligible to receive a grant, contract, or cooperative agreement under this section, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, which shall include the following:

“(1) A description of the innovative initiatives, activities, or programs to be funded under the grant, contract, or cooperative agreement, including how such initiatives, activities, or programs will increase access to evidence-based trauma-informed support services and mental health services for students, and, as applicable, the families of such students.

“(2) A description of how the initiatives, activities, or programs will provide linguistically appropriate and culturally competent services.

“(3) A description of how the initiatives, activities, or programs will support schools served by the eligible entity in improving school climate in order to support an environment conducive to learning.

“(4) An assurance that—

“(A) persons providing services under the initiative, activity, or program funded by the grant, contract, or cooperative agreement are fully licensed or certified to provide such services;

“(B) teachers, school leaders, administrators, school-based mental health services providers and other specialized instructional support personnel, representatives of local Indian Tribes or tribal organizations as appropriate, other school personnel, individuals who have experience receiving mental health services as children, and parents of students participating in services under this section will be engaged and involved in the design and implementation of the services; and

“(C) the eligible entity will comply with the evaluation required under subsection (f).

“(5) A description of how the eligible entity will support and integrate existing school-based services at schools served by the eligible entity with the initiatives, activities, or programs funded under this section in order to provide trauma-informed support services or mental health services for students, as appropriate.

“(6) A description of how the eligible entity will incorporate peer support services into the initiatives, activities, or programs to be funded under this section.

“(7) A description of how the eligible entity will ensure that initiatives, activities, or programs funded under this section are accessible to and include students with disabilities.

“(8) An assurance that the eligible entity will establish a local interagency agreement under subsection (e) and comply with such agreement.

“(e) INTERAGENCY AGREEMENTS.—

“(1) LOCAL INTERAGENCY AGREEMENTS.—In carrying out an evidence-based initiative, activity, or program described in subsection (c), an eligible entity that receives a grant, contract, or cooperative agreement under this section, or a designee of such entity, shall establish an interagency agreement between local educational agencies, agencies responsible for early childhood education programs, Head Start agencies (including Early Head Start agencies), juvenile justice authorities, mental health agencies, child welfare agencies, and other relevant agencies, authorities, or entities in the community that will be involved in the provision of services under such initiative, activity, or program.

“(2) CONTENTS.—The local interagency agreement required under paragraph (1) shall specify, with respect to each agency, authority, or entity that is a party to such agreement—

“(A) the financial responsibility for any services provided by such entity;

“(B) the conditions and terms of responsibility for such any services, including quality, accountability, and coordination of the services; and

“(C) the conditions and terms of reimbursement of such agencies, authorities, or entities, including procedures for dispute resolution.

“(f) EVALUATION.—The Secretary shall conduct a rigorous and independent evaluation of the initiatives, activities, and programs carried out by an eligible entity under this section and disseminate evidence-based practices regarding trauma-informed support services and mental health services.

“(g) DISTRIBUTION OF AWARDS.—The Secretary shall ensure that grants, contracts, and cooperative agreements awarded or entered into under this section are equitably distributed among the geographical regions of the United States and among tribal, urban, suburban, and rural populations.

“(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

“(1) to prohibit an entity involved with an initiative, activity, or program carried out under this section from reporting a crime that is committed by a student to appropriate authorities; or

“(2) to prevent Federal, State, local, and tribal law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal, State, local, and tribal law to crimes committed by a student.

“(i) SUPPLEMENT, NOT SUPPLANT.—Federal funds provided under this section shall be used to supplement, and not supplant, other Federal, State, or local funds available to carry out the initiatives, activities, and programs described in this section.

“(j) CONSULTATION REQUIRED.—In awarding or entering into grants, contracts, and cooperative agreements under this section, the Secretary shall, in a timely manner, meaningfully consult with Indian Tribes, Regional Corporations, Native Hawaiian Educational Organizations, and their representatives to ensure notice of eligibility.

“(k) DEFINITIONS.—In this section:

“(1) EARLY CHILDHOOD EDUCATION PROGRAM.—The term ‘early childhood education program’ has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

“(2) ELIGIBLE ENTITY.—The term ‘eligible entity’ means—

“(A) a State educational agency;

“(B) a local educational agency;

“(C) an Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) or their tribal educational agency;

“(D) the Bureau of Indian Education;

“(E) a Regional Corporation;

“(F) a Native Hawaiian educational organization; and

“(G) State, Territory, and Tribal Lead Agencies administering the Child Care and Development Fund as described in section 658D(a) of the Child Care and Development Block Grant Act (42 U.S.C. 9858b(a)).

“(3) ESEA TERMS.—

“(A) The terms ‘elementary school’, ‘evidence-based’, ‘local educational agency’, ‘paraprofessional’, ‘parent’, ‘professional development’, ‘school leader’, ‘secondary school’, ‘Secretary’, ‘specialized instructional support personnel’, and ‘State educational agency’ have the meanings given such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

“(B) The term ‘full-service community school’ has the meaning given such term in section 4622 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7272).

“(C) The term ‘Native Hawaiian educational organization’ has the meaning given such term in section 6207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517).

“(D) The term ‘school-based mental health services provider’ has the meaning given the term in section 4102 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7112).

“(4) REGIONAL CORPORATION.—The term ‘Regional Corporation’ has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

“(5) SCHOOL.—The term ‘school’ means a public elementary school or public secondary school.

“(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, \$50,000,000 for each of fiscal years 2023 through 2027.”.

TITLE V—RESPOND, INNOVATE, SUCCEED, AND EMPOWER ACT

SEC. 501. SHORT TITLE.

This title may be cited as the “Respond, Innovate, Succeed, and Empower Act” or the “RISE Act”.

SEC. 502. PERFECTING AMENDMENT TO THE DEFINITION OF DISABILITY.

Section 103(6) of the Higher Education Act of 1965 (20 U.S.C. 1003(6)) is amended by striking “section 3(2)” and inserting “section 3”.

SEC. 503. SUPPORTING STUDENTS WITH DISABILITIES TO SUCCEED ONCE ENROLLED IN COLLEGE.

Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)) is amended by adding at the end the following:

“(30)(A) The institution will carry out the following:

“(i) Adopt policies that make any of the following documentation submitted by an individual sufficient to establish that such individual is an individual with a disability:

“(I) Documentation that the individual has had an individualized education program (IEP) in accordance with section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), including an IEP that may not be current on the date of the determination that the individual has a disability. The institution may ask for additional documentation from an individual who had an IEP but who was subsequently evaluated and determined to be ineligible for services under the Individuals with Disabilities Education Act, including an individual determined to be ineligible during elementary school.

“(II) Documentation describing services or accommodations provided to the individual pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (commonly referred to as a ‘Section 504 plan’).

“(III) A plan or record of service for the individual from a private school, a local educational agency, a State educational agency, or an institution of higher education provided in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

“(IV) A record or evaluation from a relevant licensed professional finding that the individual has a disability.

“(V) A plan or record of disability from another institution of higher education.

“(VI) Documentation of a disability due to service in the uniformed services, as defined in section 484C(a).

“(ii) Adopt policies that are transparent and explicit regarding information about the process by which the institution determines eligibility for accommodations.

“(iii) Disseminate such information to students, parents, and faculty in an accessible format, including during any student orientation and making such information readily available on a public website of the institution.

“(B) Nothing in this paragraph shall be construed to preclude an institution from establishing less burdensome criteria than that described in subparagraph (A) to establish an individual as an individual with a disability and therefore eligible for accommodations.”.

SEC. 504. AUTHORIZATION OF FUNDS FOR THE NATIONAL CENTER FOR INFORMATION AND TECHNICAL SUPPORT FOR POSTSECONDARY STUDENTS WITH DISABILITIES.

Section 777(a) of the Higher Education Act of 1965 (20 U.S.C. 1140q(a)) is amended—

(1) in paragraph (1), by striking “From amounts appropriated under section 778,” and inserting “From amounts appropriated under paragraph (5),”; and

(2) by adding at the end the following:

“(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$2,000,000 for each of fiscal years 2023 through 2027.”.

SEC. 505. INCLUSION OF INFORMATION ON STUDENTS WITH DISABILITIES.

Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)), as amended by section 503, is further amended by adding at the end the following:

“(31) The institution will submit, for inclusion in the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, key data related to undergraduate students enrolled at the institution who are formally registered as students with disabilities with the institution’s office of disability services (or the equivalent office), including the total number of students with disabilities enrolled, the number of students accessing or receiving accommodations, the percentage of students with disabilities of all undergraduate students, and the total number of undergraduate certificates or degrees awarded to students with disabilities. An institution shall not be required to submit the information described in the preceding sentence if the number of such students would reveal personally identifiable information about an individual student.”.

SEC. 506. RULE OF CONSTRUCTION.

None of the amendments made by this title shall be construed to affect the meaning of the terms “reasonable accommodation” or “record of impairment” under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) or the rights or remedies provided under such Act.

TITLE VI—STRENGTHENING BEHAVIORAL HEALTH BENEFITS ACT

SECTION 601. SHORT TITLE.

This title may be cited as the “Strengthening Behavioral Health Benefits Act”.

SEC. 602. ENFORCEMENT OF MENTAL HEALTH AND SUBSTANCE USE DISORDER REQUIREMENTS.

(a) IN GENERAL.—Section 502(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(a)) is amended—

- (1) in paragraph (10), by striking “or” at the end;
- (2) in paragraph (11), by striking the period at the end and inserting “; or”;
- and
- (3) by adding at the end the following:

“(12) in any case relating to the provision of mental health benefits and substance use disorder benefits under a group health plan or under group health insurance coverage offered by a health insurance issuer in connection with a group health plan (as such terms are defined in section 733), by the Secretary, or by a participant, beneficiary, or fiduciary, to enforce any provision of this title or the terms of the plan or coverage relating to such benefits against a group health plan, a health insurance issuer, a fiduciary of a plan, or any other person that contracts with a group health plan to provide group health insurance coverage or assistance in the administration of a group health plan (including a third party administrator, managed behavioral health organization, and a pharmacy benefit manager), if such person participates in or conceals a violation of any requirement of part 7 relating to such benefits or a wrongful denial of a claim for mental health benefits or substance use disorder benefits under the terms of the plan or coverage, to obtain appropriate relief, in addition to any other relief otherwise available under this section, including—

- “(A) to recover all losses to participants and beneficiaries;
- “(B) to reform impermissible plan or coverage terms and policies (as written or in operation) in accordance with the requirements of this title and its implementing regulations; or
- “(C) to ensure the readjudication of claims and payment of benefits in accordance with the plan or coverage terms without any impermissible limitation, plan or coverage term, or policy.”.

(b) CLARIFICATION OF GENERAL ENFORCEMENT AUTHORITIES.—

(1) ACTIONS BROUGHT BY A PARTICIPANT, BENEFICIARY, OR FIDUCIARY.—Section 502(a)(3) of such Act (29 U.S.C. 1132(a)(3)) is amended—

- (A) by striking “or (B)” and inserting “(B)”; and
 - (B) by inserting before the semicolon at the end the following: “, or (C) to require re-adjudication and payment of benefits to remedy violations of this title notwithstanding the availability of relief under other provisions of this title”.
- (2) ACTIONS BROUGHT BY THE SECRETARY.—Section 502(a)(5) of such Act (29 U.S.C. 1132(a)(5)) is amended—
- (A) by striking “or (B)” and inserting “(B)”; and
 - (B) by inserting before the semicolon at the end the following: “, or (C) to require re-adjudication and payment of benefits to remedy violations of this title notwithstanding the availability of relief under other provisions of this title”.
- (c) EXCEPTION TO THE GENERAL PROHIBITION ON ENFORCEMENT.—Section 502(b)(3) of such Act (29 U.S.C. 1132(b)(3)) is amended—
- (1) by inserting “, and except with respect to enforcement by the Secretary of section 712 or any other provision of part 7 in any case relating to mental health benefits and substance use disorder benefits” after “under subsection (c)(9)”; and
 - (2) by striking “706(a)(1)” and inserting “733(a)(1)”.
- (d) DEFINITIONS.—Part 7 of title I of such Act (29 U.S.C. 1181 et seq.) is amended—
- (1) in section 712(e), in the matter preceding paragraph (1), by inserting “and section 502(a)(12)” after “this section”; and
 - (2) in section 733—
 - (A) in subsection (a), in the matter preceding paragraph (1), by inserting “and section 502(a)(12)” after “this part”; and
 - (B) in subsection (b), in the matter preceding paragraph (1), by inserting “and section 502(a)(12)” after “this part”.
- (e) FUNDING.—
- (1) IN GENERAL.—In addition to amounts otherwise available, there are appropriated (out of any money in the Treasury not otherwise appropriated) to the Department of Labor for fiscal year 2023, to remain available until September 30, 2032, \$275,000,000, of which—
 - (A) \$240,000,000 shall be for the Employee Benefits Security Administration; and
 - (B) \$35,000,000 shall be for the Solicitor of Labor.
 - (2) USE OF APPROPRIATED FUNDS.—Amounts made available under paragraph (1) may be used for audits and investigations, enforcement actions, litigation expenses, issuance of regulations or guidance, and any other Departmental activities relating to section 712 of the Employee Retirement Income Security Act of 1974 and any other provision of title I of such Act relating to mental health and substance use disorder benefits.

TITLE VII—EMPLOYEE AND RETIREE ACCESS TO JUSTICE ACT

SECTION 701. SHORT TITLE.

This title may be cited as the “Employee and Retiree Access to Justice Act”.

SEC. 702. UNENFORCEABLE ARBITRATION CLAUSES, CLASS ACTION WAIVERS, REPRESENTATION WAIVERS, AND DISCRETIONARY CLAUSES.

(a) IN GENERAL.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

“(n)(1) In any civil action brought by, or on behalf of, a participant or beneficiary pursuant to this section or with respect to a common law claim involving a plan or plan benefit, notwithstanding any other provision of law—

“(A) no predispute arbitration provision shall be valid or enforceable if it requires arbitration of a matter related to a claim brought under this section;

“(B) no postdispute arbitration provision shall be valid or enforceable unless—

“(i) the provision was not required by any person, obtained by coercion or threat of adverse action, or made a condition of participating in a plan, receiving benefits under a plan, or receiving any other employment, work, or any employment-related or work-related privilege or benefit;

“(ii) each participant or beneficiary agreeing to the provision was informed, through a paper notice, in a manner reasonably calculated to be un-

derstood by the average plan participant, of the right of the participant or beneficiary under subparagraph (C) to refuse to agree to the provision without retaliation or threat of retaliation;

“(iii) each participant or beneficiary agreeing to the provision so agreed after a waiting period of not fewer than 45 days, beginning on the date on which the participant or beneficiary was provided both the final text of the provision and the disclosures required under clause (ii); and

“(iv) each participant or beneficiary agreeing to the provision affirmatively consented to the provision in writing;

“(C) no covered provision shall be valid or enforceable, if prior to a dispute to which the covered provision applies, a participant or beneficiary undertakes or promises not to pursue, bring, join, litigate, or support any kind of individual, joint, class, representative, or collective claim available under this section in any forum that, but for such covered provision, is of competent jurisdiction;

“(D) no covered provision shall be valid or enforceable, if after a dispute to which the covered provision applies arises, a participant or beneficiary undertakes or promises not to pursue, bring, join, litigate, or support any kind of individual, joint, class, representative, or collective claim under this section in any forum that, but for such covered provision, is of competent jurisdiction, unless the covered provision meets the requirements of subparagraph (B); and

“(E) no covered provision related to a plan other than a multiemployer plan shall be valid or enforceable that purports to confer discretionary authority to any person with respect to benefit determinations or interpretation of plan language, or to provide a standard of review of such determinations or interpretation by a reviewing court in an action brought under this section that would require anything other than de novo review of such determinations or interpretation.

“(2) In this subsection—

“(A) the term ‘covered provision’ means any document, instrument, or agreement related to a plan or plan benefit, regardless of whether such provision appears in a plan document or in a separate agreement;

“(B) the term ‘predispute arbitration provision’ means a covered provision that requires a participant or beneficiary to arbitrate a dispute related to the plan or an amendment to the plan that had not yet arisen at the time such provision took effect;

“(C) the term ‘postdispute arbitration provision’ means a covered provision that requires a participant or beneficiary to arbitrate a dispute related to the plan or an amendment to the plan that arose before the time such provision took effect; and

“(D) the term ‘retaliation’ means any action in violation of section 510.

“(3)(A) Any dispute as to whether a covered provision that requires a participant or beneficiary to arbitrate a dispute related to a plan is valid and enforceable shall be determined by a court, rather than an arbitrator, regardless of whether any contractual provision purports to delegate such determinations to the arbitrator and irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.

“(B) For purposes of this subsection, a dispute shall be considered to arise only when a plaintiff has actual knowledge (within the meaning of such term in section 413) of a breach or violation giving rise to a claim under this section.”.

(b) REGULATIONS.—The Secretary of Labor may promulgate such regulations as may be necessary to carry out the amendment made by subsection (a), including providing for the form and content of notices required pursuant to such amendment.

SEC. 703. PROHIBITION ON MANDATORY ARBITRATION CLAUSES, CLASS ACTION WAIVERS, REPRESENTATION WAIVERS, AND DISCRETIONARY CLAUSES.

Section 402 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1102) is amended by adding at the end the following:

“(d)(1) No covered person may—

“(A) require participants or beneficiaries to agree to a predispute arbitration provision as a condition for participation in, or receipt of benefits under, a plan;

“(B) agree to a postdispute arbitration provision with a participant or beneficiary with respect to a plan or plan benefit unless the conditions of clauses (i) through (iv) of section 502(n)(1)(B) are satisfied with respect to such provision; or

“(C) agree to any other covered provision with respect to a plan or plan benefit under any circumstances under which such provision would not be valid and enforceable under subparagraphs (C) through (E) section 502(n)(1).

“(2) In this subsection—

“(A) the term ‘covered person’ means—

“(i) a plan;

“(ii) a plan sponsor;

“(iii) an employer; or

“(iv) a person engaged by a plan for purposes of administering or operating the plan; and

“(B) the terms ‘covered provision’, ‘predispute arbitration provision’ and ‘postdispute arbitration provision’ have the meanings given such terms in section 502(n)(2).”.

SEC. 704. EFFECTIVE DATE.

(a) **IN GENERAL.**—The amendments made by sections 702 and 703 shall take effect on the date of enactment of this Act and shall apply with respect to any dispute or claim that arises or accrues on or after such date, including any dispute or claim to which a provision predating such date applies, regardless of whether plan documents have been updated in accordance with such amendments.

(b) **ENFORCEMENT WITH RESPECT TO PLAN DOCUMENT UPDATES.**—Notwithstanding subsection (a), no person shall be deemed to be in violation of such amendments on account of plan documents that have not been updated in accordance with such amendments until after the beginning of the first plan year that begins on or after the date that is 1 year after the date of enactment of this Act, provided that such person acts in accordance with such amendments during the period in which the plan documents have not been updated.

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PURPOSE AND SUMMARY

The purpose of H.R. 7780, the *Mental Health Matters Act*, is to improve access to behavioral health services for children, students, and workers. H.R. 7780 responds to the growing behavioral health needs of communities across the country by investing in access to behavioral health services, equipping schools to better respond to the needs of students, and improving access to behavioral health benefits in job-based health coverage.

COMMITTEE ACTION

116th Congress

On February 6, 2019, the Committee held a hearing titled “Examining Threats to Workers with Preexisting Conditions” which discussed in part mental health benefits. The Committee heard testimony from: Ms. Sabrina Corlette, Research Professor with the Center on Health Insurance Reforms, Georgetown University Health Policy Institute, Washington, D.C.; Mr. Chad Riedy, Alexandria, VA; Ms. Grace-Marie Turner, President, Galen Institute, Paeonian Springs, VA; and Dr. Rahul Gupta, Senior Vice President and Chief Medical and Health Officer, March of Dimes, Arlington, VA.

On September 11, 2019, the Early Childhood, Elementary, and Secondary Education (ECESE) Subcommittee held a hearing titled “The Importance of Trauma-Informed Practices in Education to Assist Students Impacted by Gun Violence and Other Adversities” which discussed the trauma students bring to and experience in school, and how it effects their behavioral health and school performance. The Committee heard testimony from: Dr. Nadine Burke Harris, Surgeon General for the State of California, San Francisco, CA; Dr. Ingrida Barker, Associate Superintendent, McDowell County Schools, Welch, WV; Ms. Joy Hofmeister, State Superintendent of Public Instruction, Oklahoma State Department of Education, Oklahoma City, OK; and Dr. Janice K. Jackson, Chief Executive Officer, Chicago Public Schools, Chicago, IL.

On June 22, 2020, the Committee held a hearing titled “Inequities Exposed: How COVID-19 Widened Racial Inequities in Education, Health, and the Workforce” on how existing disparities in health and education fields have been exacerbated by the COVID-19 pandemic. The Committee heard testimony from Dr. Camara P. Jones, Adjunct Professor, Rollins School of Public Health at Emory University; Senior Fellow and Adjunct Associate Professor, Morehouse School of Medicine; Past President, American Public Health Association, Atlanta, GA; Dr. Valerie Rawlston Wilson, Director, Program on Race, Ethnicity, and the Economy, Economic Policy Institute, Silver Spring, MD; Mr. Avid Roy, Co-Founder and President, The Foundation for Research on Equal Opportunity, Austin, TX; and Mr. John B. King, Jr., President and CEO, The Education Trust, Washington, D.C.

117th Congress

On March 25, 2021, the Early Childhood, Elementary, and Secondary Education (ECESE) Subcommittee held a hearing titled “Lessons Learned: Charting the Path to Educational Equity Post-COVID-19” to examine how the COVID-19 pandemic has impacted communities and discuss the most effective methods of ensuring the nation’s public schools reopen and recover equitably. The Subcommittee heard testimony from Mr. Mark Morial J.D., President and Chief Executive Officer, National Urban League, New York, NY; Mrs. Jennifer Dale, Parent, Lake Oswego, OR; Selene Almazan, Esq., Legal Director, Council of Parent Attorneys and Advocates, Inc., Towson, MD; and Alberto Carvalho, Superintendent of Schools, Miami-Dade County Public Schools, Miami, FL.

On April 15, 2021, the Subcommittee on Health, Employment, Labor, and Pensions (HELP Subcommittee) held a hearing titled “Meeting the Moment: Improving Access to Behavioral and Mental Health Care” to examine barriers to access to behavioral health care, particularly limited coverage of mental health and substance use disorder treatment and the importance of improving enforcement of mental health parity laws. The Subcommittee heard testimony from Dr. Brian Smedley, Chief of Psychology in the Public Interest, American Psychological Association, Washington, DC; Dr. Christine Yu Moutier, Chief Medical Officer, American Foundation for Suicide Prevention, New York, NY; Mr. James Gelfand, Senior Vice President, Health Policy, The ERISA Industry Committee, Washington, DC; and Dr. Meiram Bendat, Founder, Psych-Appeal, Santa Barbara, CA.

On September 9, 2021, the ECESE Subcommittee held a hearing titled, “Back to School: Highlighting Best Practices for Safely Reopening Schools” which discussed the conditions under which schools were beginning to reopen nationally, and the state of students and teachers returning to school. The Subcommittee heard testimony from Dr. Jesus F. Jara, Superintendent of Schools, Clark County School District, Las Vegas, NV; Ms. Denise Forte, Interim Chief Executive Officer, The Education Trust, Washington, D.C.; Mr. David Zweig, Journalist, The Atlantic, New York Magazine, Wired Magazine, Hudson, NY; and Dr. Ashish K. Jha, Dean & Professor of Health Services, Policy & Practice, Brown University, Providence, RI.

On February 16, 2022, the ECESE Subcommittee held a hearing titled “Serving All Students: Promoting a Healthier, More Supportive School Environment” to discuss practices in use in public schools that are harmful to the mental health of students. The Subcommittee heard testimony from: Ms. Kristen Harper, Vice President for Public Policy and Engagement, Child Trends; Mr. Guy Stephens, Founder and Executive Director, Alliance Against Seclusion and Restraint; Ms. Morgan Craven, J.D., National Director of Policy, Advocacy and Community Engagement, Intercultural Development Research Association; and, Mr. Max Eden, Research Fellow, American Enterprise Institute.

On March 1, 2022, the HELP Subcommittee held a hearing titled “Improving Retirement Security and Access to Mental Health Benefits” to examine issues affecting access to benefits under private sector employee retirement and health benefit plans, including barriers to coverage of mental health services. The Subcommittee heard testimony from Ms. Amy Matsui, Director of Income Security and Senior Counsel, National Women’s Law Center, Washington, DC; Ms. Karen Handorf, Senior Counsel, Berger Montague, Alexandria, VA; Mr. Andrew Biggs, Senior Fellow, American Enterprise Institute, Washington, DC; and Mr. Aron Szapiro, Head of Retirement

Studies and Public Policy, Morningstar, Inc. and Morningstar Investment Management LLC, Chicago, IL.

On May 17, 2022, Rep. Mark DeSaulnier (D-CA-11) introduced H.R. 7780, the *Mental Health Matters Act*. The bill was referred to the Committee on Education and Labor.

On May 18, 2022, the Committee considered H.R. 7780 in legislative session and reported it favorably, as amended, to the House of Representatives by a vote of 26 Yeas to 18 Nays. The Committee considered the following amendments to H.R. 7780:

- Rep. DeSaulnier offered an amendment in the nature of a substitute to make conforming and technical changes. The amendment was adopted by voice vote.
- Rep. Rick Allen (R-GA-12) offered an amendment in the nature of a substitute to strike the bill text and replace it with a new program administered by the Department of Education that would award competitive grants to state educational agencies to address the mental health needs of school. The amendment was defeated by a vote of 17 Yeas and 26 Nays.
- Rep. Mary Miller (R-IL-15) offered an amendment to strike language regarding preparing mental health service providers to meet the needs of LGBTQ+ students. The amendment was defeated by a vote of 17 Yeas and 26 Nays.
- Rep. Allen offered an amendment to make implementation of the *Strengthening Behavioral Health Benefits Act* conditional on the Department of Labor issuing a rule on mental health parity requirements. The amendment also strikes the additional funding for parity enforcement. The amendment was defeated by a vote of 17 Yeas and 27 Nays.
- Rep. Diana Harshbarger (R-TN-01) offered an amendment to remove the bill's multiemployer benefits plan exemption from the bill's prohibition on discretionary clauses in employee benefit plans. The amendment was defeated by a vote of 18 Yeas and 26 Nays.

COMMITTEE VIEWS

Communities across the United States are grappling with a devastating mental health crisis, which has only been exacerbated in recent years due to two public health emergencies—the opioid crisis and the COVID-19 pandemic. Barriers to access to behavioral health services vary and create complex challenges for vulnerable families, but Congress has tools at its disposal to better support students, workers, and communities. H.R. 7780 takes important steps to reduce the inequities caused by these barriers and include policies and priorities to meet the needs of our communities. Specifically, H.R. 7780 includes language from bills championed by members of the Committee, which are described below.

Supporting the Behavioral Health Needs of Students and Youth

According to a recent CDC report, every year, 20 percent of all children are identified with a mental health condition, while 40 percent of all children will meet criteria for a mental health condition by age 18.¹ Examining data from 2013 to 2019, the same report found that among adolescents aged 12–17 years, 1 in 5 had experienced a major depressive episode.² A separate CDC report highlighted the increase in poor mental health and suicide behaviors among U.S. high school students over roughly the last decade.³ Among high school students in 2019, the report found that more than 1 in 3 reported feeling sad or hopeless, an increase of 40 percent over the 2009 figure.⁴ Equally distressing, nearly 1 in 5 high school students in 2019 had seriously considered attempting suicide.⁵ On the other end of the age spectrum, findings indicate that there is evidence that even very young children experience mental health conditions.⁶

Members of marginalized communities often face additional challenges that impact mental health. Between 2009 and 2019, lesbian, gay, and bisexual students were four times more likely to have attempted suicide than their heterosexual peers.⁷ Focusing specifically on transgender youth, a national quantitative cross-sectional survey published in 2020, found they are twice as likely to experience depression, seriously consider suicide, and attempt suicide compared to cisgender, lesbian, gay, bisexual, queer and questioning youth.⁸ It is important to note that LGBTQ+ identities are not in themselves the cause of such challenges. Rather, these higher rates likely reflect the impact of bias, discrimination, family rejection, and other stressors.⁹ COVID-19 has placed additional stressors on many children and young people and has disproportionately impacted communities of color. Over 150,000 children have lost a parent or caregiver to COVID-19, and about 65 percent of all youth experiencing COVID-19 orphanhood are children of color.¹⁰

¹ Rebecca Bitsko et al., *Mental Health Surveillance Among Children- United States, @013-2019*, 71 *Mortality & Morbidity Wkly. Rpt.*, Feb. 25, 2022, at 4, <https://www.cdc.gov/mmwr/volumes/71/su/pdfs/su7102a1-H.pdf>.

² *Id.* at 2.

³ Ctrs. for Disease Control & Prevention, *Youth Risk Behavior Survey Data Summary & Trends Report: 2009–2019* 6 (2019), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBSDataSummaryTrendsReport2019-508.pdf>.

⁴ *Id.* at 60-61.

⁵ *Id.* at 62.

⁶ See Ruth Shim, et al., *Epidemic Rates of Child and Adolescent Mental Health Disorders Require an Urgent Response*, 149 *Pediatrics* 5 April 26, 2022 at 1, <https://publications.aap.org/pediatrics/article/149/5/e202205661/184904/Epidemic-Rates-of-Child-and-Adolescent-Mental>.

⁷ See *Id.* at 684.

⁸ Myeshia Price-Feeney et al., *Understanding the Mental Health of Transgender and Nonbinary Youth*, 66 *J. of Adolescent Health* 684, 689 (2020), [https://www.jahonline.org/article/S1054-139X\(19\)30922-X/fulltext](https://www.jahonline.org/article/S1054-139X(19)30922-X/fulltext).

⁹ See, e.g., Joanna Almeida, et al., *Emotional Distress Among LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation*, 38 *J. of Youth & Adolescence* 1001-14 (2009).

¹⁰ See, Dan Treglia, et al., *Hidden Pain: Children Who Lost a Parent or Caregiver to COVID-19 and What the Nation Can Do to Help Them*, COVID Collaborative, (Dec. 2021),

<https://www.covidcollaborative.us/assets/uploads/img/HIDDEN-PAIN-FINAL.pdf>; Press Release,

Ctrs. for Disease Control & Prevention, *The Hidden U.S. COVID-19 Pandemic: Orphaned Children- More than 140,000 U.S. Children Lost a Primary or Secondary Caregiver Due to the COVID-19 Pandemic* (October 2021), <https://www.cdc.gov/media/releases/2021/p1007-covid-19-orphaned-children.html>.

In addition to losing parents¹¹ and family members,¹² children of color have been disproportionately impacted by long-term COVID-19 complications,¹³ food insecurity,¹⁴ housing instability,¹⁵ and community violence¹⁶ — all factors that contribute to adverse mental health outcomes. Improving equitable access to quality mental health services will provide critical support to children experiencing traumatic stress, anxiety, depression, and other mental health conditions.¹⁷

To highlight the urgent mental health needs of children and youth, the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry, and the Children's Hospital Association declared a national emergency in child and adolescent mental health in October 2021.¹⁸ In order to respond to this national emergency, H.R. 7780 includes important Committee priorities to better support our nation's students, children, and educators during this national emergency.

Supporting Early Childhood Mental Health

H.R. 7780 includes the text of the *Early Childhood Mental Health Support Act*, which was first introduced in the 116th Congress by Rep. Mark DeSaulnier (D-CA-11), Rep. Doris Matsui (D-CA-06) and Rep. Joe Kennedy III (D-MA-04). The bill was reintroduced in the 117th Congress by Rep. DeSaulnier, Rep. Matsui, and Rep. Ayanna Pressley (D-MA-07). The legislation aims to improve access to mental health supports for both children and staff in Head Start programs by requiring the U.S. Department of Health and Human Services (HHS) to identify evidence-based interventions for Head Start programs and help Head Start agencies implement these interventions to improve the health of children and staff.

¹¹ See Susan D. Hillis, et al., COVID-19-Associated Orphanhood and Caregiver Death in the United States. *Pediatrics*, <https://publications.aap.org/pediatrics/article/148/6/e2021053760/183446/COVID-19-Associated-Orphanhood-and-Caregiver-Death>.

¹² Mike Stobbe, More than 120,000 U.S. kids had caregivers die during pandemic, (October 7, 2021), Associated Press, <https://apnews.com/article/coronavirus-pandemic-science-pandemics-covid-19-pandemic-race-and-ethnicity-72ab35ef81250e5007f5674d7e0af73d>.

¹³ Jason Kane, *Rising number of children struggle with COVID's effects, especially in Black and Latino communities*, PBS News Hour, (July 23, 2021), <https://www.pbs.org/newshour/show/rising-number-of-children-have-long-haul-covid-especially-in-black-and-latino-communities>.

¹⁴ Jiying Ling, Paige Duren, Lorraine Robbins, Food Insecurity and Mental Well-Being Among Low-Income Families During COVID-19 Pandemic, (September 2022), *American Journal of Health Promotion*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9014344/pdf/10.1177_08901171221089627.pdf.

¹⁵ U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Promoting Mental Health Through Housing Stability*, (May 13, 2022), <https://www.huduser.gov/portal/pdredge/pdr-edge-trending-053122.html>.

¹⁶ Eunice Larbi, Hannah Berendzen, et al., Substance Abuse and Mental Health Services Administration, *Coping with Community Violence Together*, (July 27, 2022), <https://www.samhsa.gov/blog/coping-community-violence-together>.

¹⁷ Cf. The Nat'l Child Traumatic Stress Network, *What is Child Traumatic Stress?* (2003), https://www.samhsa.gov/sites/default/files/programs_campaigns/childrens_mental_health/what-is-child-traumatic-stress.pdf (highlighting the epidemic of childhood traumatic stress).

¹⁸ Am. Acad. of Pediatrics, *AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health*, (Oct. 19, 2021) <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/>.

The targeted funding and support of the *Early Childhood Mental Health Support Act* comes at a critical time for Head Start programs. The COVID-19 pandemic and opioid crisis have taken a serious toll on students' social and emotional development, leading to an increase in the number of children experiencing trauma entering Head Start.¹⁹ As a result, children are entering Head Start with higher needs and contributing to stressful working conditions for staff; these factors, coupled with low compensation, are leading to high staff turnover.²⁰ Head Start was founded to help break the cycle of poverty and provide young children from low-income families comprehensive services that meet their emotional, social, health, nutritional, and educational needs.²¹ Providing access to mental health services to young children is an important part of Head Start's work. In 2016, roughly one in six U.S. children between the ages of two and eight years had a diagnosed mental, behavioral, or developmental disorder.²² Given the life-long consequences of adverse experiences and trauma on children, it is crucial that Congress develop policies to improve the mental health of our nation's young people.

A 2022 survey of over 900 Head Start staff states that classrooms are overrun with children exhibiting challenging behaviors, social-emotional needs, and trauma.²³ The Administration for Children and Families, the office within HHS that administers Head Start, needs additional resources both to address the increased need from the vulnerable populations of children Head Start serves and to identify the best interventions to set children on a path to school readiness and lifelong mental health wellness. The evidence is clear: the sooner children receive support, the more they thrive.²⁴

Recognizing the Need to Support Children Impacted by Trauma

Trauma is not merely a factor in the lives of young children – it affects between half and two-thirds of all children in the United States.²⁵ Described simply by the American Psychological Association as “an emotional response to a terrible event”, traumatic events may include the experience of child abuse, community or school violence, or the sudden loss of a loved one.²⁶ According to a CDC study analyzing the long-term effects of childhood and adolescent traumatic experiences (also known as adverse childhood experiences, or ACEs) on adult health, health care costs, and life expectancy, the effects of trauma are predictive of poor mental health across an

¹⁹ See Early Childhood & Knowledge Learning Ctr., Admin. for Child. & Families, U.S. Dep't of Health & Hum. Svcs., Introduction to Head Start and the Opioid Crisis, (2020) <https://eclkc.ohs.acf.hhs.gov/mental-health/article/head-start-opioid-crisis>; Nat'l Head Start Assn., Confronting Head Start's Workforce Crisis 2-5 (2022), <https://nhsa.org/wp-content/uploads/2022/05/2022.05-Workforce-Brief.pdf?source=email>.

²⁰ See Nat'l Head Start Assn., *supra* note 15, at 2-5.

²¹ Early Childhood & Knowledge Learning Ctr., Admin. for Child. & Families, U.S. Dep't of Health & Hum. Svcs. Head Start History, (2018), <https://eclkc.ohs.acf.hhs.gov/about-us/article/head-start-history>.

²² Ctrs. for Disease Control & Prevention, Data and Statistics on Children's Mental Health, (2022), <https://www.cdc.gov/childrensmentalhealth/data.html>.

²³ See Nat'l Head Start Assn., *supra* note 15, at 5.

²⁴ E.g., Ctr. on the Developing Child, Harvard University, The Impact of Early Adversity on Children's Development. 2 (2007), <https://developingchild.harvard.edu/resources/inbrief-the-impact-of-early-adversity-on-childrens-development/> (“While there is no ‘magic age’ for intervention, it is clear that, in most cases, intervening as early as possible is significantly more effective than waiting.”).

²⁵ Substance Abuse & Mental Health Svcs. Admin., Understanding Childhood Trauma 1, (2016), https://store.samhsa.gov/sites/default/files/d7/priv/sma16-4923_0.pdf.

²⁶ Am. Psych. Assn., Trauma (Sept. 13, 2022, 8:15 PM), <https://www.apa.org/topics/trauma#>.

individual's lifespan.²⁷ Furthermore, it is estimated that the social and economic costs of trauma exposure are hundreds of billions of dollars per year.²⁸

As a result of experiencing trauma, children may experience difficulties with concentration, memory, organization, and language skills that can make it difficult to adjust to a classroom setting.²⁹ There is also a strong correlation between students who have experienced trauma and poor learning outcomes.³⁰ Further, teachers, school leaders, and specialized instructional support personnel can be deeply impacted by the traumas students bring with them into the classroom each day and sustain secondary traumatic stress.³¹ Given the staggering reach of trauma and widespread concerns for both student and teacher wellbeing and academic learning, it is crucial that teachers, school leaders, paraprofessionals, school-based mental health services providers, and other specialized instructional support personnel are equipped to successfully work with students who have been impacted by trauma.

Effective trauma-informed approaches will go beyond trauma-sensitive teaching practices employed by a single teacher in a classroom and will encompass school wide practices designed to foster safe and stable environments, cultivating a space in which students, educators, and staff members can thrive.³² Professional development programs on trauma-informed best practices direct school staff to work together to identify student needs for referral to licensed or certified school-based mental health services providers, such as school counselors, social workers, and psychologists. These professional development activities also enable teachers and school leaders to support student mental health in ways that are effective yet appropriate given their roles.³³

Recognizing trauma's outsized role as a root cause of major American public health issues, during the 115th Congress, Reps. Danny K. Davis (D-IL-07) and Mike Gallagher (R-WI-08) launched the Trauma-Informed Care Caucus in the U.S. House of Representatives to increase

²⁷ See Ctrs. for Disease Control & Prevention, About the CDC-Kaiser ACE Study, (Sept. 13, 2022, 8:24 PM) <https://www.cdc.gov/violenceprevention/aces/about.html> (linking adverse childhood experiences to increased risk of other negative health outcomes from injury to chronic disease, infections disease, and risky behaviors generally).

²⁸ Ctrs. for Disease Control & Prevention, Preventing Childhood Adverse Experiences (ACEs): Leveraging the Best Available Evidence 7, (2019), <https://www.cdc.gov/violenceprevention/pdf/preventingACES.pdf>.

²⁹ See e.g., Kohske Ogata, Maltreatment Related Trauma Symptoms Affect Academic Achievement Through Cognitive Functioning: A Preliminary Examination in Japan, 5 J.of Intel. 5 (2017) <https://www.mdpi.com/2079-3200/5/4/32>.

³⁰ Rachael D. Goodman, et al., Traumatic Stress, Socioeconomic Status, and Academic Achievement Among Primary School Students 256, (2012) https://www.researchgate.net/profile/Rachael-Goodman-2/publication/232560514_Traumatic_Stress_Socioeconomic_Status_and_Academic_Achievement_Among_Primary_School_Students/links/0a85e538fdecdbdf10000000/Traumatic-Stress-Socioeconomic-Status-and-Academic-Achievement-Among-Primary-School-Students.pdf.

³¹ The Nat'l Child Traumatic Stress Network, Secondary Traumatic Stress, <http://www.nctsn.org/resources/topics/secondary-traumatic-stress>

³² Alex Shevrin Venet, The How and Why of Trauma Informed Teaching, Edutopia (Aug. 3, 2018), <https://www.edutopia.org/article/how-and-why-trauma-informed-teaching>.

³³ See First Book, The Impact of COVID-19 on Student Mental Health in Communities of Need, 24 (Mar. 2022) https://firstbook.org/wp-content/uploads/2022/03/FirstBook_RI_Mental_Health_Final.pdf?utm_source=firstbook&utm_medium=page&utm_campaign=mentalhealth.

congressional awareness of trauma-informed care.³⁴ Representatives Davis and Gallagher were then joined by Senator Richard Durbin (D-NY) and Senator Lisa Murkowski (R-AK) in introducing the *Trauma-Informed Care for Children and Families Act*³⁵ in both the House and Senate, to support children who have been exposed to ACEs and other traumas. This legislation, designed to respond to needs revealed by a Government Accountability Office (GAO) study requested by Senator Durbin and Rep. Davis,³⁶ was the basis for trauma-related provisions included in the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act*. The *SUPPORT Patients and Communities Act* passed the House by a bipartisan vote of 396-14, with the support of then- Committee Chairwoman Virginia Foxx (R-NC-05)³⁷; it passed the Senate and was enacted into law in 2018.³⁸ However, the programs in SUPPORT derived from the *Trauma-Informed Care for Children and Families Act* have not yet received funding.

In the 116th Congress, Rep. Jahana Hayes (D-CT-05) introduced H.R. 4835, the *Supporting Trauma-Informed Education Practices Act*,³⁹ which sought to provide mandatory funding for the programs in SUPPORT derived from the *Trauma-Informed Care for Children and Families Act*. H.R. 4835 was eventually included in the *Elijah E. Cummings Lower Drug Costs Now Act* (H.R. 3), which passed the House of Representatives in December 2019.⁴⁰ In the same Congress, Reps. Davis and Gallagher continued to champion trauma-informed care, and introduced new legislation, H.R. 3180, the *Resilience Investment, Support, and Expansion (RISE) from Trauma Act*, to increase support for children and adults who have been exposed to trauma by building out the trauma-informed workforce and increasing resources for communities to support children who have experienced trauma.

In the 117th Congress, Rep. Hayes reintroduced the *Supporting Trauma-Informed Education Practices Act* with several crucial revisions, such as including early childhood education programs as eligible entities to carry out evidence-based trauma-informed practices, as well as adding evidence-based programs to improve mental health and resiliency among teachers, school leaders, and other school personnel as an allowable use of grant funds. This was in line with recommendations the Early Childhood, Elementary, and Secondary Education (ECESE) Subcommittee heard from Kristen Harper, Vice President for Policy and Engagement of Child Trends, at a February 16, 2022 hearing who said, “Schools’ primary strategy should be prevention, with health, mental health, and social services and relationship-building as schools’ primary tactics.”⁴¹ The *Supporting Trauma-Informed Education Practices Act* was included in H.R. 7780.

³⁴Press Release, Office of Rep. Mike Gallagher, Gallagher Launches Bipartisan Trauma-Informed Care Caucus (May 21, 2018) <https://gallagher.house.gov/media/press-releases/gallagher-launches-bipartisan-trauma-informed-care-caucus>.

³⁵ S. 774 & H.R. 1757, 115th Cong. (2017).

³⁶ U.S. Gov’t Accountability Off., GAO-19-388, Children Affected by Trauma, Selected States Report Various Approaches and Challenges to Supporting Children (2019) <https://www.gao.gov/assets/gao-19-388.pdf>.

³⁷ H.R. 6, 115th Cong., 2d sess., House Roll Call Vote #288, (June 22, 2018), <https://clerk.house.gov/Votes/2018288>.

³⁸ H.R. 6, 115th Cong., 2d sess., Senate Roll Call Vote #221, (Oct. 3, 2018), https://www.senate.gov/legislative/LIS/roll_call_votes/vote1152/vote_115_2_00221.htm.

³⁹ H.R. 4835, 116th Cong. (2019).

⁴⁰ H.R. 3, 116th Cong., 1st sess., House Roll Call Vote #682 (Dec. 12, 2019), <https://clerk.house.gov/Votes/2019682>.

⁴¹ *Serving All Students: Promoting a Healthier, More Supportive School Environment: Hearing Before the Subcomm. on Early Childhood, Elementary & Secondary Educ. of the H. Comm. on Educ. & Lab.*, 117th Cong. (2022).

Based on longstanding bipartisan support for trauma-informed practices, and previous support for the authorization of trauma informed programs in SUPPORT, it is disappointing to see how these practices were considered during the markup to H.R. 7780. Under now-Ranking Member Foxx’s leadership, the proposed Republican Amendment in the Nature of a Substitute (ANS) to the *Mental Health Matters Act* entirely removed competitive grants to increase student access to trauma-informed support from the legislation. In fact, the Republican ANS went so far as to strike the mere mentions of “trauma” and “trauma-informed practices” from the bill.

Finally, as a result of the *SUPPORT Patients and Communities Act*’s passage in the 115th Congress, and the longtime efforts of the Congressional Black Caucus’ Emergency Taskforce on Youth Suicide and Mental Health, an Interagency Task Force on Trauma-Informed Care, led by the Substance Abuse and Mental Health Services Administration (SAMHSA), was established to “harness the expertise, reach, and resources of the federal government to address the impact that trauma can have on the healthy development of children.”⁴² The Committee looks forward to the Task Force’s forthcoming report and recommendations. Furthermore, under the *Mental Health Matters Act*, initiatives, activities, and programs carried out under the bill’s *Supporting Trauma-Informed Education Practices Act* provisions must reflect the best practices for trauma-informed identification, referral and support developed by the Task Force. The Committee is eager for these efforts to serve as further exemplars of evidence-based trauma-informed support services and mental health services.

Investing in the School-Based Behavioral Health Workforce

Despite the increasing mental, emotional, and behavioral health needs of children, students, and youth, only 20 percent of children with mental, emotional, or behavioral health disorders receive care from a specialized mental health care provider.⁴³ Among the 4.1 million adolescents ages 12–17 who reported a major depressive episode in 2020, only 41.6 percent received treatment, according to SAMHSA.⁴⁴ Of those who did receive treatment, many received access via school-based mental health services.⁴⁵ Students are more likely to visit school-based health centers for

⁴² Substance Abuse & Mental Health Svcs. Admin., National Strategy for Trauma-Informed Care Operating Plan, <https://www.samhsa.gov/sites/default/files/trauma-informed-care-operating-plan.pdf>.

⁴³ American Academy of Child and Adolescent Psychiatry, Press Release: Severe Shortage of Child and Adolescent Psychiatrists Illustrated in AACAP Workforce Maps, (May 4, 2022), https://www.aacap.org/AACAP/zLatest_News/Severe_Shortage_Child_Adolescent_Psychiatrists_Illustrated_AACAP_Workforce_Maps; See Richard Martini, et al., Best Principles for Integration of Child Psychiatry into the Pediatric Health Home: Financing Collaborative Care, 3 *American Academy of Child and Adolescent Psychiatry*, (June 2012), https://www.aacap.org/App_Themes/AACAP/docs/clinical_practice_center/systems_of_care/best_principles_for_integration_of_child_psychiatry_into_the_pediatric_health_home_2012.pdf (“Almost 20% of children in the United States suffer from some form of a mental illness- only 20% of these children receive treatment.”).

⁴⁴ Substance Abuse & Mental Health Svcs. Admin., Ctr. for Behavioral Health Stats. & Quality, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2020 National Survey on Drug Use and Health*, 41 (October 21, 2021), <https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFRPDFWHTMLFiles2020/2020NSDUHFFR1PDFW102121.pdf>.

⁴⁵See *Id.* at 42-43.

mental health services than community mental health centers.⁴⁶ For students living in low-income school districts, school-based mental health services may be one of few resources available in communities with limited access to health care.

Students of color also face additional barriers when seeking quality mental health services. People of color in the U.S. are more likely to delay or avoid seeking mental health treatment,⁴⁷ and one of the theorized reasons for this delay is lack of access to mental health providers from diverse backgrounds and linguistically and culturally appropriate mental health services. While more people of color are training to become mental health providers, racial and ethnic minorities represent only 26 percent of psychologists under the age of 36 and 8 percent of those over age 50, according to the American Psychological Association.⁴⁸

School-based mental health services providers, which include school counselors, social workers, and psychologists, are trained professionals with the appropriate licensure, certification and/or credentials to serve on the frontlines of the student mental health crisis and meet student mental health needs. Research has shown that school-based mental health providers improve school climate and other positive outcomes for students.⁴⁹ Schools served by more school-based mental health services providers see a host of improvements, including increased attendance rates, lower rates of school disciplinary incidents,⁵⁰ as well as improved academic achievement and career readiness,⁵¹ and improved graduation rates.⁵²

As part of the its 2015-16 U.S. Department of Education's Civil Rights Data Collection (CRDC), the Department's Office for Civil Rights (OCR) required, for the first time, that all public schools report the number of social workers, nurses, and psychologists employed, to supplement existing data collection on the number of school counselors.⁵³ A comparison of the resulting CRDC data and recommended student to school-based mental health services provider ratios indicate an concerning shortage of such professionals in schools. The 2015-16 data revealed that only two states on average met the 250:1 student-to-social worker ratio recommended by the

⁴⁶ Michael Arenson, et al., *The evidence on School-Based Center: A Review*, 6 *Global Pediatric Health* 1, 3-4 (2019), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6381423/pdf/10.1177_2333794X19828745.pdf.

⁴⁷ Thomas G. McGuire & Jeanne Miranda, *Racial and ethnic Disparities in Mental Health Care: Evidence and Policy Implications*, 3, NIH Public Access, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3928067/>.

⁴⁸ American Psychological Association. (2019). Demographics of the U.S. Psychology Workforce. <https://www.apa.org/workforce/data-tools/demographics>.

⁴⁹ See, e.g., Richard E. Cleveland & Christopher A. Sink, *Student Happiness, School Climate, and School Improvement Plans: Implications for School Counseling Practice*, 21 *Professional School Counseling* 1-10 (2018); Thomas J. Hernandez & Susan R. Seem, *A Safe School Climate: A Systemic Approach and the School Counselor*, 7 *Professional School Counseling* 256-62 (2004); Joseph G. Kosciw, et al., *Who, what, where, when, and why: Demographic and ecological factors contributing to hostile school climate for lesbian, gay, bisexual, and transgender youth*, 38 *Journal of Youth Adolescent* 976-88 (2009).

⁵⁰ Richard T. Lapan et al., *Connecticut professional school counselors: College and career counseling services and smaller ratios benefit students*, 16 *Professional School Counseling* 117-124. (2012).

⁵¹ Richard T. Lapan et al., *The impact of more fully implemented guidance programs on the school experiences of high school students: A statewide evaluation study*, 75 *J. of Counseling & Development*, 292-302 (1997).

⁵² Kevin Tan, et al., *The impact of school social workers on high school freshman graduation among the one hundred largest school districts in the United States*, 39 *Sch. Soc. Work J.*, 1-14 (2015).

⁵³ U.S. Dept. of Educ., Civil Rights Data Collection, Master List of 2015-16 Definitions, <https://ocrdata.ed.gov/assets/downloads/CRDC-Definitions-2015-16.pdf>.

School Social Work Association of America (SSWAA).⁵⁴ Likewise, only three states met the 250:1 student-to-school counselor ratio recommended by the American School Counselor Association.⁵⁵ For the 2020-21 school year, the national average ratio was 415 students to every one school counselor. Further, the National Association of School Psychologists (NASP) recommends a 500:1 student-to-school psychologist ratio in order to provide comprehensive school-based psychological services.⁵⁶ However, the actual national ratio for the 2020-21 school year was 1,211 students to one school psychologist.⁵⁷ Schools are entering the student mental health crisis woefully understaffed.

The Committee recognizes the pronounced need schools face to respond to COVID-19-related stress and trauma as well as existing and projected student needs for mental health services. Thanks to passage of the *American Rescue Plan Act* (ARPA), schools have more resources to address student mental health.⁵⁸ Congress provided more than \$120 billion to K-12 schools through the ARPA Elementary and Secondary School Emergency Relief (ESSER) Fund. This legislation required that states target at least 20 percent to address learning loss and efforts to address the disproportionate impact of the COVID-19 pandemic on underserved student groups' academic, social and emotional needs.⁵⁹ Local educational agencies may use ARPA funds to provide mental health services and supports.⁶⁰ As of March 2022, with the help of ESSER funds, schools have already seen a 65 percent increase in social workers, and a 17 percent increase in counselors.⁶¹ But we must do more.

Building and Sustaining Pipeline of School-Based Mental Health Service Providers

The Committee believes strengthening school-based mental health programs is necessary to respond to the needs that have been present and documented since at least 2015-16, and to respond to added stress and trauma brought on by the COVID-19 and the opioid crisis. H.R. 7780 is designed to meet both the existing and projected student needs for mental health services by investing in the pipeline of school-based mental health services providers and targeting funding for the recruitment and retention of providers. These policies are aligned with recommendations from NASP for addressing the shortage of school psychologists, recommendations which could be

⁵⁴ Pooja Patel & Melissa Clinedinst, State-By-State Student-To-Counselor Ratio Maps By School District, Nat'l Ass'n, for Coll. Admission Counseling, ii, (2021)

<https://www.nacacnet.org/globalassets/documents/publications/research/researchstateratiosreport.pdf>.

⁵⁵ ASCA National Model A Framework For School Counseling Programs,

<https://schoolcounselor.org/getmedia/bd376246-0b4f-413f-b3e0-1b9938f36e68/ANM-executive-summary-4th-ed.pdf>.

⁵⁶ Nat'l Ass'n of Sch. Psychs., *Shortage of School Psychologists*, <https://www.nasponline.org/research-and-policy/policy-priorities/critical-policy-issues/shortage-of-school-psychologists#:~:text=NASP%20recommends%20a%20ratio%20of,a%20ratio%20of%201%3A5000>.

⁵⁷ *Id.*

⁵⁸ Pub. L. No. 117-2, 135 Stat. 4 (2021).

⁵⁹ *Id.* at § 2001(a), (e)(1).

⁶⁰ *Id.*

⁶¹ Fact Sheet, The White House, President Biden to Announce Strategy to Address Our National Mental Health Crisis, As Part of Unity Agenda in his First State of the Union, (Mar. 01, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/01/fact-sheet-president-biden-to-announce-strategy-to-address-our-national-mental-health-crisis-as-part-of-unity-agenda-in-his-first-state-of-the-union/>.

adapted and applied across school-based mental health services professions.⁶² These recommendations include a focus on recruitment, more opportunities for re-specialization within graduate programs, and a focus on retention of currently practicing school psychologists.⁶³ H.R. 7780 also allows for models that have proven successful to increase the teacher workforce to be used to increase the school mental health workforce. At least one state has shown that by collaborating with school psychology faculty and professionals from two different educational service agencies the state could successfully develop a “Grow Your Own” program for mental health services personnel.⁶⁴

To address the outlined student mental health needs, Title II of the *Mental Health Matters Act* includes language which would expand the pipeline of school-based mental health services providers by establishing a competitive grant program supporting partnerships between eligible institutions of higher education and high-need local education agencies. The legislative language for this grant program is from the bipartisan *Increasing Access to Mental Health in Schools Act* (H.R. 3572), introduced by Rep. Judy Chu (D-CA-27) and Rep. Brian Fitzpatrick (R-PA-01), with Committee member Rep. Hayes as an original co-sponsor.

Crucially, Title II of the *Mental Health Matters Act* recognizes the importance of recruiting a diverse school-based mental health services provider workforce by including a new priority for partnerships which include Historically Black Colleges and Universities (HBCUs), Minority-Serving Institutions (MSIs) and Tribally Controlled Colleges and Universities (TCCUs). Title II also allows for grant funds to be used to increase the diversity of school-based mental health services providers. It also requires graduates of these programs who wish to serve in schools to be trained to meet the needs of LGBTQ+ students as well as students who have been victims of or witnesses to human trafficking. It is worth noting that in FY2019, the U.S. Department of Education used a portion of School Safety National Activities funds to award the first (and thus far only) cohort of Mental Health Demonstration Grant Program funds, which have a similar aim to that of Title II’s proposed grant program. However, this program has not been authorized in statute.

Title III of the *Mental Health Matters Act* includes language which would direct the U.S. Department of Education to award grants to state educational agencies to recruit and retain school-based mental health services providers at high-need public elementary and secondary schools. This language is from the *Elementary and Secondary School Counseling Act* (H.R. 6214), introduced by Reps. Katherine Clark (D-MA-05), with Committee member Rep. Jahana Hayes as an original co-sponsor.

Title III also updates the *Elementary and Secondary Counseling Act* to include crucial reservations for schools operated or funded by the Bureau of Indian Education (BIE) and schools in the Outlying Areas to ensure these schools have resources necessary to hire and retain school counselors. Title III also requires that as a condition of receiving funding, states provide an

⁶² Nat’l Ass’n of Sch. Psychs., *supra* note 56.

⁶³ *Id.*

⁶⁴ Stephanie L. Schmitz et al., *Increasing School-Based Mental Health Services with a “Grow Your Own” School Psychology Program*, 26 Contemporary Sch. Psych. 22-33 (2022) <https://link.springer.com/article/10.1007/s40688-020-00348-z>.

assurance to the Secretary of Education that the state will award subgrants to LEAs that serve a significant number of high-need schools. It is worth noting that ED awarded six state educational agencies School-Based Mental Health Services Grants, with purposes aligned with Title III of the *Mental Health Matters Act*, in FY2020 after Congress increased appropriations for the School Safety National Activities program and directed that \$10 million be used to increase the number of counselors, social workers, psychologists, or other service providers who provide school-based mental health services to students. However, this Demonstration Grant program has not yet been authorized in statute.⁶⁵

With the *Mental Health Matters Act* including such bold attempts to increase the much-needed school mental health work force, it is unfortunate that the Republican ANS aimed to significantly gut key provisions of both Title II and Title III. Had it passed, the Republican ANS would have removed key targeting provisions, ones the Committee believes are necessary to support the mental health needs of students in high-poverty schools and school districts. It is also worth noting that the Republican ANS would have weakened provisions to build the pipeline of certified and licensed mental health professionals and removed references to the specific professions constituting school-based mental health services providers, and requirements for their appropriate licensure, certification, and credentialing.

Further, flying in the face of growing evidence that LGBTQ+ students face disproportionate levels of trauma, an amendment offered at markup by Rep. Miller proposed to remove all mention of LGBTQ+ students from the bill. LGBTQ+ students, and the unique traumas they face trying to live their lives, cannot be erased; removing all traces of LGBTQ+ students from the *Mental Health Matters Act* would in no way address the pronounced and disproportionate trauma LGBTQ+ students face, nor would it resolve the barriers they face in accessing care to deal with that trauma.

Finally, in discussing trauma and school-based mental health services, the Committee must address the trauma produced by the nationwide epidemic of gun violence in and around our schools and its effect on the mental health needs of students. On May 25, 2022, just one week after the Committee marked up the *Mental Health Matters Act*, 19 students and two teachers were tragically slain by a gunman in Uvalde, Texas, in the second-deadliest school shooting in U.S. history.⁶⁶ The grief and trauma experienced by students and the wider community in Uvalde has resonated nationwide, and demands both immediate support by school-based mental health services providers, as well as further investments in consistent supports, which acknowledge the ongoing

⁶⁵ The Committee supports efforts to increase resources and support for the school-based mental health workforce via congressionally-directed funding, or through existing authority at the Department of Education. But passage of the *Mental Health Matters Act* lays the groundwork for a robust authorization of programs to address the dire need in our schools for mental health services professionals. In doing so, the Committee recognizes it is building off of policies and practices undertaken by the School-Based Mental Health Services Demonstration Grant program and the Mental Health Services Professional Grant program, and hopes that if made in to law authorizations in H.R. 7780 to expand the school-based mental health workforce would receive robust appropriations in line with the requisite need.

⁶⁶ See generally, e.g., *Uvalde School Shooting*, Texas Tribune, (2022), <https://www.texastribune.org/series/uvalde-texas-school-shooting/> (offering compendium of stories about the shooting and aftermath).

mental health needs resulting from mass shootings such as school shootings.⁶⁷ The Committee would be remiss not to state that research has shown that most people with mental illness are not violent.⁶⁸ In fact, individuals with mental illness are more likely to be victims rather than perpetrators of violence.⁶⁹ Therefore, while it is important to increase access to mental health services, such actions should not be seen as a substitute for much needed common-sense gun control policies.

Supporting Students with Disabilities

Section 504 of the *Rehabilitation Act of 1973* (Section 504)⁷⁰ and Title II of the *Americans with Disabilities Act* (ADA)⁷¹ provide that college students with disabilities are entitled to accommodations that eliminate barriers to equal access to learning opportunities. Although disability is fairly prevalent among college students—approximately 19 percent of all enrolled undergraduates reported having a disability⁷²—only a third of these students inform their college or seek any accommodations.⁷³ Research indicates that graduation rates for these students are lower than their non-disabled peers, and failure to seek accommodations may play a part in that gap.⁷⁴ Reducing impediments to students receiving disability accommodations will help students with disabilities succeed in post-secondary education.

Under current law, in order to receive accommodations (e.g., extended time on tests, note-taking services, permission to record classes), students must first demonstrate that they have a disability that is covered by section 504 and the ADA. Once that is established, the school and the student must determine a reasonable accommodation that enables the student to perform the essential functions of the academic program or to enjoy the equal benefits of the program. While many students with disabilities receive accommodations throughout their elementary and secondary education, when they transition to post-secondary education, they must navigate new requirements to document their disability. Schools generally require the diagnosis of a disability to be ‘recent’, within six months for psychiatric disabilities.⁷⁵ This is true even if when student has a lifelong disability and received services through the *Individuals with Disabilities Education Act* or accommodations under section 504 when they were in elementary and secondary school. Evaluations for learning disabilities can be especially costly and time-consuming for students and

⁶⁷ Amy Novotney, Am. Psych. Assn., [What Happens to the Survivors](https://www.apa.org/monitor/2018/09/survivors), (Sept. 2018), <https://www.apa.org/monitor/2018/09/survivors>.

⁶⁸ Tori DeAngelis, Am. Psych. Assn., [Mental illness and violence: Debunking myths, addressing realities](https://www.apa.org/monitor/2021/04/ce-mental-illness), (Apr. 2021), <https://www.apa.org/monitor/2021/04/ce-mental-illness>.

⁶⁹ *Id.*

⁷⁰ 29 U.S.C. § 794.

⁷¹ 42 U.S.C. § 12132.

⁷² U.S. Dept. of Educ. Institute of Educ. Sciences, Nat’l Ctr. for Educ. Stats, <https://nces.ed.gov/fastfacts/display.asp?id=60> (last visited May, 25th, 2022).

⁷³ U.S. Dept. of Educ. Institute of Educ. Sciences, Nat’l Ctr. for Educ. Stats, https://nces.ed.gov/whatsnew/press_releases/4_26_2022.asp (last visited May, 25th, 2022).

⁷⁴ Fact Sheet, Postsecondary Nat’l Pol’y Inst., [Students with Disabilities in Higher Education](https://pnpi.org/students-with-disabilities-in-higher-education/), <https://pnpi.org/students-with-disabilities-in-higher-education/>.

⁷⁵ Ass’n on Higher Educ. & Disability, [Documentation Guidelines, Psychiatric Disorders](https://www.ahead.org/about-ahead/about-overview/affiliates/connecticut/documentation#H), (2008) <https://www.ahead.org/about-ahead/about-overview/affiliates/connecticut/documentation#H>.

their families, and long waitlists to even receive an evaluation and diagnosis can lead to delays or to the student abandoning the effort altogether and not receiving the needed accommodation.⁷⁶

To help, H.R. 7780 includes the text of the *Respond, Innovate, Support, and Empower (RISE) Act*—first introduced in the Senate in the 114th Congress by Senator Bob Casey (D-PA) and first introduced in the House in the 115th Congress by Rep. Suzanne Bonamici (D-OR-01) and a bipartisan group of legislators in order to help students with disabilities, including mental health disabilities, who are transitioning from high school to college.

As incorporated in H.R. 7780, the *RISE Act* makes it easier for college students with disabilities to access the reasonable accommodations they need and to which they are legally entitled. Under H.R. 7780, colleges and universities would be required to accept a student's existing Individualized Education Plan (IEP), 504 plan or other qualifying documentation from their elementary or secondary school as sufficient to establish that the student has a disability which may need accommodation. Additionally, covered institutions must adopt policies that are transparent and detailed regarding the process for determining eligibility for accommodations and make that information available in an accessible format during orientation and on the college or university's public-facing website. To facilitate students receiving accommodations, H.R. 7780 authorizes \$10 million in funding over five years for the National Center for College Students with Disabilities (NCCSD). The NCCSD provides students and families with information about available disability services and offers faculty training and resources on best practices to support students with disabilities. Finally, the legislation requires covered institutions to report on the number of students with disabilities being served, the accommodations provided, and the outcomes for these students.

Ensuring Access to Mental Health and Substance Use Disorder Benefits

Access to behavioral health care—including treatment for both mental health and substance use disorder—is an important part of maintaining overall health and wellness. Mental illnesses are closely linked to physical health problems, such as diabetes, stroke, and heart disease.⁷⁷ Individuals living with serious mental illness experience significantly higher mortality rates than the overall population, dying as much as 25 years earlier, usually as a result of treatable conditions.⁷⁸ With respect to substance use disorder, a treatable behavioral health condition, SAMHSA at HHS has found that about 40.3 million people aged 12 or older had a substance use disorder within the past year, and more than four out of five Americans who need treatment for

⁷⁶ Nat'l Ctr. for Learning Disabilities, *Life with LD: Navigating the Transition to College*, <https://www.nclld.org/news/policy-and-advocacy/life-with-ld-navigating-the-transition-to-college/>.

⁷⁷ Ctrs. for Disease Control & Prevention, *Mental Health: Learn About Mental Health*, <https://www.cdc.gov/mentalhealth/learn/index.htm>.

⁷⁸ Joe Parks, et al., *Morbidity and Mortality in People with Serious Mental Illness*, National Association of State Mental Health Program Directors (NASMHPD) Medical Directors Council at 4 (Oct. 2006), https://www.nasmhpd.org/sites/default/files/Mortality%20and%20Morbidity%20Final%20Report%208.18.08_0.pdf; see also Nancy H. Liu et al., *Excess Mortality in Persons with Severe Mental Disorders: A Multilevel Intervention Framework and Priorities for Clinical Practice, Policy and Research Agendas*, 16 *World Psychiatry* 30 (Jan. 26, 2017), <https://onlinelibrary.wiley.com/doi/full/10.1002/wps.20384>.

substance misuse do not receive it.⁷⁹ As the COVID-19 pandemic continues to underscore the importance of equitable access to quality behavioral health care services, the number of individuals reporting symptoms of depression or anxiety increased from 11 percent to 41.1 percent during the height of the pandemic.⁸⁰

Having affordable health coverage is critical to accessing care in America. With the nation's increasing behavioral health needs, it is imperative to ensure that health coverage adequately covers behavioral health. The long-standing tenet of "parity" in behavioral health care refers to the principle that coverage of mental health and substance use disorder (MH/SUD) services should be no more restrictive than coverage of medical and surgical health services. Congress has taken several steps to improve parity, beginning in 1996 with the *Mental Health Parity Act*⁸¹ (MHPA), which provided that annual or lifetime dollar limits for mental health benefits could not be more restrictive than those imposed on medical and surgical benefits. In 2008, the *Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act*⁸² (MHPAEA) greatly expanded the parity protections existing in law. In general, MHPAEA requires that financial requirements and treatment limitations imposed by a group health plan or health insurance issuer on mental health or substance use disorder benefits must be in parity with the treatment limitations that apply to medical and surgical benefits. The requirements of MHPAEA and its implementing regulations extend parity to SUD services and apply to both quantitative treatment limitations (QTLs), such as co-payments, as well as non-quantitative treatment limitations (NQTLs), such as step therapy, prior authorization, formulary design, or medical management.⁸³ These requirements are applicable to private sector employer-sponsored plans through amendments made by MHPAEA to the *Employee Retirement Income Security Act* (ERISA).⁸⁴

The *Patient Protection and Affordable Care Act*⁸⁵ (ACA) also advanced parity further in several respects. Most directly, the ACA applied MHPAEA to the individual market⁸⁶ and qualified health plans,⁸⁷ and further required that non-grandfathered plans in the individual and small group markets cover essential health benefits, including treatment for MH/SUD services.⁸⁸ Notably, several of the ACA's consumer protections, including the preventive services mandate⁸⁹ and the prohibitions on annual and lifetime limits,⁹⁰ also apply to MH/SUD services, thereby extending additional protections to the large group market. Congress has taken additional steps to

⁷⁹ Press Release, SAMHSA Releases 2020 National Survey on Drug Use and Health, Substance Abuse & Mental Health Svcs. Admin, (Oct. 26, 2021), <https://www.samhsa.gov/newsroom/press-announcements/202110260320>.

⁸⁰ Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Use, Kaiser Family Foundation (Feb. 10, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/>.

⁸¹ Pub. L. No. 104-204, title VII (1996).

⁸² Pub. L. No. 110-343, div. C, title V, subtitle B (2008).

⁸³ See Colleen L. Barry et al., *A Political History of Federal Mental Health and Addiction Insurance Parity*, 88 *Milbank Quarterly* 404, 406-407 (2010).

⁸⁴ 29 U.S.C. 1185a.

⁸⁵ Pub. L. No. 111-148 (as amended by Pub. L. No. 111-152).

⁸⁶ 42 U.S.C. § 300gg-26(c)(4)(A).

⁸⁷ 42 U.S.C. § 18031(j).

⁸⁸ 42 U.S.C. § 18022.

⁸⁹ 42 U.S.C. § 300gg-13.

⁹⁰ 42 U.S.C. § 300gg-11.

improve parity in recent years. In 2016, the *21st Century Cures Act*⁹¹ mandated that federal agencies issue additional guidance, develop an action plan to improve enforcement, and audit plans that commit five or more parity violations. The *Consolidated Appropriations Act, 2021*⁹² enhanced audit requirements and required health plans and issuers to perform comparative analyses of NQTLs and make such analyses available to regulators upon request.

Despite progress, parity in health benefits remains a challenge—made all the more pressing by the COVID-19 public health emergency and the associated stressors that the pandemic has placed on communities around the country.

H.R. 7780 Provides the Department of Labor Clearer Authority to Enforce Laws to Protect Access to Mental Health and Substance Use Disorder Benefits for Americans with Job-Based Coverage

On January 25, 2022, the Department of Labor (DOL), in conjunction with the Departments of Health and Human Services (HHS) and the Treasury, issued a report to Congress (2022 Report) about implementation and enforcement of MHPAEA.⁹³ Notably, the 2022 Report summarized findings of widespread noncompliance with MHPAEA based on reviews conducted by the Departments. The 2022 Report also included several recommendations for legislative action that would bolster efforts to enforce the law. In part, it recommended that Congress amend ERISA to (1) expressly provide the DOL with the authority to directly pursue parity violations caused by health insurance issuers, and (2) to “expressly provide that participants and beneficiaries, as well as the DOL on their behalf, may recover amounts lost by participants and beneficiaries who had their claims denied” due to parity violations, ensuring that they are made whole.⁹⁴

The 2022 Report is not the first instance that legislative action has been recommended to authorize the DOL to directly enforce parity requirements against issuers. The Health, Employment, Labor, and Pensions (HELP) Subcommittee heard testimony from witnesses in multiple hearings arguing that this would be an effective way of bolstering DOL’s enforcement authority and incentivizing more widespread compliance with the law.⁹⁵ The same recommendation was also made during the Trump Administration by the President’s Commission

⁹¹ Pub. L. No. 144-255, title X (2016).

⁹² Pub. L. No. 116-260, div. BB, title II (2020).

⁹³ *2022 MHPAEA Report to Congress: Realizing Parity, Reducing Stigma, and Raising Awareness: Increasing Access to Mental Health and Substance Use Disorder Coverage*, available at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf>.

⁹⁴ *Id.* at 51-2. The report also recommended that the DOL be given authority assess civil monetary penalties for MHPAEA noncompliance. Representative Norcross introduced H.R. 1364, the “Parity Enforcement Act of 2021” earlier in the 117th Congress that would provide the DOL with this authority if enacted.

⁹⁵ *Improving Retirement Security and Access to Mental Health Benefits: Hearing Before the Subcomm. On Health, Employment, Labor, and Pensions*, 117th Cong. (2022) (statement of Karen Handorf, Senior Counsel, Berger Montague P.C.) at 5, available at <https://edlabor.house.gov/download/handorkarentestimony030122>; *Meeting the Moment: Improving Access to Behavioral and Mental Health Care: Hearing Before the Subcomm. On Health, Employment, Labor, and Pensions*, 117th Cong. (2021) (statement of Dr. Meiram Bendat, Founder, Psych Appeal, Inc.) at 7, available at <https://edlabor.house.gov/download/moutierchristinetestimony041521>.

on Combatting Drug Addiction and the Opioid Crisis, chaired by then-Governor Chris Christie (R-NJ).⁹⁶

On May 13, 2022, Rep. Joe Courtney (D-CT-02) introduced H.R. 7767, the *Strengthening Behavioral Health Benefits Act* with Committee Member Rep. Donald Norcross (D-NJ-01) as an original cosponsor. The *Strengthening Behavioral Health Benefits Act* amends ERISA to adopt the recommendations from the 2022 Report and also provides \$275 million over ten years in mandatory funding to support oversight, compliance, and enforcement efforts by DOL. The provisions of the *Strengthening Behavioral Health Benefits Act* are incorporated into Title VI of the *Mental Health Matters Act*.

The *Mental Health Matters Act* provides meaningful authority to DOL to address some of the legal loopholes that continue to deny full parity between MH/SUD services and medical and surgical health services. DOL is responsible for enforcing ERISA, including the mental health parity provisions, with respect to more than 2 million private employer-sponsored plans.⁹⁷ About one-third of individuals who receive job-based health benefits are covered by an insured plan.⁹⁸ For insured plans, benefits offered by the plan are funded through a group insurance policy sold to the plan by a health insurance issuer and the issuer is also responsible for processing claims and administering the plan. The other two-thirds of these individuals are covered by a self-funded plan.⁹⁹ For self-funded plans, the employer or other plan sponsor retains the financial responsibility for paying benefits under the plan, but generally contracts with a health insurance issuer or other administrative service provider to process claims and administer the plan. Most employers with self-insured plans purchase prototype plans from the same issuers that offer identical coverage to insured plans.¹⁰⁰

Unfortunately, ERISA's civil enforcement scheme fails to sufficiently account for issuers' significant role with respect to administration of both self-funded and insured plans.¹⁰¹ Even though issuers are often the entity responsible for causing plans' parity violations, ERISA

⁹⁶ *Final Report from The President's Commission On Combating Drug Addiction And The Opioid Crisis*, at 72, available at https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-15-2017.pdf.

⁹⁷ U.S. Department of Labor, FY 2023 Congressional Budget Justification Employee Benefits Security Administration (2022), <https://www.dol.gov/sites/dolgov/files/general/budget/2023/CBJ-2023-V2-01.pdf>.

⁹⁸ *Employer Health Benefits 2021 Annual Survey*, Kaiser Family Foundation, November 10, 2021 at 9, available at <https://www.kff.org/health-costs/report/2021-employer-health-benefits-survey/>.

⁹⁹ *Id.*

¹⁰⁰ *Improving Retirement Security and Access to Mental Health Benefits: Hearing Before the Subcomm. on Health, Labor, and Pensions*, 117th Cong. (2022) (statement of Karen Handorf, Senior Counsel, Berger Montague P.C.) at 5, available at <https://edlabor.house.gov/download/handorkarentestimony030122>. See also *Meeting the Moment: Improving Access to Behavioral and Mental Health Care: Hearing Before the Subcomm. On Health, Labor, and Pensions*, 117th Cong. (2021) (statement of Dr. Meiram Bendat, Founder, Psych Appeal, Inc.) at 5, <https://edlabor.house.gov/imo/media/doc/BendatMeiramTestimony041521.pdf>.

¹⁰¹ Section 2726 of the Public Health Service (PHS) Act imposes requirements on health insurance issuers that are substantively identical to the parity requirements in ERISA. State insurance regulators are generally responsible for enforcement of these requirements under section 2723 of the PHS Act. State-level enforcement efforts vary widely from state to state. See U.S. Gov't Accountability Off., GAO-20-150, *Mental Health and Substance Use: State and Federal Oversight of Compliance with Parity Requirements Varies*, available at <https://www.gao.gov/products/gao-20-150>.

expressly prohibits the DOL from enforcing parity requirements against issuers directly.¹⁰² If the DOL were able to directly enforce mental health parity requirements against issuers, the agency would be able to more effectively leverage its resources and better protect participants. In part, this is because whenever possible the agency tries to work with plan service providers to achieve global corrections, not just for the particular plans it investigates but for all other plans that contract with the same service providers.¹⁰³ If the DOL could compel issuers to make corrections for noncompliant coverage offered to ERISA-covered plans, they would be able to obtain global corrections for self-funded and insured plans alike.

In addition to providing DOL with clearer direct enforcement authority to enforce MHPAEA violations, H.R. 7780 also amends ERISA to make it clear that individuals, and DOL acting on their behalf, may obtain retrospective relief in any case involving mental health or other benefits that they are entitled to under ERISA.

Case law regarding parties' ability to file lawsuits to recover mental health and other benefits wrongly denied due to a plan not complying with ERISA has become muddled and is ripe for clarification. ERISA's civil enforcement framework includes a private right of action for participants and beneficiaries, which means that they are generally able to file lawsuits to ensure that they receive the benefits that they are entitled to and compel their plan to comply with the law. ERISA also generally provides the DOL with authority to bring these types of lawsuits on participants and beneficiaries' behalf. There are three interconnected statutory provisions in ERISA that fulfill this purpose:

1. Section 502(a)(1)(B) enables any plan participant or beneficiary to sue to “recover benefits due to him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the plan.”¹⁰⁴
2. Section 502(a)(3) enables any plan participant or beneficiary to sue “(A) to enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations, or (ii) to enforce any provisions of [ERISA] or the terms of the plan.”¹⁰⁵
3. Section 502(a)(5) similarly enables the DOL to sue “(A) to enjoin any act or practice which violates any provision of [ERISA] or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations, or (ii) to enforce any provisions of [ERISA].”¹⁰⁶

Courts have sometimes recognized a distinction between section 502(a)(1)(B) and section 502(a)(3) by reading them in tandem to create a two-step process for resolving disputes over benefits that were wrongfully denied due to a violation of ERISA's requirements. For Step 1, participants or beneficiaries can bring a claim under section 502(a)(3) to have any terms of their plan that violate ERISA reformed and, for Step 2, they may also bring claims under section

¹⁰² 29 U.S.C. 1132(b)(3).

¹⁰³ See *FY 2021 MHPAEA Enforcement Fact Sheet* at 3, available at <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/mhpaea-enforcement-2021.pdf>.

¹⁰⁴ 29 U.S.C. 1132(a)(1)(B).

¹⁰⁵ 29 U.S.C. 1132(a)(3).

¹⁰⁶ 29 U.S.C. 1132(a)(5).

502(a)(1)(B) to recover the benefits provided by the terms of the plan, *as reformed* through relief obtained under section 502(a)(3).¹⁰⁷ However, in some cases, courts have taken a simpler approach and held that plan terms that violate ERISA cannot supersede the law and so they are unenforceable and do not need to be reformed prior to consideration of claims to recover denied benefits under section 502(a)(1)(B).¹⁰⁸ However, under either approach, section 502(a)(1)(B) is the only provision that can be used to address recovery of denied benefits by participants.

In *Secretary of Labor v. Macy's, et al.*, the U.S. District Court for the Southern District of Ohio recently found new limits on the DOL's authority to enforce ERISA requirements.¹⁰⁹ In *Macy's*, the DOL attempted to exercise its authority to seek "appropriate equitable relief" under section 502(a)(5) to require the defendants to re-adjudicate claims that it alleges were improperly decided. However, the court held that re-adjudication was not a remedy available under 502(a)(5). Although *Macy's* only represents the interpretation of one district court and others may rightly find that DOL has the authority to obtain re-adjudication of benefits as a remedy for violations of ERISA, the Committee sees an interest in making clear that it is the intent of Congress that this relief be available to the Secretary. Without this authority, DOL's ability to fulfill its mission to protect the rights of participants and beneficiaries would be significantly curtailed. The success of participants and beneficiaries' claims should not hinge on whether their claims are properly brought under ERISA section 502(a)(1)(b) or section 502(a)(3). As such, H.R. 7780 eradicates any ambiguity and ensures that both of ERISA's remedial authority provisions in sections 502 can fully protect participants and beneficiaries.

Discretionary Clauses Inhibit the Ability of Workers and Retirees to Enforce their Rights to Mental Health and Other Benefits Under ERISA-Covered Plans

H.R. 7780, in part, enhances access to mental health and substance use disorder benefits for individuals with job-based health coverage by prohibiting discretionary clauses that unfairly advantage plan administrators by denying claimants the opportunity for *de novo* review by courts of their benefit denials. H.R. 7780 incorporates these protections by including provisions of bicameral legislation, the *Employee and Retiree Access to Justice Act of 2022*, introduced by Rep. DeSaulnier and Sen. Tina Smith (D-MN) on May 12, 2022.

During the HELP Subcommittee's March 1, 2022, hearing titled "Improving Retirement Security and Access to Mental Health Benefits" (March 1st Hearing), witnesses testified regarding clauses in group health plan documents that give plan administrators authority to interpret the terms of the plan and effectively deny plan participants and beneficiaries from having their claims for denied benefits reviewed *de novo* by courts if they choose to bring a lawsuit under ERISA. In *Firestone Tire & Rubber Co. v. Bruch*, the Supreme Court held that if the plan documents for an ERISA-covered employee benefit plan expressly provide the plan administrator with authority to interpret the terms of the plan, then lawsuits challenging a denial of benefits must be reviewed by courts under an abuse of discretion standard, rather than the *de novo* standard that is ordinarily the default under ERISA.¹¹⁰

¹⁰⁷ E.g., *Cigna Corp. v. Amara et al.*, 563 U.S. 421 (2011).

¹⁰⁸ See e.g., *N.R. v. Raytheon*, 24 F.4th 740 (1st Cir. 2022).

¹⁰⁹ See *Secretary of Labor v. Macy's, et al.*, 1:17-cv-541 (S.D. Ohio Nov. 17, 2021).

¹¹⁰ *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 1010 (1989).

In the March 1st Hearing, the Committee heard testimony stating that because of *Firestone*, there has been a proliferation of “discretionary clauses” in employee benefit plans that purport to grant discretion to entities, often health insurance companies, regarding benefit determinations and plan interpretation.¹¹¹ Karen Handorf, a veteran ERISA attorney, testified that:

[t]hese clauses change the default *de novo* review standard that courts would otherwise apply in reviewing benefit denials to an abuse of discretion standard that is extremely deferential to the plan fiduciaries... In practice, this deferential standard of review makes it very difficult for participants and beneficiaries, particularly those challenging health care or disability denials, to obtain promised benefits even if the court determines that it would decide the matter differently under a *de novo* standard of review.

Ms. Handorf further explained that this standard “severely limits the scope of discovery” in these of cases because courts may only consider the same evidence that was considered by the plan administrator when deciding whether to approve or deny the benefit claim.¹¹² Indeed, the deferential standard of review creates such a strong presumption in favor of the plan administrator’s decision to deny benefits that not even a structural conflict of interest will generally be sufficient to defeat the presumption that a deferential standard of review is required.¹¹³

The Committee strongly believes a general prohibition on discretionary clauses in ERISA-covered plans would significantly enhance participants’ and beneficiaries’ ability to prevail when they are challenge a wrongful denial of mental health benefits. Consider, for example, the case of *Wit v. United Behavioral Health*, a large class action lawsuit regarding coverage of mental health benefits. In *Wit*, the U.S. District Court for the Northern District of California ruled that United Behavioral Health (“UBH”) breached its fiduciary duties under ERISA because the terms of the plans it administered stated that medical necessity determinations were based on guidelines that were consistent with generally accepted standards of care when, in fact, UBH had adopted guidelines that were much narrower.¹¹⁴ When the district court’s ruling was issued, the case earned national attention and was celebrated as a watershed moment by mental health advocates.¹¹⁵ However, UBH appealed and the Ninth Circuit Court of Appeals recently overturned the district court’s decision.¹¹⁶ In its reversal, the Ninth Circuit held that the lower court had misapplied the

¹¹¹ *Improving Retirement Security And Access To Mental Health Benefits: Hearing Before the Subcomm. On Health, Labor, and Pensions*, 117th Cong. (2022) at 7-8 (statement of Karen Handorf, Senior Counsel, Berger Montague P.C.), available at <https://edlabor.house.gov/download/handorkarentestimony030122>.

¹¹² *Id.* at 7; see also *Meeting the Moment: Improving Access to Behavioral and Mental Health Care: Hearing Before the Subcomm. On Health, Labor, and Pensions*, 117th Cong. (2021) (statement of Dr. Meiram Bendat, Founder, Psych Appeal, Inc.), available at <https://edlabor.house.gov/imo/media/doc/BendatMeiramTestimony041521.pdf> (providing similar commentary on the effect of discretionary clauses).

¹¹³ *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 128 (2008) (“The significance of the conflict of interest factor will depend on the circumstances of the particular case”).

¹¹⁴ *Wit v. United Behav. Health*, No. 14-CV-02346-JCS (N.D. Cal. Mar. 5, 2019), rev’d, No. 20-17363, 9th Cir. Mar. 22, 2022),

¹¹⁵ See Reed Abelson, *Mental Health Treatment Denied to Customers by Giant Insurer’s Policies, Judge Rules*, N.Y. Times, Mar. 9, 2019, available at <https://www.nytimes.com/2019/03/05/health/unitedhealth-mental-health-parity.html?searchResultPosition=1>.

¹¹⁶ *Wit v. United Behav. Health*, No. 20-17363, (9th Cir. Mar. 22, 2022).

standard of review (for abuse of discretion, rather *de novo* review) by substituting the court's interpretation of plan terms for UBH's, which the court determined was not unreasonable. If plaintiffs in the *Wit* case were able to have their claims reviewed by the court under a *de novo* standard it would mean that UBH's interpretation of plan terms would not be given deference and the plaintiffs' claims would not have to clear such a high bar to prevail.

Notably, courts do not always seem to agree that giving deference to a plan administrators' denial of benefits is just, even under the Supreme Court's precedent. For example, one judicial opinion explained that "[t]he masks of the law in this case conceals the person at risk of dying by a deferential standard of review and the rules of legal interpretation. The result is a determination that [defendant's] denial of benefits was legally, but perhaps not morally, reasonable."¹¹⁷ In another decision, a court explained that because of the requirement that they apply deferential review, "the die was essentially cast" against the participant's claim and "the claimant may lose even if a preponderance of the evidence supports a finding of disability, so long as the decision has 'rational support in the record.'"¹¹⁸

Without a *de novo* standard of review, individuals are unfairly disadvantaged when they challenge a benefit denial in court. H.R. 7780 would take an important step toward resolving this imbalance of power and improving access to behavioral health benefits for workers and their families by prohibiting single-employer plan discretionary clauses and any plan provisions that would require a standard of review other than *de novo*.

Forced Arbitration Clauses That Purport to Govern ERISA Claims Are Increasingly Common and Interfere with Workers' Ability to Enforce Their Rights with Respect to Mental Health and Substance Use Disorder Benefits

By amending ERISA to expressly prohibit arbitration clauses that preclude plan participants and beneficiaries from bringing suit in federal court to challenge mental health benefit denials and fiduciary breaches, H.R. 7780 would help workers covered by ERISA plans enforce their rights with respect to mental health benefits and remove barriers that conflict with ERISA's stated purpose of "providing for appropriate remedies, sanctions, and ready access to the Federal courts."¹¹⁹

In its March 1st Hearing, the HELP Subcommittee heard testimony that "plan sponsors are increasingly including provisions in their employee benefit plans requiring participants to arbitrate" challenges to benefit denials and fiduciary breach claims against plan administrators and other plan service providers "instead of bringing suit in federal court as permitted under ERISA."¹²⁰ The HELP Subcommittee also heard about the effect forced arbitration clauses on coverage for mental health treatment during its April 15, 2021 hearing titled "Meeting the Moment:

¹¹⁷ *Robertson v. Blue Cross & Blue Shield of Texas*, 99 F. Supp. 3d 1249, 1261 (D. Mont.), aff'd sub nom. *Robertson v. Blue Cross*, 612 F. App'x 478 (9th Cir. 2015).

¹¹⁸ *Fessenden v. Reliance Standard Life Ins. Co.*, No. 3:15CV370-PPS, 2018 WL 461105, at *13 (N.D. Ind. Jan. 17, 2018), vacated and remanded, 927 F.3d 998 (7th Cir. 2019).

¹¹⁹ 29 U.S.C. 1001(b).

¹²⁰ *Improving Retirement Security and Access to Mental Health Benefits: Hearing Before the Subcomm. On Health, Labor, and Pensions*, 117th Cong. (2022) at 8 (statement of Karen Handorf, Senior Counsel, Berger Montague P.C.), available at <https://edlabor.house.gov/download/handorkarentestimony030122>.

Improving Access to Behavioral and Mental Health Care” during which Dr. Meiram Bendat testified that such clauses “...make things secret, so DOL doesn’t find out about potential allegations and findings. Arbitrations don’t always follow the law in a way that courts do, and arbitrations can also potentially limit the types of relief sought, so [they are] a real danger.”¹²¹ Forced arbitration clauses take a variety of forms and may either be embedded in plan documents or participants’ employment agreements. They sometimes also purport to require plan participants to waive their ability to participate in class action or maintain confidentiality regarding any actions they might bring.¹²² The case law on whether these clauses are enforceable is mixed and seems to vary based on the specific facts and circumstances of each particular case.¹²³ The express prohibition in H.R. 7780 eliminates such ambiguity.

At the March 1st Hearing, Ms. Handorf testified that forced arbitration clauses “potentially make plan fiduciaries subject to conflicting arbitration decisions, even when the behavior in question impacts all plan participants equally, violating ERISA’s goal of consistent and uniform application of fiduciary standards among plan participants.”¹²⁴ In addition, “[t]he cost of pursuing an individual participant’s claim may outweigh the value of the individual claim. Thus, these restrictions may defeat the ability of participants and beneficiaries who have a small-dollar claim from obtaining redress even if the violation at issue is systemic and many other participants or beneficiaries would have similar claims that could be addressed on a class or representative basis.”¹²⁵

Taken together, the provisions of H.R. 7780 bring us closer to making the promise of parity a reality for the millions of people with job-based health coverage.¹²⁶

Conclusion

The *Mental Health Matters Act* is a comprehensive measure designed to ensure that federal policies and programs are meeting the behavioral health needs of students, workers, and families. As the country continues to recognize the importance of mental health, Congress must put policies in place to support our mental health workforce, ensure students get access to mental health services in their schools, and protect rights to access mental health and substance abuse services.

¹²¹ Dr. Meiram Bendat, *Meeting the Moment: Improving Access to Behavioral and Mental Health Care: Hearing Before the Subcomm. On Health, Labor, and Pensions*, 117th Cong. (2021) available at <https://edlabor.house.gov/hearings/meeting-the-moment-improving-access-to-behavioral-and-mental-health-care>.

¹²² *Improving Retirement Security and Access to Mental Health Benefits: Hearing Before the Subcomm. On Health, Labor, and Pensions*, 117th Cong. (2022) at 8 (statement of Karen Handorf, Senior Counsel, Berger Montague P.C.), available at <https://edlabor.house.gov/download/handorkarentestimony030122>.

¹²³ See Pamela Reynolds, *Are ERISA Breach of Fiduciary Duty Claims Arbitrable?* (June 2, 2021), available at <https://www.littler.com/publication-press/publication/are-erisa-breach-fiduciary-duty-claims-arbitrable>, (providing a robust discussion of relevant case law).

¹²⁴ Handorf, *supra* note 52, citing 29 U.S.C 1002(b).

¹²⁵ *Id.*

¹²⁶ Several of the amendments to ERISA made by H.R. 7780 would also help participants and beneficiaries in employee pension benefit plans to enforce their rights under the law. Forced arbitration clauses, for example, have been a barrier to bringing lawsuits alleging breach of fiduciary duties related to the administration of defined contribution retirement plans. See *e.g.*, *Dorman v. Charles Schwab Corp.*, 780 F. App'x 510 (9th Cir. 2019).

The Committee reports H.R. 7780 to the House and hopes that the House can take action on it this Congress to send the message that mental health truly matters.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section states that the title of the bill is the *Mental Health Matters Act*.

Section 2. Table of Contents

TITLE I – Early Childhood Mental Health Act

Section 101. Short Title

This section states that the title may be cited as the *Early Childhood Mental Health Support Act*.

Section 102. Identification of Effective Interventions in Head Start Programs

This section requires the U.S. Secretary of Health and Human Services (HHS), acting through the Assistant Secretary for the Administration for Children and Families (ACF), to identify and review interventions, best practices, curricula, and staff trainings that are evidence-based and improve the behavioral health of children. This section requires that the Secretary focus on interventions that can be delivered by a provider or other staff, are demonstrated to improve social-emotional development, demonstrate effectiveness across racial, ethnic, and geographic populations, and offer a tiered approach to addressing need. This section also requires the Secretary to identify interventions that support staff wellness and the appropriate credentials for individuals who deliver such interventions.

Section 103. Implementing the Interventions in Head Start Programs

This section authorizes the Assistant Secretary for ACF to award grants to Head Start agencies to implement the interventions identified in section 102 and ensure grants are awarded to grantees representing a diversity of geographic areas.

Section 104. Evaluating Implementation of Interventions in Head Start Programs

This section requires the Office of the Assistant Secretary for Planning and Evaluation, in coordination with the Assistant Secretary for ACF, in HHS to determine if the interventions under section 103 are effectively implemented and yield long-term savings, develop a method for making such determination, and ensure such method includes competency and testing approaches, performance or outcome measures, or other methods, and solicits public input. The Assistant Secretary is required to develop a method for such determination not later than 2 years after enactment and update such method and determination at least every 5 years.

Section 105. Implementing the Evaluation Framework for Head Start Program

The section requires the Assistant Secretary for ACF to implement the evaluation developed in section 104(a) to determine the effectiveness of the interventions, best practices, curricula, and

staff trainings under section 102. This section also directs the Assistant Secretary for the ACF to provide technical assistance for grantees implementing and evaluating interventions under section 102.

Section 106. Best Practices Centers

This section authorizes the Assistant Secretary for ACF to fund up to five Best Practice Centers in Early Childhood Training to prepare Head Start agencies and staff to deliver the interventions identified in section 102.

Section 107. Funding

This section authorizes \$100 million over ten years between FY 2023 through FY 2032 to carry out sections 103(b), 104, and 106.

TITLE II – Building Pipeline of School-Based Mental Health Service Providers

Section 201. Short Title

This section states that the title may be cited as the *Building Pipeline of School-Based Mental Health Service Providers Act*.

Section 202. Definitions

This section specifies definitions for “Best Practices,” “Eligible Institution,” “Eligible Partnership,” “High-Need Local Educational Agency,” “Historically Black College or University,” “Homeless Children and Youths,” “Indian Tribe; Tribal Organization,” “Institution of Higher Education,” “Local Educational Agency,” “Minority-Serving Institution,” “Outlying Area,” “Participating Eligible Institution,” “Participating Graduate,” “Participating High-Need Local Educational Agency,” “School-Based Mental Health Field,” “School-Based Mental Health Services Provider,” “Secretary,” “State Educational Agency,” “Student Support Personnel Target Ratios,” “Tribally Controlled College or University,” and “Unaccompanied Youth.”

Section 203. Grant Program to Increase the Number of School-Based Mental Health Services Provides Serving in High-Need Local Educational Agencies

This section authorizes the Secretary of Education to award grants to eligible partnerships to enable the eligible partnership to carry out pipeline programs to increase the number of school-based mental health services providers employed by high-need local educational agencies. This section also requires several reservations from the total of amounts appropriated: half of one percent to the Secretary of the Interior; half of one percent for allotments to outlying areas; not more than three percent to conduct evaluations under subsection (h); and not more than two percent for administration and technical assistance.

This section outlines the application process. Eligible partnerships must submit an application to the Secretary of Education including an assessment of existing ratios of school-based mental health services providers to students, and a detailed descriptions of a plan to carry out a pipeline program and the proposed allocation and use of grant funds. Further this section outlines how grant funds awarded may be used.

The section requires the Secretary of Education to award grants to ensure grants are distributed to eligible entities that will serve geographically diverse areas and give priority to eligible partnerships that: have the highest numbers or percentages of low-income students; include one or more high-need local educational agencies that have fewer school-based mental health services providers than other eligible partnerships; include one or more eligible institutions of high education; propose to collaborate with another institution of high education; and propose to use grant funds to increase the diversity of school-based mental health services providers.

This section states that funds under this section shall be used to supplement, not supplant, other Federal, State, or local funds available.

This section further requires that each eligible partnership receiving a grant prepare and submit an annual report to the Secretary of Education. The annual report must include: actual service delivery provided through the grant funds; outcomes that are consistent with the purpose of the grant program; the instruction, materials, and activities being funded; and the effectiveness of any training and ongoing professional development provided. The Secretary of Education will public the annual reports on the website of the Department of Education.

This section requires the Secretary of Education to conduct interim evaluations to ensure eligible partnerships are making adequate progress and a final evaluation to determine the effectiveness of the grant program. Further, the Secretary of Education will submit a report to Congress not earlier than five years nor later than six years after enactment pertaining the findings of the final evaluation.

This section also authorizes \$200 million for FY 2023 and each succeeding fiscal year.

TITLE III – The Elementary and Secondary School Counseling Act

Section 301. Short Title

This section states that the title may be cited as the *Elementary and Secondary School Counseling Act*.

Section 302. Definitions

This section specifies definitions for “ESEA Definitions,” “High-Need School,” “Outlying Area,” “School-Based Mental Health Services Provider,” “Secretary,” and “State.”

Section 303. Allotments to States and Subgrants to Local Educational Agencies

This section authorizes the Secretary of Education to make allotments to States. States will award subgrants to local educational agencies in order to increase access to school-based mental health services providers at high-need schools.

This section requires several reservations from the total of amounts appropriated: half of one percent for the Secretary of the Interior; half of one percent for allotments for the outlying areas; and not more than two percent for administration and technical assistance.

This section requires the Secretary to make allotments to each State based on the formula under part A of title I of the *Elementary and Secondary Education Act of 1965*. Additionally, this section outlines the minimum state allotment for small states and matching requirements. This section further outlines the application process for States. States are eligible to receive an allotment for a period of 5-years and may be renewed for an additional 5-year period.

This section outlines the process for States to make subgrants to local educational agencies to recruit and retain school-based mental health services providers and work toward effectively staffing high-need schools with school-based mental health services providers. States are required to give priority to local educational agencies that serve a significant number of high-need schools. Local educational agencies must submit an application to the State regarding how the agency will prioritize assisting high-need schools with the largest numbers or percentages of students from low-income families. This section states that funds under this section shall be used to supplement, not supplant, other funds available to a state or local educational agency for school-based mental health services. Funds can be combined with State or local funds to carry out activities under this section.

This section requires that local educational agencies receiving a subgrant under this section submit an annual report to the State describing the activities carried out, enumerate the number of school-based mental health services providers, and include the most recent student to provider ratios. The Secretary of Education will public the annual reports on the website of the Department of Education.

Section 304. Authorization of Appropriations

This section authorizes \$5 billion for FY 2023 and such sums as necessary for each succeeding fiscal year.

TITLE IV – Supporting Trauma-Informed Education Practices Act

Section 401. Short Title

This section states that the title may be cited as the *Supporting Trauma-Informed Education Practices Act*.

Section 402. Amendment to the SUPPORT for Patients and Communities Act

This section amends section 7134 of the *SUPPORT for Patients and Communities Act*.

This section authorizes the Secretary of Education, in coordination with the Secretary of HHS, to award grants to an eligible entity to increase school personnel access to evidence-based trauma support services and mental health services. This section also requires several reservations from the total of amounts appropriated: not more than three percent to conduct the evaluation under this section; and not more than two percent to technical assistance and administration. Eligible entities who receive funds under this section may not exceed a 5-year period.

This section outlines a list of initiatives, activities, and programs for which an eligible entity may use the funds under this section. Eligible entities must submit an application to the Secretary of Education in order to receive a grant, contract, or cooperative agreement under this section. In

carrying out an evidence-based initiative described under the use of funds section, an eligible entity will establish an interagency agreement between local educational agencies, agencies responsible for early childhood education programs, Head Start agencies (including Early Head Start agencies), juvenile justice authorities, mental health agencies, child welfare agencies, and other relevant agencies, authorities, or entities in the community that will be involved in the provision of services under such initiative, activity, or program.

This section requires that the Secretary of Education conduct a rigorous evaluation of the initiatives and activities carried out by an eligible entity under this section and disseminate evidence-based practices regarding trauma-informed support services and mental health services.

The section requires the Secretary of Education to ensure grants, contracts, and cooperative agreements under this section are distributed equitably to eligible entities that will serve geographically diverse areas. This section states that funds under this section shall be used to supplement, not supplant, other Federal, State, or local funds available to carry out the initiatives and activities described in this section. Further this section requires the Secretary of Education to consult with Indian Tribes, Regional Corporations, Native Hawaiian Educational Organizations, and their representatives to ensure notice of eligibility.

This section specifies definitions for “Early Childhood Education Program,” “Eligible Entity,” “ESEA Terms,” “Regional Corporation,” and “School.”

This section authorizes \$50 million between FY 2023 through FY 2027 to carry out this section.

TITLE V – Respond, Innovate, Succeed, and Empower (RISE)

Section 501. Short Title

This section states that the title may be cited as the *Respond, Innovate, Succeed, and Empower Act* or the *RISE Act*.

Section 502. Perfecting Amendment to the Definition of Disability

This section amends Section 103(6) of the *Higher Education Act of 1965* by striking “section 3(2)” and inserting “section 3.”

Section 503. Supporting Students with Disabilities to Succeed Once Enrolled in College

This section amends section 487(a) of the *Higher Education Act of 1965* to add that institutions will adopt policies providing that individualized education plans (IEPs) and similar documentation developed during primary and secondary education will be considered sufficient to establish that the student has a disability for which they may need an accommodation. Additionally, institutions are required to develop, disseminate and publish policies that are transparent and explicit regarding the process through which a student with a disability can obtain reasonable accommodations.

Section 504. Authorization of the Funds for the National Center for the Information and Technical Support for Postsecondary Students with Disabilities

This section amends section 777(a) of the *Higher Education Act of 1965* by striking the previous amounts appropriated and adding new paragraph (5) indicating appropriations. This section

authorizes \$2 million for each fiscal year between FY 2023 and FY 2027 to carry out this subsection.

Section 505. Inclusion of Information on Students with Disabilities

This section amends Section 487(a) of the *Higher Education Act of 1965*, as amended by section 503, to add a new paragraph (31) at the end. This section outlines that institutions will submit key data related to undergraduate students who are formally registered as students with disabilities with the institution's office of disability services. Institutions will not submit such information if the information would reveal personally identifiable information.

Section 506. Rule of Construction

This section states that none of the amendments made by this title shall not be construed to affect the meaning of the terms "reasonable accommodation" or "record of impairment" under the *Americans with Disabilities Act of 1990*.

TITLE VI - Strengthening Behavioral Health Benefits

Section 601. Short Title

This section states that the title may be cited as the *Strengthening Behavioral Health Benefits Act*.

Section 602. Enforcement of Mental Health and Substance Use Disorder Requirements

This section amends section 502(a) of the *Employee Retirement Income Security Act of 1974* to add a new paragraph (12). This section authorizes the Secretary of Labor or a plan participant, beneficiary, or fiduciary to bring a civil action regarding mental health and substance use disorder benefits against a plan, health insurance issuer, fiduciary, or other individual who participates in or conceals a statutory violation or wrongful denial of benefits relating to mental health and substance use disorder. This section specifies that relief available under paragraph (12) includes recovery of all losses to participants or beneficiaries, reformation of impermissible plan or coverage terms, and re-adjudication of claims and payment of benefits.

This section further amends section 502(a) of the *Employee Retirement Income Security Act of 1974* to clarify that relief available to the Secretary of Labor or any participant or beneficiary includes re-adjudication and payment of benefits.

This section amends section 502(b)(3) of the *Employee Retirement Income Security Act of 1974* to authorize the Secretary of Labor to enforce requirements regarding mental health and substance use disorder benefits against health insurance issuers.

This section amends part 7 of title I of the *Employee Retirement Income Security Act of 1974* to make a technical amendment to account for amendments made by this legislation.

This section authorizes \$275 million to remain available until FY 2032 for audits and investigations, enforcement actions, litigation expenses, issuance of regulations or guidance, and any other Departmental activities relating to section 712 of the *Employee Retirement Income Security Act of 1974* or other requirements relating to mental health and substance use disorder benefits.

TITLE VII – Employee and Retiree Access to Justice

Section 701. Short Title

This section states that the title may be cited as the *Employee and Retiree Access to Justice Act of 2022*.

Section 702. Unenforceable Arbitration Clauses, Class Action Waivers, Representation Waivers, and Discretionary Clauses

This section amends section 502 of the *Employee Retirement Income Security Act of 1974* to provide that pre-dispute or coerced post-dispute arbitration clauses, class action waivers, and representation waivers are unenforceable in any civil action brought by or on behalf of a participant or beneficiary under section 502 or under a common law claim relating to plan benefits.

This section amends section 502 of the *Employee Retirement Income Security Act of 1974* to provide that covered provisions that give discretionary authority in benefit determinations or plan interpretation (or otherwise deny de novo review of benefit denial claims) are unenforceable with respect to single-employer plans in any civil action brought by or on behalf of a participant or beneficiary under section 502 or under a common law claim relating to plan benefits.

This section specifies definitions for “covered provision,” “pre-dispute arbitration provision,” “post-dispute arbitration provision,” and “retaliation.”

This section authorizes the Secretary of Labor to issue regulations related to these provisions.

Section 703. Prohibition on Mandatory Arbitration Clauses, Class Action Waivers, Representation Waivers, and Discretionary Clauses

This section amends section 402 of the *Employee Retirement Income Security Act of 1974* to prohibit covered persons from including in plan documents any pre-dispute arbitration provision, post-dispute arbitration provision, class action waiver, representation waiver, or discretionary clause described in section 702.

This section specifies definitions for “covered person” as well as “covered provision,” “pre-dispute arbitration provision,” and “post-dispute arbitration provision.”

Section 704. Effective Date

This section specifies that the provisions in sections 702 and 703 apply as of the date of enactment.

This section further specifies that plans will have an additional year following the enactment of this legislation to update plan documents, provided that they otherwise comply with the requirements of sections 702 and 703 starting on the date of enactment.

EXPLANATION OF AMENDMENTS

The amendments, including the amendment in the nature of a substitute, are explained in the descriptive portions of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act of 1995*, Pub. L. No. 104–1, H.R. 7780 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act of 1974*, Pub. L. No. 93-344 (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104–4), the Committee traditionally adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office (CBO) pursuant to section 402 of the *Congressional Budget and Impoundment Control Act of 1974*, which includes an estimate of federal mandates. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a statement on federal mandates for H.R. 7780, as amended.

EARMARK STATEMENT

In accordance with clause 9 of Rule XXI of the Rules of the House of Representatives, H.R. 7780 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of Rule XXI.

ROLL CALL VOTES

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 7780:

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:1

Bill: H.R.7780

Amendment Number:2

Disposition: Defeated by a roll call vote of 17-27

Sponsor/Amendment: Allen / MH_RSUB_02

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)			X
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)			X
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)			X	Mr. MURPHY (NC)	X		
Ms. WILD (PA)		X		Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)		X		Mr. OWENS (UT)	X		
Mrs. HAYES (CT)		X		Mr. GOOD (VA)		X	
Mr. LEVIN (MI)		X		Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)		X		Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)		X		Mrs. MILLER (IL)			X
Ms. LEGER FERNÁNDEZ (NM)		X		Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)			X	Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)		X		Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)		X		Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)		X		<i>Vacancy</i>			
Mr. POCAN (WI)		X		<i>Vacancy</i>			
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 17

Nos:27

Not Voting: 7

Total: 53/ Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:2

Bill: H.R.7780

Amendment Number:3

Disposition: Defeated by a roll call vote of 17-26

Sponsor/Amendment: Miller / MILLIL_035

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)			X
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)			X
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)			X	Mr. MURPHY (NC)	X		
Ms. WILD (PA)		X		Ms. MILLER-MEEKS (IA)			X
Mrs. MCBATH (GA)		X		Mr. OWENS (UT)	X		
Mrs. HAYES (CT)		X		Mr. GOOD (VA)	X		
Mr. LEVIN (MI)		X		Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)		X		Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)		X		Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)			X	Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)		X		Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)		X		Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)			X
Mrs. SHERFILUS-MCCORMICK (FL)		X		<i>Vacancy</i>			
Mr. POCAN (WI)		X		<i>Vacancy</i>			
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 17

Nos:26

Not Voting: 8

Total: 53/ Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:3

Bill: H.R.7780

Amendment Number:4

Disposition: Defeated by a roll call vote of 17-27

Sponsor/Amendment: Allen / H7780_R_AMD_02

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)			X
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)			X
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)			X	Mr. MURPHY (NC)	X		
Ms. WILD (PA)		X		Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)		X		Mr. OWENS (UT)	X		
Mrs. HAYES (CT)		X		Mr. GOOD (VA)		X	
Mr. LEVIN (MI)		X		Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)		X		Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)		X		Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)			X	Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)		X		Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)		X		Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)			X
Mrs. SHERFILUS-MCCORMICK (FL)		X		<i>Vacancy</i>			
Mr. POCAN (WI)		X		<i>Vacancy</i>			
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 17

Nos:27

Not Voting: 7

Total: 53/ Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:4

Bill: H.R.7780

Amendment Number:5

Disposition: Defeated by a roll call vote of 18-26

Sponsor/Amendment: Harshbarger / H7780_R_AMD_01

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)			X
Mr. GRIJALVA (AZ)			X	Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)	X		
Mr. SABLAN (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)	X		
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)			X
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)			X	Mr. MURPHY (NC)	X		
Ms. WILD (PA)		X		Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)		X		Mr. OWENS (UT)	X		
Mrs. HAYES (CT)		X		Mr. GOOD (VA)			X
Mr. LEVIN (MI)		X		Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)		X		Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)		X		Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)			X	Mr. FITZGERALD (WI)	X		
Ms. MANNING (NC)		X		Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)		X		Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)		X		Mr. JACOBS (NY)	X		
Mrs. SHERFILUS-MCCORMICK (FL)		X		<i>Vacancy</i>			
Mr. POCAN (WI)		X		<i>Vacancy</i>			
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 18

Nos:26

Not Voting: 7

Total: 53/ Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call: 5

Bill: 7780

Amendment Number: Motion

Disposition: Adopted by a Full Committee voice vote 26-18

Sponsor/Amendment: Courtney motion to report H.R. 7780 to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)			
Mr. GRIJALVA (AZ)				Mr. WILSON (SC)		X	
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)		X	
Mr. SABLAN (MP)	X			Mr. WALBERG (MI)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)		X	
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. BANKS (IN)		X	
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)			
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)		X	
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)		X	
Mr. MORELLE (NY)				Ms. MILLER-MEEKS (IA)		X	
Ms. WILD (PA)	X			Mr. OWENS (UT)		X	
Mrs. MCBATH (GA)	X			Mr. GOOD (VA)		X	
Mrs. HAYES (CT)	X			Mrs. MCCLAIN (MI)		X	
Mr. LEVIN (MI)	X			Mrs. HARSHBARGER (TN)		X	
Ms. OMAR (MN)	X			Mrs. MILLER (IL)		X	
Ms. STEVENS (MI)	X			Mrs. SPARTZ (IN)		X	
Ms. LEGER FERNÁNDEZ (NM)	X			Mr. FITZGERALD (WI)			
Mr. JONES (NY)				Mr. CAWTHORN (NC)			
Ms. MANNING (NC)	X			Mrs. STEEL (CA)		X	
Mr. MRVAN (IN)	X			Mr. JACOBS (NY)		X	
Mr. BOWMAN (NY)	X			<i>Vacancy</i>			
Mrs. CHERFILUS-MCCORMICK (FL)	X			<i>Vacancy</i>			
Mr. POCAN (WI)	X						
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 26

Nos: 18

Not Voting:

Total: 53/ Quorum: / Report:

(29 D - 24 R)

*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of Rule XIII of the Rules of the House of Representatives, the goals of H.R. 7780 are to improve access to behavioral health services for children, students, and workers.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of Rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 7780 is known to be duplicative of another federal program, including any program that was included in a report to Congress pursuant to section 21 of Pub. L. No. 111-139 or the most recent Catalog of Federal Domestic Assistance.

HEARINGS

Pursuant to clause 3(c)(6) of Rule XIII of the Rules of the House of Representatives—

(1) the following hearing was used to develop H.R. 7780: the HELP Subcommittee hearing titled “Meeting the Moment: Improving Access to Behavioral and Mental Health Care” held on April 15, 2021. The hearing examined barriers to access to behavioral health care, particularly limited coverage of mental health and substance use disorder treatment and the importance of improving enforcement of mental health parity laws. The Subcommittee heard testimony from Dr. Brian Smedley, Chief of Psychology in the Public Interest, American Psychological Association, Washington, DC; Dr. Christine Yu Moutier, Chief Medical Officer, American Foundation for Suicide Prevention, New York, NY; Mr. James Gelfand, Senior Vice President, Health Policy, The ERISA Industry Committee, Washington, DC; and Dr. Meiram Bendat, Founder, Psych-Appeal, Santa Barbara, CA.

(2) Other related hearings held are listed in the Committee History section of this report.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of Rule XIII and clause 2(b)(1) of Rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget and Impoundment Control Act of 1974*, and pursuant to clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget and Impoundment Control Act of 1974*, the Committee has requested but not received a cost estimate for H.R. 7780 from the Director of the Congressional Budget Office.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 7780. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget and Impoundment Control Act of 1974*. The Committee reports that because this cost estimate was not timely submitted to the Committee before the filing of this report, the Committee is not in a position to make a cost estimate for H.R. 7780, as amended.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 7780 as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SUPPORT FOR PATIENTS AND COMMUNITIES ACT

* * * * *

TITLE VII—PUBLIC HEALTH PROVISIONS

* * * * *

Subtitle N—Trauma-Informed Care

* * * * *

[SEC. 7134. GRANTS TO IMPROVE TRAUMA SUPPORT SERVICES AND MENTAL HEALTH CARE FOR CHILDREN AND YOUTH IN EDUCATIONAL SETTINGS.

[(a) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS AUTHORIZED.—The Secretary, in coordination with the Assistant Secretary for Mental Health and Substance Use, is authorized to award grants to, or enter into contracts or cooperative agreements with, State educational agencies, local educational agencies, Indian Tribes (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) or their tribal educational agencies, a school operated by the Bureau of Indian Education, a Regional Corporation, or a Native Hawaiian educational organization, for the purpose of increasing student access to evidence-based trauma support services and mental health care by developing innovative initiatives, activities, or programs to link local school systems with local trauma-informed support and mental health systems, including those under the Indian Health Service.

[(b) DURATION.—With respect to a grant, contract, or cooperative agreement awarded or entered into under this section, the period during which payments under such grant, contract or agreement are made to the recipient may not exceed 4 years.

[(c) USE OF FUNDS.—An entity that receives a grant, contract, or cooperative agreement under this section shall use amounts made available through such grant, contract, or cooperative agreement for evidence-based activities, which shall include any of the following:

- [(1) Collaborative efforts between school-based service systems and trauma-informed support and mental health service**

systems to provide, develop, or improve prevention, screening, referral, and treatment and support services to students, such as providing trauma screenings to identify students in need of specialized support.

[(2) To implement schoolwide positive behavioral interventions and supports, or other trauma-informed models of support.

[(3) To provide professional development to teachers, teacher assistants, school leaders, specialized instructional support personnel, and mental health professionals that—

[(A) fosters safe and stable learning environments that prevent and mitigate the effects of trauma, including through social and emotional learning;

[(B) improves school capacity to identify, refer, and provide services to students in need of trauma support or behavioral health services; or

[(C) reflects the best practices for trauma-informed identification, referral, and support developed by the Task Force under section 7132.

[(4) Services at a full-service community school that focuses on trauma-informed supports, which may include a full-time site coordinator, or other activities consistent with section 4625 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7275).

[(5) Engaging families and communities in efforts to increase awareness of child and youth trauma, which may include sharing best practices with law enforcement regarding trauma-informed care and working with mental health professionals to provide interventions, as well as longer term coordinated care within the community for children and youth who have experienced trauma and their families.

[(6) To provide technical assistance to school systems and mental health agencies.

[(7) To evaluate the effectiveness of the program carried out under this section in increasing student access to evidence-based trauma support services and mental health care.

[(8) To establish partnerships with or provide subgrants to Head Start agencies (including Early Head Start agencies), public and private preschool programs, child care programs (including home-based providers), or other entities described in subsection (a), to include such entities described in this paragraph in the evidence-based trauma initiatives, activities, support services, and mental health systems established under this section in order to provide, develop, or improve prevention, screening, referral, and treatment and support services to young children and their families.

[(d) APPLICATIONS.—To be eligible to receive a grant, contract, or cooperative agreement under this section, an entity described in subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, which shall include the following:

[(1) A description of the innovative initiatives, activities, or programs to be funded under the grant, contract, or coopera-

tive agreement, including how such program will increase access to evidence-based trauma support services and mental health care for students, and, as applicable, the families of such students.

[(2) A description of how the program will provide linguistically appropriate and culturally competent services.

[(3) A description of how the program will support students and the school in improving the school climate in order to support an environment conducive to learning.

[(4) An assurance that—

[(A) persons providing services under the grant, contract, or cooperative agreement are adequately trained to provide such services; and

[(B) teachers, school leaders, administrators, specialized instructional support personnel, representatives of local Indian Tribes or tribal organizations as appropriate, other school personnel, and parents or guardians of students participating in services under this section will be engaged and involved in the design and implementation of the services.

[(5) A description of how the applicant will support and integrate existing school-based services with the program in order to provide mental health services for students, as appropriate.

[(6) A description of the entities in the community with which the applicant will partner or to which the applicant will provide subgrants in accordance with subsection (c)(8).

[(e) INTERAGENCY AGREEMENTS.—

[(1) LOCAL INTERAGENCY AGREEMENTS.—To ensure the provision of the services described in subsection (c), a recipient of a grant, contract, or cooperative agreement under this section, or their designee, shall establish a local interagency agreement among local educational agencies, agencies responsible for early childhood education programs, Head Start agencies (including Early Head Start agencies), juvenile justice authorities, mental health agencies, child welfare agencies, and other relevant agencies, authorities, or entities in the community that will be involved in the provision of such services.

[(2) CONTENTS.—In ensuring the provision of the services described in subsection (c), the local interagency agreement shall specify with respect to each agency, authority, or entity that is a party to such agreement—

[(A) the financial responsibility for the services;

[(B) the conditions and terms of responsibility for the services, including quality, accountability, and coordination of the services; and

[(C) the conditions and terms of reimbursement among such agencies, authorities, or entities, including procedures for dispute resolution.

[(f) EVALUATION.—The Secretary shall reserve not more than 3 percent of the funds made available under subsection (1) for each fiscal year to—

[(1) conduct a rigorous, independent evaluation of the activities funded under this section; and

[(2) disseminate and promote the utilization of evidence-based practices regarding trauma support services and mental health care.

[(g) DISTRIBUTION OF AWARDS.—The Secretary shall ensure that grants, contracts, and cooperative agreements awarded or entered into under this section are equitably distributed among the geographical regions of the United States and among tribal, urban, suburban, and rural populations.

[(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

[(1) to prohibit an entity involved with a program carried out under this section from reporting a crime that is committed by a student to appropriate authorities; or

[(2) to prevent Federal, State, and tribal law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal, tribal, and State law to crimes committed by a student.

[(i) SUPPLEMENT, NOT SUPPLANT.—Any services provided through programs carried out under this section shall supplement, and not supplant, existing mental health services, including any special education and related services provided under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

[(j) CONSULTATION WITH INDIAN TRIBES.—In carrying out subsection (a), the Secretary shall, in a timely manner, meaningfully consult with Indian Tribes and their representatives to ensure notice of eligibility.

[(k) DEFINITIONS.—In this section:

[(1) ELEMENTARY SCHOOL.—The term “elementary school” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

[(2) EVIDENCE-BASED.—The term “evidence-based” has the meaning given such term in section 8101(21)(A)(i) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(21)(A)(i)).

[(3) NATIVE HAWAIIAN EDUCATIONAL ORGANIZATION.—The term “Native Hawaiian educational organization” has the meaning given such term in section 6207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517).

[(4) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

[(5) REGIONAL CORPORATION.—The term “Regional Corporation” has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)).

[(6) SCHOOL.—The term “school” means a public elementary school or public secondary school.

[(7) SCHOOL LEADER.—The term “school leader” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

[(8) SECONDARY SCHOOL.—The term “secondary school” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

[(9) SECRETARY.—The term “Secretary” means the Secretary of Education.

[(10) SPECIALIZED INSTRUCTIONAL SUPPORT PERSONNEL.—The term “specialized instructional support personnel” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

[(11) STATE EDUCATIONAL AGENCY.—The term “State educational agency” has the meaning given such term in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

[(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, \$50,000,000 for each of fiscal years 2019 through 2023.]

SEC. 7134. GRANTS TO IMPROVE TRAUMA SUPPORT SERVICES AND MENTAL HEALTH CARE FOR CHILDREN AND YOUTH IN EDUCATIONAL SETTINGS.

(a) AUTHORIZATION OF GRANTS.—

(1) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS AUTHORIZED.—*The Secretary, in coordination with the Secretary of Health and Human Services, is authorized to award grants to, or enter into contracts or cooperative agreements with, an eligible entity for the purpose of increasing student, teacher, school leader, and other school personnel access to evidence-based trauma support services and mental health services by developing innovative initiatives, activities, or programs to connect schools and local educational agencies, or tribal educational agencies, as applicable, with community trauma-informed support and mental health systems, including such systems under the Indian Health Service.*

(2) RESERVATIONS.—*From the total amount appropriated under subsection (1) for a fiscal year, the Secretary shall reserve—*

(A) not more than 3 percent to conduct the evaluation under subsection (f); and

(B) not more than 2 percent for technical assistance and administration.

(b) DURATION.—*With respect to a grant, contract, or cooperative agreement awarded or entered into under this section, the period during which payments under such grant, contract or agreement are made to the recipient may not exceed 5 years.*

(c) USE OF FUNDS.—*An eligible entity that receives or enters into a grant, contract, or cooperative agreement under this section shall use amounts made available through such grant, contract, or cooperative agreement for evidence-based initiatives, activities, or programs, which shall include at least 1 of the following:*

(1) Enhancing, improving, or developing collaborative efforts between schools, local educational agencies or tribal educational agencies, as applicable, and community mental health and trauma-informed service delivery systems to provide, de-

velop, or improve prevention, referral, treatment, and support services to students.

(2) Implementing trauma-informed models of support, including trauma-informed, positive behavioral interventions and supports in schools served by the eligible entity.

(3) Providing professional development to teachers, paraprofessionals, school leaders, school-based mental health services providers, and other specialized instructional support personnel employed by local educational agencies or tribal educational agencies, as applicable or schools served by the eligible entity that—

(A) fosters safe and stable learning environments that prevent and mitigate the effects of trauma, including through social and emotional learning;

(B) improves school capacity to identify, refer, and provide services to students in need of trauma-informed support or mental health services, including by helping educators to identify the unique personal and contextual variables that influence the manifestation of trauma; and

(C) reflects the best practices for trauma-informed identification, referral, and support developed by the Interagency Task Force on Trauma-Informed Care (as established by section 7132).

(4) Providing trauma-informed support services and mental health services to students at full-service community schools served by the eligible entity.

(5) Engaging families and communities to increase awareness of child trauma, which may include sharing best practices with law enforcement regarding trauma-informed services and working with mental health professionals to provide interventions and longer term coordinated care within the community for children and youth who have experienced trauma and the families of such children and youth.

(6) Evaluating the effectiveness of the initiatives, activities, or programs carried out under this section in increasing student access to evidence-based trauma support services and mental health services.

(7) Establishing partnerships with or providing subgrants to early childhood education programs or other eligible entities, to include such entities in the evidence-based trauma-informed or mental health initiatives, activities, and support services established under this section in order to provide, develop, or improve prevention, referral, treatment, and support services to children and their families.

(8) Establishing new, or enhancing existing, evidence-based educational, awareness, and prevention programs to improve mental health and resiliency among teachers, paraprofessionals, school leaders, school-based mental health services providers, and other specialized instructional support personnel employed by local educational agencies or tribal educational agencies, as applicable, or schools served by the eligible entity.

(d) APPLICATIONS.—To be eligible to receive a grant, contract, or cooperative agreement under this section, an eligible entity shall

submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require, which shall include the following:

(1) A description of the innovative initiatives, activities, or programs to be funded under the grant, contract, or cooperative agreement, including how such initiatives, activities, or programs will increase access to evidence-based trauma-informed support services and mental health services for students, and, as applicable, the families of such students.

(2) A description of how the initiatives, activities, or programs will provide linguistically appropriate and culturally competent services.

(3) A description of how the initiatives, activities, or programs will support schools served by the eligible entity in improving school climate in order to support an environment conducive to learning.

(4) An assurance that—

(A) persons providing services under the initiative, activity, or program funded by the grant, contract, or cooperative agreement are fully licensed or certified to provide such services;

(B) teachers, school leaders, administrators, school-based mental health services providers and other specialized instructional support personnel, representatives of local Indian Tribes or tribal organizations as appropriate, other school personnel, individuals who have experience receiving mental health services as children, and parents of students participating in services under this section will be engaged and involved in the design and implementation of the services; and

(C) the eligible entity will comply with the evaluation required under subsection (f).

(5) A description of how the eligible entity will support and integrate existing school-based services at schools served by the eligible entity with the initiatives, activities, or programs funded under this section in order to provide trauma-informed support services or mental health services for students, as appropriate.

(6) A description of how the eligible entity will incorporate peer support services into the initiatives, activities, or programs to be funded under this section.

(7) A description of how the eligible entity will ensure that initiatives, activities, or programs funded under this section are accessible to and include students with disabilities.

(8) An assurance that the eligible entity will establish a local interagency agreement under subsection (e) and comply with such agreement.

(e) INTERAGENCY AGREEMENTS.—

(1) LOCAL INTERAGENCY AGREEMENTS.—In carrying out an evidence-based initiative, activity, or program described in subsection (c), an eligible entity that receives a grant, contract, or cooperative agreement under this section, or a designee of such entity, shall establish an interagency agreement between local

educational agencies, agencies responsible for early childhood education programs, Head Start agencies (including Early Head Start agencies), juvenile justice authorities, mental health agencies, child welfare agencies, and other relevant agencies, authorities, or entities in the community that will be involved in the provision of services under such initiative, activity, or program.

(2) *CONTENTS.—The local interagency agreement required under paragraph (1) shall specify, with respect to each agency, authority, or entity that is a party to such agreement—*

(A) the financial responsibility for any services provided by such entity;

(B) the conditions and terms of responsibility for such any services, including quality, accountability, and coordination of the services; and

(C) the conditions and terms of reimbursement of such agencies, authorities, or entities, including procedures for dispute resolution.

(f) EVALUATION.—The Secretary shall conduct a rigorous and independent evaluation of the initiatives, activities, and programs carried out by an eligible entity under this section and disseminate evidence-based practices regarding trauma-informed support services and mental health services.

(g) DISTRIBUTION OF AWARDS.—The Secretary shall ensure that grants, contracts, and cooperative agreements awarded or entered into under this section are equitably distributed among the geographical regions of the United States and among tribal, urban, suburban, and rural populations.

(h) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

(1) to prohibit an entity involved with an initiative, activity, or program carried out under this section from reporting a crime that is committed by a student to appropriate authorities; or

(2) to prevent Federal, State, local, and tribal law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal, State, local, and tribal law to crimes committed by a student.

(i) SUPPLEMENT, NOT SUPPLANT.—Federal funds provided under this section shall be used to supplement, and not supplant, other Federal, State, or local funds available to carry out the initiatives, activities, and programs described in this section.

(j) CONSULTATION REQUIRED.—In awarding or entering into grants, contracts, and cooperative agreements under this section, the Secretary shall, in a timely manner, meaningfully consult with Indian Tribes, Regional Corporations, Native Hawaiian Educational Organizations, and their representatives to ensure notice of eligibility.

(k) DEFINITIONS.—In this section:

(1) EARLY CHILDHOOD EDUCATION PROGRAM.—The term “early childhood education program” has the meaning given such term in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003).

(2) *ELIGIBLE ENTITY.*—*The term “eligible entity” means—*
 (A) *a State educational agency;*
 (B) *a local educational agency;*
 (C) *an Indian Tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) or their tribal educational agency;*
 (D) *the Bureau of Indian Education;*
 (E) *a Regional Corporation;*
 (F) *a Native Hawaiian educational organization; and*
 (G) *State, Territory, and Tribal Lead Agencies administering the Child Care and Development Fund as described in section 658D(a) of the Child Care and Development Block Grant Act (42 U.S.C. 9858b(a)).*

(3) *ESEA TERMS.*—
 (A) *The terms “elementary school”, “evidence-based”, “local educational agency”, “paraprofessional”, “parent”, “professional development”, “school leader”, “secondary school”, “Secretary”, “specialized instructional support personnel”, and “State educational agency” have the meanings given such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).*

(B) *The term “full-service community school” has the meaning given such term in section 4622 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7272).*

(C) *The term “Native Hawaiian educational organization” has the meaning given such term in section 6207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517).*

(D) *The term “school-based mental health services provider” has the meaning given the term in section 4102 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7112).*

(4) *REGIONAL CORPORATION.*—*The term “Regional Corporation” has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).*

(5) *SCHOOL.*—*The term “school” means a public elementary school or public secondary school.*

(I) *AUTHORIZATION OF APPROPRIATIONS.*—*There are authorized to be appropriated to carry out this section, \$50,000,000 for each of fiscal years 2023 through 2027.*

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HIGHER EDUCATION ACT OF 1965

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TITLE I—GENERAL PROVISIONS
PART A—DEFINITIONS

* * * * *

SEC. 103. ADDITIONAL DEFINITIONS.

In this Act:

(1) **AUTHORIZING COMMITTEES.**—The term “authorizing committees” means the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives.

(2) **COMBINATION OF INSTITUTIONS OF HIGHER EDUCATION.**—The term “combination of institutions of higher education” means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private non-profit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on the group’s behalf.

(3) **CRITICAL FOREIGN LANGUAGE.**—Except as otherwise provided, the term “critical foreign language” means each of the languages contained in the list of critical languages designated by the Secretary in the Federal Register on August 2, 1985 (50 Fed. Reg. 31412; promulgated under the authority of section 212(d) of the Education for Economic Security Act (repealed by section 2303 of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988)), as updated by the Secretary from time to time and published in the Federal Register, except that in the implementation of this definition with respect to a specific title, the Secretary may set priorities according to the purposes of such title and the national security, economic competitiveness, and educational needs of the United States.

(4) **DEPARTMENT.**—The term “Department” means the Department of Education.

(5) **DIPLOMA MILL.**—The term “diploma mill” means an entity that—

(A)(i) offers, for a fee, degrees, diplomas, or certificates, that may be used to represent to the general public that the individual possessing such a degree, diploma, or certificate has completed a program of postsecondary education or training; and

(ii) requires such individual to complete little or no education or coursework to obtain such degree, diploma, or certificate; and

(B) lacks accreditation by an accrediting agency or association that is recognized as an accrediting agency or association of institutions of higher education (as such term is defined in section 102) by—

(i) the Secretary pursuant to subpart 2 of part H of title IV; or

- (ii) a Federal agency, State government, or other organization or association that recognizes accrediting agencies or associations.
- (6) **DISABILITY.**—The term “disability” has the same meaning given that term under [section 3(2)] *section 3* of the Americans With Disabilities Act of 1990.
- (7) **DISTANCE EDUCATION.**—
 - (A) **IN GENERAL.**—Except as otherwise provided, the term “distance education” means education that uses one or more of the technologies described in subparagraph (B)—
 - (i) to deliver instruction to students who are separated from the instructor; and
 - (ii) to support regular and substantive interaction between the students and the instructor, synchronously or asynchronously.
 - (B) **INCLUSIONS.**—For the purposes of subparagraph (A), the technologies used may include—
 - (i) the Internet;
 - (ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;
 - (iii) audio conferencing; or
 - (iv) video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in clauses (i) through (iii).
- (8) **EARLY CHILDHOOD EDUCATION PROGRAM.**—The term “early childhood education program” means—
 - (A) a Head Start program or an Early Head Start program carried out under the Head Start Act (42 U.S.C. 9831 et seq.), including a migrant or seasonal Head Start program, an Indian Head Start program, or a Head Start program or an Early Head Start program that also receives State funding;
 - (B) a State licensed or regulated child care program;or
 - (C) a program that—
 - (i) serves children from birth through age six that addresses the children’s cognitive (including language, early literacy, and early mathematics), social, emotional, and physical development; and
 - (ii) is—
 - (I) a State prekindergarten program;
 - (II) a program authorized under section 619 or part C of the Individuals with Disabilities Education Act; or
 - (III) a program operated by a local educational agency.
- (9) **ELEMENTARY SCHOOL.**—The term “elementary school” has the same meaning given that term under section 8101 of the Elementary and Secondary Education Act of 1965.

(10) GIFTED AND TALENTED.—The term “gifted and talented” has the same meaning given that term under section 8101 of the Elementary and Secondary Education Act of 1965.

(11) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” has the same meaning given that term under section 8101 of the Elementary and Secondary Education Act of 1965.

(12) NEW BORROWER.—The term “new borrower” when used with respect to any date means an individual who on that date has no outstanding balance of principal or interest owing on any loan made, insured, or guaranteed under title IV.

(13) NONPROFIT.—The term “nonprofit” as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(14) POVERTY LINE.—The term “poverty line” means the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

(15) SCHOOL OR DEPARTMENT OF DIVINITY.—The term “school or department of divinity” means an institution, or a department or a branch of an institution, the program of instruction of which is designed for the education of students—

(A) to prepare the students to become ministers of religion or to enter upon some other religious vocation (or to provide continuing training for any such vocation); or

(B) to prepare the students to teach theological subjects.

(16) SECONDARY SCHOOL.—The term “secondary school” has the same meaning given that term under section 8101 of the Elementary and Secondary Education Act of 1965.

(17) SECRETARY.—The term “Secretary” means the Secretary of Education.

(18) SERVICE-LEARNING.—The term “service-learning” has the same meaning given that term under section 101(23) of the National and Community Service Act of 1990.

(19) SPECIAL EDUCATION TEACHER.—The term “special education teacher” means teachers who teach children with disabilities as defined in section 602 of the Individuals with Disabilities Education Act.

(20) STATE; FREELY ASSOCIATED STATES.—

(A) STATE.—The term “State” includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

(B) FREELY ASSOCIATED STATES.—The term “Freely Associated States” means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(21) STATE EDUCATIONAL AGENCY.—The term “State educational agency” has the same meaning given that term under section 8101 of the Elementary and Secondary Education Act of 1965.

(22) STATE HIGHER EDUCATION AGENCY.—The term “State higher education agency” means the officer or agency primarily responsible for the State supervision of higher education.

(23) UNIVERSAL DESIGN.—The term “universal design” has the meaning given the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(24) UNIVERSAL DESIGN FOR LEARNING.—The term “universal design for learning” means a scientifically valid framework for guiding educational practice that—

(A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient.

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TITLE IV—STUDENT ASSISTANCE

* * * * *

PART G—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

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SEC. 487. PROGRAM PARTICIPATION AGREEMENTS.

(a) REQUIRED FOR PROGRAMS OF ASSISTANCE; CONTENTS.—In order to be an eligible institution for the purposes of any program authorized under this title, an institution must be an institution of higher education or an eligible institution (as that term is defined for the purpose of that program) and shall, except with respect to a program under subpart 4 of part A, enter into a program participation agreement with the Secretary. The agreement shall condition the initial and continuing eligibility of an institution to participate in a program upon compliance with the following requirements:

(1) The institution will use funds received by it for any program under this title and any interest or other earnings thereon solely for the purpose specified in and in accordance with the provision of that program.

(2) The institution shall not charge any student a fee for processing or handling any application, form, or data required to determine the student’s eligibility for assistance under this title or the amount of such assistance.

(3) The institution will establish and maintain such administrative and fiscal procedures and records as may be nec-

essary to ensure proper and efficient administration of funds received from the Secretary or from students under this title, together with assurances that the institution will provide, upon request and in a timely fashion, information relating to the administrative capability and financial responsibility of the institution to—

(A) the Secretary;

(B) the appropriate guaranty agency; and

(C) the appropriate accrediting agency or association.

(4) The institution will comply with the provisions of subsection (c) of this section and the regulations prescribed under that subsection, relating to fiscal eligibility.

(5) The institution will submit reports to the Secretary and, in the case of an institution participating in a program under part B or part E, to holders of loans made to the institution's students under such parts at such times and containing such information as the Secretary may reasonably require to carry out the purpose of this title.

(6) The institution will not provide any student with any statement or certification to any lender under part B that qualifies the student for a loan or loans in excess of the amount that student is eligible to borrow in accordance with sections 425(a), 428(a)(2), and 428(b)(1) (A) and (B).

(7) The institution will comply with the requirements of section 485.

(8) In the case of an institution that advertises job placement rates as a means of attracting students to enroll in the institution, the institution will make available to prospective students, at or before the time of application (A) the most recent available data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements, and (B) relevant State licensing requirements of the State in which such institution is located for any job for which the course of instruction is designed to prepare such prospective students.

(9) In the case of an institution participating in a program under part B or D, the institution will inform all eligible borrowers enrolled in the institution about the availability and eligibility of such borrowers for State grant assistance from the State in which the institution is located, and will inform such borrowers from another State of the source for further information concerning such assistance from that State.

(10) The institution certifies that it has in operation a drug abuse prevention program that is determined by the institution to be accessible to any officer, employee, or student at the institution.

(11) In the case of any institution whose students receive financial assistance pursuant to section 484(d), the institution will make available to such students a program proven successful in assisting students in obtaining a certificate of high school equivalency.

(12) The institution certifies that—

(A) the institution has established a campus security policy; and

(B) the institution has complied with the disclosure requirements of section 485(f).

(13) The institution will not deny any form of Federal financial aid to any student who meets the eligibility requirements of this title on the grounds that the student is participating in a program of study abroad approved for credit by the institution.

(14)(A) The institution, in order to participate as an eligible institution under part B or D, will develop a Default Management Plan for approval by the Secretary as part of its initial application for certification as an eligible institution and will implement such Plan for two years thereafter.

(B) Any institution of higher education which changes ownership and any eligible institution which changes its status as a parent or subordinate institution shall, in order to participate as an eligible institution under part B or D, develop a Default Management Plan for approval by the Secretary and implement such Plan for two years after its change of ownership or status.

(C) This paragraph shall not apply in the case of an institution in which (i) neither the parent nor the subordinate institution has a cohort default rate in excess of 10 percent, and (ii) the new owner of such parent or subordinate institution does not, and has not, owned any other institution with a cohort default rate in excess of 10 percent.

(15) The institution acknowledges the authority of the Secretary, guaranty agencies, lenders, accrediting agencies, the Secretary of Veterans Affairs, and the State agencies under subpart 1 of part H to share with each other any information pertaining to the institution's eligibility to participate in programs under this title or any information on fraud and abuse.

(16)(A) The institution will not knowingly employ an individual in a capacity that involves the administration of programs under this title, or the receipt of program funds under this title, who has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this title, or has been judicially determined to have committed fraud involving funds under this title or contract with an institution or third party servicer that has been terminated under section 432 involving the acquisition, use, or expenditure of funds under this title, or who has been judicially determined to have committed fraud involving funds under this title.

(B) The institution will not knowingly contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been—

(i) convicted of, or pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under this title; or

(ii) judicially determined to have committed fraud involving funds under this title.

(17) The institution will complete surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, as designated by the Secretary, in a timely manner and to the satisfaction of the Secretary.

(18) The institution will meet the requirements established pursuant to section 485(g).

(19) The institution will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that the student borrow additional funds, on any student because of the student's inability to meet his or her financial obligations to the institution as a result of the delayed disbursement of the proceeds of a loan made under this title due to compliance with the provisions of this title, or delays attributable to the institution.

(20) The institution will not provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance, except that this paragraph shall not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive Federal student assistance.

(21) The institution will meet the requirements established by the Secretary and accrediting agencies or associations, and will provide evidence to the Secretary that the institution has the authority to operate within a State.

(22) The institution will comply with the refund policy established pursuant to section 484B.

(23)(A) The institution, if located in a State to which section 4(b) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-2(b)) does not apply, will make a good faith effort to distribute a mail voter registration form, requested and received from the State, to each student enrolled in a degree or certificate program and physically in attendance at the institution, and to make such forms widely available to students at the institution.

(B) The institution shall request the forms from the State 120 days prior to the deadline for registering to vote within the State. If an institution has not received a sufficient quantity of forms to fulfill this section from the State within 60 days prior to the deadline for registering to vote in the State, the institution shall not be held liable for not meeting the requirements of this section during that election year.

(C) This paragraph shall apply to general and special elections for Federal office, as defined in section 301(3) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(3)), and to the elections for Governor or other chief executive within such State).

(D) The institution shall be considered in compliance with the requirements of subparagraph (A) for each stu-

dent to whom the institution electronically transmits a message containing a voter registration form acceptable for use in the State in which the institution is located, or an Internet address where such a form can be downloaded, if such information is in an electronic message devoted exclusively to voter registration.

(24) In the case of a proprietary institution of higher education (as defined in section 102(b)), such institution will derive not less than ten percent of such institution's revenues from sources other than Federal funds that are disbursed or delivered to or on behalf of a student to be used to attend such institution (referred to in this paragraph and subsection (d) as "Federal education assistance funds"), as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).

(25) In the case of an institution that participates in a loan program under this title, the institution will—

(A) develop a code of conduct with respect to such loans with which the institution's officers, employees, and agents shall comply, that—

(i) prohibits a conflict of interest with the responsibilities of an officer, employee, or agent of an institution with respect to such loans; and

(ii) at a minimum, includes the provisions described in subsection (e);

(B) publish such code of conduct prominently on the institution's website; and

(C) administer and enforce such code by, at a minimum, requiring that all of the institution's officers, employees, and agents with responsibilities with respect to such loans be annually informed of the provisions of the code of conduct.

(26) The institution will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of title 18, United States Code), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph.

(27) In the case of an institution that has entered into a preferred lender arrangement, the institution will at least annually compile, maintain, and make available for students attending the institution, and the families of such students, a list, in print or other medium, of the specific lenders for loans made, insured, or guaranteed under this title or private education loans that the institution recommends, promotes, or endorses in accordance with such preferred lender arrangement. In making such list, the institution shall comply with the requirements of subsection (h).

(28)(A) The institution will, upon the request of an applicant for a private education loan, provide to the applicant the form required under section 128(e)(3) of the Truth in Lending Act (15 U.S.C. 1638(e)(3)), and the information required to complete such form, to the extent the institution possesses such information.

(B) For purposes of this paragraph, the term “private education loan” has the meaning given such term in section 140 of the Truth in Lending Act.

(29) The institution certifies that the institution—

(A) has developed plans to effectively combat the unauthorized distribution of copyrighted material, including through the use of a variety of technology-based deterrents; and

(B) will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

(30)(A) *The institution will carry out the following:*

(i) *Adopt policies that make any of the following documentation submitted by an individual sufficient to establish that such individual is an individual with a disability:*

(I) *Documentation that the individual has had an individualized education program (IEP) in accordance with section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)), including an IEP that may not be current on the date of the determination that the individual has a disability. The institution may ask for additional documentation from an individual who had an IEP but who was subsequently evaluated and determined to be ineligible for services under the Individuals with Disabilities Education Act, including an individual determined to be ineligible during elementary school.*

(II) *Documentation describing services or accommodations provided to the individual pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (commonly referred to as a “Section 504 plan”).*

(III) *A plan or record of service for the individual from a private school, a local educational agency, a State educational agency, or an institution of higher education provided in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).*

(IV) *A record or evaluation from a relevant licensed professional finding that the individual has a disability.*

(V) *A plan or record of disability from another institution of higher education.*

(VI) *Documentation of a disability due to service in the uniformed services, as defined in section 484C(a).*

(ii) *Adopt policies that are transparent and explicit regarding information about the process by which the institution determines eligibility for accommodations.*

(iii) *Disseminate such information to students, parents, and faculty in an accessible format, including during any student orientation and making such information readily available on a public website of the institution.*

(B) *Nothing in this paragraph shall be construed to preclude an institution from establishing less burdensome criteria than that described in subparagraph (A) to establish an individual as an individual with a disability and therefore eligible for accommodations.*

(31) *The institution will submit, for inclusion in the Integrated Postsecondary Education Data System (IPEDS) or any other Federal postsecondary institution data collection effort, key data related to undergraduate students enrolled at the institution who are formally registered as students with disabilities with the institution's office of disability services (or the equivalent office), including the total number of students with disabilities enrolled, the number of students accessing or receiving accommodations, the percentage of students with disabilities of all undergraduate students, and the total number of undergraduate certificates or degrees awarded to students with disabilities. An institution shall not be required to submit the information described in the preceding sentence if the number of such students would reveal personally identifiable information about an individual student.*

(b) HEARINGS.—(1) An institution that has received written notice of a final audit or program review determination and that desires to have such determination reviewed by the Secretary shall submit to the Secretary a written request for review not later than 45 days after receipt of notification of the final audit or program review determination.

(2) The Secretary shall, upon receipt of written notice under paragraph (1), arrange for a hearing and notify the institution within 30 days of receipt of such notice the date, time, and place of such hearing. Such hearing shall take place not later than 120 days from the date upon which the Secretary notifies the institution.

(c) AUDITS; FINANCIAL RESPONSIBILITY; ENFORCEMENT OF STANDARDS.—(1) Notwithstanding any other provisions of this title, the Secretary shall prescribe such regulations as may be necessary to provide for—

(A)(i) except as provided in clauses (ii) and (iii), a financial audit of an eligible institution with regard to the financial condition of the institution in its entirety, and a compliance audit of such institution with regard to any funds obtained by it under this title or obtained from a student or a parent who has a loan insured or guaranteed by the Secretary under this title, on at least an annual basis and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organi-

zations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary and shall be available to cognizant guaranty agencies, eligible lenders, State agencies, and the appropriate State agency notifying the Secretary under subpart 1 of part H, except that the Secretary may modify the requirements of this clause with respect to institutions of higher education that are foreign institutions, and may waive such requirements with respect to a foreign institution whose students receive less than \$500,000 in loans under this title during the award year preceding the audit period;

(ii) with regard to an eligible institution which is audited under chapter 75 of title 31, United States Code, deeming such audit to satisfy the requirements of clause (i) for the period covered by such audit; or

(iii) at the discretion of the Secretary, with regard to an eligible institution (other than an eligible institution described in section 102(a)(1)(C)) that has obtained less than \$200,000 in funds under this title during each of the 2 award years that precede the audit period and submits a letter of credit payable to the Secretary equal to not less than $\frac{1}{2}$ of the annual potential liabilities of such institution as determined by the Secretary, deeming an audit conducted every 3 years to satisfy the requirements of clause (i), except for the award year immediately preceding renewal of the institution's eligibility under section 498(g);

(B) in matters not governed by specific program provisions, the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid under this title, including any matter the Secretary deems necessary to the sound administration of the financial aid programs, such as the pertinent actions of any owner, shareholder, or person exercising control over an eligible institution;

(C)(i) except as provided in clause (ii), a compliance audit of a third party servicer (other than with respect to the servicer's functions as a lender if such functions are otherwise audited under this part and such audits meet the requirements of this clause), with regard to any contract with an eligible institution, guaranty agency, or lender for administering or servicing any aspect of the student assistance programs under this title, at least once every year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a third party servicer that is audited under chapter 75 of title 31, United States Code, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by such audit;

(D)(i) a compliance audit of a secondary market with regard to its transactions involving, and its servicing and collection of, loans made under this title, at least once a year and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(ii) with regard to a secondary market that is audited under chapter 75 of title 31, United States Code, such audit shall be deemed to satisfy the requirements of clause (i) for the period covered by the audit;

(E) the establishment, by each eligible institution under part B responsible for furnishing to the lender the statement required by section 428(a)(2)(A)(i), of policies and procedures by which the latest known address and enrollment status of any student who has had a loan insured under this part and who has either formally terminated his enrollment, or failed to re-enroll on at least a half-time basis, at such institution, shall be furnished either to the holder (or if unknown, the insurer) of the note, not later than 60 days after such termination or failure to re-enroll;

(F) the limitation, suspension, or termination of the participation in any program under this title of an eligible institution, or the imposition of a civil penalty under paragraph (3)(B) whenever the Secretary has determined, after reasonable notice and opportunity for hearing, that such institution has violated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this section shall exceed 60 days unless the institution and the Secretary agree to an extension or unless limitation or termination proceedings are initiated by the Secretary within that period of time;

(G) an emergency action against an institution, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to the institution (by registered mail, return receipt requested), withhold funds from the institution or its students and withdraw the institution's authority to obligate funds under any program under this title, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the institution is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (D) for limitation, suspension, or termination,

except that an emergency action shall not exceed 30 days unless limitation, suspension, or termination proceedings are initiated by the Secretary against the institution within that period of time, and except that the Secretary shall provide the institution an opportunity to show cause, if it so requests, that the emergency action is unwarranted;

(H) the limitation, suspension, or termination of the eligibility of a third party servicer to contract with any institution to administer any aspect of an institution's student assistance program under this title, or the imposition of a civil penalty under paragraph (3)(B), whenever the Secretary has determined, after reasonable notice and opportunity for a hearing, that such organization, acting on behalf of an institution, has violated or failed to carry out any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation, except that no period of suspension under this subparagraph shall exceed 60 days unless the organization and the Secretary agree to an extension, or unless limitation or termination proceedings are initiated by the Secretary against the individual or organization within that period of time; and

(I) an emergency action against a third party servicer that has contracted with an institution to administer any aspect of the institution's student assistance program under this title, under which the Secretary shall, effective on the date on which a notice and statement of the basis of the action is mailed to such individual or organization (by registered mail, return receipt requested), withhold funds from the individual or organization and withdraw the individual or organization's authority to act on behalf of an institution under any program under this title, if the Secretary—

(i) receives information, determined by the Secretary to be reliable, that the individual or organization, acting on behalf of an institution, is violating any provision of this title, any regulation prescribed under this title, or any applicable special arrangement, agreement, or limitation,

(ii) determines that immediate action is necessary to prevent misuse of Federal funds, and

(iii) determines that the likelihood of loss outweighs the importance of the procedures prescribed under subparagraph (F), for limitation, suspension, or termination, except that an emergency action shall not exceed 30 days unless the limitation, suspension, or termination proceedings are initiated by the Secretary against the individual or organization within that period of time, and except that the Secretary shall provide the individual or organization an opportunity to show cause, if it so requests, that the emergency action is unwarranted.

(2) If an individual who, or entity that, exercises substantial control, as determined by the Secretary in accordance with the definition of substantial control in subpart 3 of part H, over one or more institutions participating in any program under this title, or, for purposes of paragraphs (1) (H) and (I), over one or more organi-

zations that contract with an institution to administer any aspect of the institution's student assistance program under this title, is determined to have committed one or more violations of the requirements of any program under this title, or has been suspended or debarred in accordance with the regulations of the Secretary, the Secretary may use such determination, suspension, or debarment as the basis for imposing an emergency action on, or limiting, suspending, or terminating, in a single proceeding, the participation of any or all institutions under the substantial control of that individual or entity.

(3)(A) Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates, the Secretary may suspend or terminate the eligibility status for any or all programs under this title of any otherwise eligible institution, in accordance with procedures specified in paragraph (1)(D) of this subsection, until the Secretary finds that such practices have been corrected.

(B)(i) Upon determination, after reasonable notice and opportunity for a hearing, that an eligible institution—

(I) has violated or failed to carry out any provision of this title or any regulation prescribed under this title; or

(II) has engaged in substantial misrepresentation of the nature of its educational program, its financial charges, and the employability of its graduates,

the Secretary may impose a civil penalty upon such institution of not to exceed \$25,000 for each violation or misrepresentation.

(ii) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.

(4) The Secretary shall publish a list of State agencies which the Secretary determines to be reliable authority as to the quality of public postsecondary vocational education in their respective States for the purpose of determining eligibility for all Federal student assistance programs.

(5) The Secretary shall make readily available to appropriate guaranty agencies, eligible lenders, State agencies notifying the Secretary under subpart 1 of part H, and accrediting agencies or associations the results of the audits of eligible institutions conducted pursuant to paragraph (1)(A).

(6) The Secretary is authorized to provide any information collected as a result of audits conducted under this section, together with audit information collected by guaranty agencies, to any Federal or State agency having responsibilities with respect to student financial assistance, including those referred to in subsection (a)(15) of this section.

(7) Effective with respect to any audit conducted under this subsection after December 31, 1988, if, in the course of conducting any such audit, the personnel of the Department of Education discover, or are informed of, grants or other assistance provided by an institution in accordance with this title for which the institution has not received funds appropriated under this title (in the amount necessary to provide such assistance), including funds for which reimbursement was not requested prior to such discovery or information, such institution shall be permitted to offset that amount against any sums determined to be owed by the institution pursuant to such audit, or to receive reimbursement for that amount (if the institution does not owe any such sums).

(d) IMPLEMENTATION OF NON-FEDERAL REVENUE REQUIREMENT.—

(1) CALCULATION.—In making calculations under subsection (a)(24), a proprietary institution of higher education shall—

(A) use the cash basis of accounting, except in the case of loans described in subparagraph (D)(i) that are made by the proprietary institution of higher education;

(B) consider as revenue only those funds generated by the institution from—

(i) tuition, fees, and other institutional charges for students enrolled in programs eligible for assistance under this title;

(ii) activities conducted by the institution that are necessary for the education and training of the institution's students, if such activities are—

(I) conducted on campus or at a facility under the control of the institution;

(II) performed under the supervision of a member of the institution's faculty; and

(III) required to be performed by all students in a specific educational program at the institution; and

(iii) funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible for funds under this title, if the program—

(I) is approved or licensed by the appropriate State agency;

(II) is accredited by an accrediting agency recognized by the Secretary; or

(III) provides an industry-recognized credential or certification;

(C) presume that any Federal education assistance funds that are disbursed or delivered to or on behalf of a student will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by—

(i) grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training;

(iii) funds used by a student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under the Internal Revenue Code of 1986; or

(iv) institutional scholarships described in subparagraph (D)(iii);

(D) include institutional aid as revenue to the school only as follows:

(i) in the case of loans made by a proprietary institution of higher education on or after July 1, 2008 and prior to July 1, 2012, the net present value of such loans made by the institution during the applicable institutional fiscal year accounted for on an accrual basis and estimated in accordance with generally accepted accounting principles and related standards and guidance, if the loans—

(I) are bona fide as evidenced by enforceable promissory notes;

(II) are issued at intervals related to the institution's enrollment periods; and

(III) are subject to regular loan repayments and collections;

(ii) in the case of loans made by a proprietary institution of higher education on or after July 1, 2012, only the amount of loan repayments received during the applicable institutional fiscal year, excluding repayments on loans made and accounted for as specified in clause (i); and

(iii) in the case of scholarships provided by a proprietary institution of higher education, only those scholarships provided by the institution in the form of monetary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or from income earned on those funds;

(E) in the case of each student who receives a loan on or after July 1, 2008, and prior to July 1, 2011, that is authorized under section 428H or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this title, the amount by which the disbursement of such loan received by the institution exceeds the limit on such loan in effect on the day before the date of enactment

of the Ensuring Continued Access to Student Loans Act of 2008; and

(F) exclude from revenues—

(i) the amount of funds the institution received under part C, unless the institution used those funds to pay a student's institutional charges;

(ii) the amount of funds the institution received under subpart 4 of part A;

(iii) the amount of funds provided by the institution as matching funds for a program under this title;

(iv) the amount of funds provided by the institution for a program under this title that are required to be refunded or returned; and

(v) the amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

(2) SANCTIONS.—

(A) INELIGIBILITY.—A proprietary institution of higher education that fails to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years shall be ineligible to participate in the programs authorized by this title for a period of not less than two institutional fiscal years. To regain eligibility to participate in the programs authorized by this title, a proprietary institution of higher education shall demonstrate compliance with all eligibility and certification requirements under section 498 for a minimum of two institutional fiscal years after the institutional fiscal year in which the institution became ineligible.

(B) ADDITIONAL ENFORCEMENT.—In addition to such other means of enforcing the requirements of this title as may be available to the Secretary, if a proprietary institution of higher education fails to meet a requirement of subsection (a)(24) for any institutional fiscal year, then the institution's eligibility to participate in the programs authorized by this title becomes provisional for the two institutional fiscal years after the institutional fiscal year in which the institution failed to meet the requirement of subsection (a)(24), except that such provisional eligibility shall terminate—

(i) on the expiration date of the institution's program participation agreement under this subsection that is in effect on the date the Secretary determines that the institution failed to meet the requirement of subsection (a)(24); or

(ii) in the case that the Secretary determines that the institution failed to meet a requirement of subsection (a)(24) for two consecutive institutional fiscal years, on the date the institution is determined ineligible in accordance with subparagraph (A).

(3) PUBLICATION ON COLLEGE NAVIGATOR WEBSITE.—The Secretary shall publicly disclose on the College Navigator website—

- (A) the identity of any proprietary institution of higher education that fails to meet a requirement of subsection (a)(24); and
- (B) the extent to which the institution failed to meet such requirement.
- (4) REPORT TO CONGRESS.—Not later than July 1, 2009, and July 1 of each succeeding year, the Secretary shall submit to the authorizing committees a report that contains, for each proprietary institution of higher education that receives assistance under this title, as provided in the audited financial statements submitted to the Secretary by each institution pursuant to the requirements of subsection (a)(24)—
- (A) the amount and percentage of such institution’s revenues received from sources under this title; and
- (B) the amount and percentage of such institution’s revenues received from other sources.
- (e) CODE OF CONDUCT REQUIREMENTS.—An institution of higher education’s code of conduct, as required under subsection (a)(25), shall include the following requirements:
- (1) BAN ON REVENUE-SHARING ARRANGEMENTS.—
- (A) PROHIBITION.—The institution shall not enter into any revenue-sharing arrangement with any lender.
- (B) DEFINITION.—For purposes of this paragraph, the term “revenue-sharing arrangement” means an arrangement between an institution and a lender under which—
- (i) a lender provides or issues a loan that is made, insured, or guaranteed under this title to students attending the institution or to the families of such students; and
- (ii) the institution recommends the lender or the loan products of the lender and in exchange, the lender pays a fee or provides other material benefits, including revenue or profit sharing, to the institution, an officer or employee of the institution, or an agent.
- (2) GIFT BAN.—
- (A) PROHIBITION.—No officer or employee of the institution who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education loans, or agent who has responsibilities with respect to education loans, shall solicit or accept any gift from a lender, guarantor, or servicer of education loans.
- (B) DEFINITION OF GIFT.—
- (i) IN GENERAL.—In this paragraph, the term “gift” means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having a monetary value of more than a de minimus amount. The term includes a gift of services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.
- (ii) EXCEPTIONS.—The term “gift” shall not include any of the following:

(I) Standard material, activities, or programs on issues related to a loan, default aversion, default prevention, or financial literacy, such as a brochure, a workshop, or training.

(II) Food, refreshments, training, or informational material furnished to an officer or employee of an institution, or to an agent, as an integral part of a training session that is designed to improve the service of a lender, guarantor, or servicer of education loans to the institution, if such training contributes to the professional development of the officer, employee, or agent.

(III) Favorable terms, conditions, and borrower benefits on an education loan provided to a student employed by the institution if such terms, conditions, or benefits are comparable to those provided to all students of the institution.

(IV) Entrance and exit counseling services provided to borrowers to meet the institution's responsibilities for entrance and exit counseling as required by subsections (b) and (l) of section 485, as long as—

(aa) the institution's staff are in control of the counseling, (whether in person or via electronic capabilities); and

(bb) such counseling does not promote the products or services of any specific lender.

(V) Philanthropic contributions to an institution from a lender, servicer, or guarantor of education loans that are unrelated to education loans or any contribution from any lender, guarantor, or servicer that is not made in exchange for any advantage related to education loans.

(VI) State education grants, scholarships, or financial aid funds administered by or on behalf of a State.

(iii) **RULE FOR GIFTS TO FAMILY MEMBERS.**—For purposes of this paragraph, a gift to a family member of an officer or employee of an institution, to a family member of an agent, or to any other individual based on that individual's relationship with the officer, employee, or agent, shall be considered a gift to the officer, employee, or agent if—

(I) the gift is given with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the gift was given because of the official position of the officer, employee, or agent.

(3) **CONTRACTING ARRANGEMENTS PROHIBITED.**—

(A) **PROHIBITION.**—An officer or employee who is employed in the financial aid office of the institution or who otherwise has responsibilities with respect to education

loans, or an agent who has responsibilities with respect to education loans, shall not accept from any lender or affiliate of any lender any fee, payment, or other financial benefit (including the opportunity to purchase stock) as compensation for any type of consulting arrangement or other contract to provide services to a lender or on behalf of a lender relating to education loans.

(B) EXCEPTIONS.—Nothing in this subsection shall be construed as prohibiting—

(i) an officer or employee of an institution who is not employed in the institution's financial aid office and who does not otherwise have responsibilities with respect to education loans, or an agent who does not have responsibilities with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans;

(ii) an officer or employee of the institution who is not employed in the institution's financial aid office but who has responsibility with respect to education loans as a result of a position held at the institution, or an agent who has responsibility with respect to education loans, from performing paid or unpaid service on a board of directors of a lender, guarantor, or servicer of education loans, if the institution has a written conflict of interest policy that clearly sets forth that officers, employees, or agents must recuse themselves from participating in any decision of the board regarding education loans at the institution; or

(iii) an officer, employee, or contractor of a lender, guarantor, or servicer of education loans from serving on a board of directors, or serving as a trustee, of an institution, if the institution has a written conflict of interest policy that the board member or trustee must recuse themselves from any decision regarding education loans at the institution.

(4) INTERACTION WITH BORROWERS.—The institution shall not—

(A) for any first-time borrower, assign, through award packaging or other methods, the borrower's loan to a particular lender; or

(B) refuse to certify, or delay certification of, any loan based on the borrower's selection of a particular lender or guaranty agency.

(5) PROHIBITION ON OFFERS OF FUNDS FOR PRIVATE LOANS.—

(A) PROHIBITION.—The institution shall not request or accept from any lender any offer of funds to be used for private education loans (as defined in section 140 of the Truth in Lending Act), including funds for an opportunity pool loan, to students in exchange for the institution providing concessions or promises regarding providing the lender with—

- (i) a specified number of loans made, insured, or guaranteed under this title;
- (ii) a specified loan volume of such loans; or
- (iii) a preferred lender arrangement for such loans.

(B) DEFINITION OF OPPORTUNITY POOL LOAN.—In this paragraph, the term “opportunity pool loan” means a private education loan made by a lender to a student attending the institution or the family member of such a student that involves a payment, directly or indirectly, by such institution of points, premiums, additional interest, or financial support to such lender for the purpose of such lender extending credit to the student or the family.

(6) BAN ON STAFFING ASSISTANCE.—

(A) PROHIBITION.—The institution shall not request or accept from any lender any assistance with call center staffing or financial aid office staffing.

(B) CERTAIN ASSISTANCE PERMITTED.—Nothing in paragraph (1) shall be construed to prohibit the institution from requesting or accepting assistance from a lender related to—

- (i) professional development training for financial aid administrators;
- (ii) providing educational counseling materials, financial literacy materials, or debt management materials to borrowers, provided that such materials disclose to borrowers the identification of any lender that assisted in preparing or providing such materials; or
- (iii) staffing services on a short-term, nonrecurring basis to assist the institution with financial aid-related functions during emergencies, including State-declared or federally declared natural disasters, federally declared national disasters, and other localized disasters and emergencies identified by the Secretary.

(7) ADVISORY BOARD COMPENSATION.—Any employee who is employed in the financial aid office of the institution, or who otherwise has responsibilities with respect to education loans or other student financial aid of the institution, and who serves on an advisory board, commission, or group established by a lender, guarantor, or group of lenders or guarantors, shall be prohibited from receiving anything of value from the lender, guarantor, or group of lenders or guarantors, except that the employee may be reimbursed for reasonable expenses incurred in serving on such advisory board, commission, or group.

(f) INSTITUTIONAL REQUIREMENTS FOR TEACH-OUTS.—

(1) IN GENERAL.—In the event the Secretary initiates the limitation, suspension, or termination of the participation of an institution of higher education in any program under this title under the authority of subsection (c)(1)(F) or initiates an emergency action under the authority of subsection (c)(1)(G) and its prescribed regulations, the Secretary shall require that institution to prepare a teach-out plan for submission to the institution’s accrediting agency or association in compliance with sec-

tion 496(c)(3), the Secretary's regulations on teach-out plans, and the standards of the institution's accrediting agency or association.

(2) TEACH-OUT PLAN DEFINED.—In this subsection, the term “teach-out plan” means a written plan that provides for the equitable treatment of students if an institution of higher education ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency or association, an agreement between institutions for such a teach-out plan.

(g) INSPECTOR GENERAL REPORT ON GIFT BAN VIOLATIONS.—The Inspector General of the Department shall—

(1) submit an annual report to the authorizing committees identifying all violations of an institution's code of conduct that the Inspector General has substantiated during the preceding year relating to the gift ban provisions described in subsection (e)(2); and

(2) make the report available to the public through the Department's website.

(h) PREFERRED LENDER LIST REQUIREMENTS.—

(1) IN GENERAL.—In compiling, maintaining, and making available a preferred lender list as required under subsection (a)(27), the institution will—

(A) clearly and fully disclose on such preferred lender list—

(i) not less than the information required to be disclosed under section 153(a)(2)(A);

(ii) why the institution has entered into a preferred lender arrangement with each lender on the preferred lender list, particularly with respect to terms and conditions or provisions favorable to the borrower; and

(iii) that the students attending the institution, or the families of such students, do not have to borrow from a lender on the preferred lender list;

(B) ensure, through the use of the list of lender affiliates provided by the Secretary under paragraph (2), that—

(i) there are not less than three lenders of loans made under part B that are not affiliates of each other included on the preferred lender list and, if the institution recommends, promotes, or endorses private education loans, there are not less than two lenders of private education loans that are not affiliates of each other included on the preferred lender list; and

(ii) the preferred lender list under this paragraph—

(I) specifically indicates, for each listed lender, whether the lender is or is not an affiliate of each other lender on the preferred lender list; and

(II) if a lender is an affiliate of another lender on the preferred lender list, describes the details of such affiliation;

(C) prominently disclose the method and criteria used by the institution in selecting lenders with which to enter into preferred lender arrangements to ensure that such lenders are selected on the basis of the best interests of the borrowers, including—

(i) payment of origination or other fees on behalf of the borrower;

(ii) highly competitive interest rates, or other terms and conditions or provisions of loans under this title or private education loans;

(iii) high-quality servicing for such loans; or

(iv) additional benefits beyond the standard terms and conditions or provisions for such loans;

(D) exercise a duty of care and a duty of loyalty to compile the preferred lender list under this paragraph without prejudice and for the sole benefit of the students attending the institution, or the families of such students;

(E) not deny or otherwise impede the borrower's choice of a lender or cause unnecessary delay in loan certification under this title for those borrowers who choose a lender that is not included on the preferred lender list; and

(F) comply with such other requirements as the Secretary may prescribe by regulation.

(2) LENDER AFFILIATES LIST.—

(A) IN GENERAL.—The Secretary shall maintain and regularly update a list of lender affiliates of all eligible lenders, and shall provide such list to institutions for use in carrying out paragraph (1)(B).

(B) USE OF MOST RECENT LIST.—An institution shall use the most recent list of lender affiliates provided by the Secretary under subparagraph (A) in carrying out paragraph (1)(B).

(i) DEFINITIONS.—For the purpose of this section:

(1) AGENT.—The term “agent” has the meaning given the term in section 151.

(2) AFFILIATE.—The term “affiliate” means a person that controls, is controlled by, or is under common control with another person. A person controls, is controlled by, or is under common control with another person if—

(A) the person directly or indirectly, or acting through one or more others, owns, controls, or has the power to vote five percent or more of any class of voting securities of such other person;

(B) the person controls, in any manner, the election of a majority of the directors or trustees of such other person; or

(C) the Secretary determines (after notice and opportunity for a hearing) that the person directly or indirectly exercises a controlling interest over the management or policies of such other person's education loans.

(3) EDUCATION LOAN.—The term “education loan” has the meaning given the term in section 151.

(4) ELIGIBLE INSTITUTION.—The term “eligible institution” means any such institution described in section 102 of this Act.

(5) OFFICER.—The term “officer” has the meaning given the term in section 151.

(6) PREFERRED LENDER ARRANGEMENT.—The term “preferred lender arrangement” has the meaning given the term in section 151.

(j) CONSTRUCTION.—Nothing in the amendments made by the Higher Education Amendments of 1992 shall be construed to prohibit an institution from recording, at the cost of the institution, a hearing referred to in subsection (b)(2), subsection (c)(1)(D), or subparagraph (A) or (B)(i) of subsection (c)(2), of this section to create a record of the hearing, except the unavailability of a recording shall not serve to delay the completion of the proceeding. The Secretary shall allow the institution to use any reasonable means, including stenographers, of recording the hearing.

* * * * *

TITLE VII—GRADUATE AND POSTSECONDARY IMPROVEMENT PROGRAMS

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PART D—PROGRAMS TO PROVIDE STUDENTS WITH DISABILITIES WITH A QUALITY HIGHER EDUCATION

* * * * *

Subpart 4—National Technical Assistance Center; Coordinating Center

* * * * *

SEC. 777. NATIONAL TECHNICAL ASSISTANCE CENTER; COORDINATING CENTER.

(a) NATIONAL CENTER.—

(1) IN GENERAL.—[From amounts appropriated under section 778,] *From amounts appropriated under paragraph (5),* the Secretary shall award a grant to, or enter into a contract or cooperative agreement with, an eligible entity to provide for the establishment and support of a National Center for Information and Technical Support for Postsecondary Students with Disabilities (in this subsection referred to as the “National Center”). The National Center shall carry out the duties set forth in paragraph (4).

(2) ADMINISTRATION.—The program under this section shall be administered by the office in the Department that administers other postsecondary education programs.

(3) ELIGIBLE ENTITY.—In this subpart, the term “eligible entity” means an institution of higher education, a nonprofit

organization, or partnership of two or more such institutions or organizations, with demonstrated expertise in—

(A) supporting students with disabilities in postsecondary education;

(B) technical knowledge necessary for the dissemination of information in accessible formats;

(C) working with diverse types of institutions of higher education, including community colleges; and

(D) the subjects supported by the grants, contracts, or cooperative agreements authorized in subparts 1, 2, and 3.

(4) DUTIES.—The duties of the National Center shall include the following:

(A) ASSISTANCE TO STUDENTS AND FAMILIES.—The National Center shall provide information and technical assistance to students with disabilities and the families of students with disabilities to support students across the broad spectrum of disabilities, including—

(i) information to assist individuals with disabilities who are prospective students of an institution of higher education in planning for postsecondary education while the students are in secondary school;

(ii) information and technical assistance provided to individualized education program teams (as defined in section 614(d)(1) of the Individuals with Disabilities Education Act) for secondary school students with disabilities, and to early outreach and student services programs, including programs authorized under subparts 2, 4, and 5 of part A of title IV, to support students across a broad spectrum of disabilities with the successful transition to postsecondary education;

(iii) research-based supports, services, and accommodations which are available in postsecondary settings, including services provided by other agencies such as vocational rehabilitation;

(iv) information on student mentoring and networking opportunities for students with disabilities; and

(v) effective recruitment and transition programs at postsecondary educational institutions.

(B) ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION.—The National Center shall provide information and technical assistance to faculty, staff, and administrators of institutions of higher education to improve the services provided to, the accommodations for, the retention rates of, and the completion rates of, students with disabilities in higher education settings, which may include—

(i) collection and dissemination of best and promising practices and materials for accommodating and supporting students with disabilities, including practices and materials supported by the grants, contracts, or cooperative agreements authorized under subparts 1, 2, and 3;

(ii) development and provision of training modules for higher education faculty on exemplary practices for accommodating and supporting postsecondary students with disabilities across a range of academic fields, which may include universal design for learning and practices supported by the grants, contracts, or cooperative agreements authorized under subparts 1, 2, and 3; and

(iii) development of technology-based tutorials for higher education faculty and staff, including new faculty and graduate students, on best and promising practices related to support and retention of students with disabilities in postsecondary education.

(C) INFORMATION COLLECTION AND DISSEMINATION.—

The National Center shall be responsible for building, maintaining, and updating a database of disability support services information with respect to institutions of higher education, or for expanding and updating an existing database of disabilities support services information with respect to institutions of higher education. Such database shall be available to the general public through a website built to high technical standards of accessibility practicable for the broad spectrum of individuals with disabilities. Such database and website shall include available information on—

- (i) disability documentation requirements;
- (ii) support services available;
- (iii) links to financial aid;
- (iv) accommodations policies;
- (v) accessible instructional materials;
- (vi) other topics relevant to students with disabilities; and
- (vii) the information in the report described in subparagraph (E).

(D) DISABILITY SUPPORT SERVICES.—The National Center shall work with organizations and individuals with proven expertise related to disability support services for postsecondary students with disabilities to evaluate, improve, and disseminate information related to the delivery of high quality disability support services at institutions of higher education.

(E) REVIEW AND REPORT.—Not later than three years after the establishment of the National Center, and every two years thereafter, the National Center shall prepare and disseminate a report to the Secretary and the authorizing committees analyzing the condition of postsecondary success for students with disabilities. Such report shall include—

- (i) a review of the activities and the effectiveness of the programs authorized under this part;
- (ii) annual enrollment and graduation rates of students with disabilities in institutions of higher education from publicly reported data;

(iii) recommendations for effective postsecondary supports and services for students with disabilities, and how such supports and services may be widely implemented at institutions of higher education;

(iv) recommendations on reducing barriers to full participation for students with disabilities in higher education; and

(v) a description of strategies with a demonstrated record of effectiveness in improving the success of such students in postsecondary education.

(F) STAFFING OF THE CENTER.—In hiring employees of the National Center, the National Center shall consider the expertise and experience of prospective employees in providing training and technical assistance to practitioners.

(5) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated to carry out this subsection \$2,000,000 for each of fiscal years 2023 through 2027.*

(b) COORDINATING CENTER.—

(1) DEFINITION OF ELIGIBLE ENTITY.—In this subsection, the term “eligible entity” means an entity, or a partnership of entities, that has demonstrated expertise in the fields of—

(A) higher education;

(B) the education of students with intellectual disabilities;

(C) the development of comprehensive transition and postsecondary programs for students with intellectual disabilities; and

(D) evaluation and technical assistance.

(2) IN GENERAL.—From amounts appropriated under section 778, the Secretary shall enter into a cooperative agreement, on a competitive basis, with an eligible entity for the purpose of establishing a coordinating center for institutions of higher education that offer inclusive comprehensive transition and postsecondary programs for students with intellectual disabilities, including institutions participating in grants authorized under subpart 2, to provide—

(A) recommendations related to the development of standards for such programs;

(B) technical assistance for such programs; and

(C) evaluations for such programs.

(3) ADMINISTRATION.—The program under this subsection shall be administered by the office in the Department that administers other postsecondary education programs.

(4) DURATION.—The Secretary shall enter into a cooperative agreement under this subsection for a period of five years.

(5) REQUIREMENTS OF COOPERATIVE AGREEMENT.—The eligible entity entering into a cooperative agreement under this subsection shall establish and maintain a coordinating center that shall—

(A) serve as the technical assistance entity for all comprehensive transition and postsecondary programs for students with intellectual disabilities;

(B) provide technical assistance regarding the development, evaluation, and continuous improvement of such programs;

(C) develop an evaluation protocol for such programs that includes qualitative and quantitative methodologies for measuring student outcomes and program strengths in the areas of academic enrichment, socialization, independent living, and competitive or supported employment;

(D) assist recipients of grants under subpart 2 in efforts to award a meaningful credential to students with intellectual disabilities upon the completion of such programs, which credential shall take into consideration unique State factors;

(E) develop recommendations for the necessary components of such programs, such as—

(i) academic, vocational, social, and independent living skills;

(ii) evaluation of student progress;

(iii) program administration and evaluation;

(iv) student eligibility; and

(v) issues regarding the equivalency of a student's participation in such programs to semester, trimester, quarter, credit, or clock hours at an institution of higher education, as the case may be;

(F) analyze possible funding streams for such programs and provide recommendations regarding the funding streams;

(G) develop model memoranda of agreement for use between or among institutions of higher education and State and local agencies providing funding for such programs;

(H) develop mechanisms for regular communication, outreach and dissemination of information about comprehensive transition and postsecondary programs for students with intellectual disabilities under subpart 2 between or among such programs and to families and prospective students;

(I) host a meeting of all recipients of grants under subpart 2 not less often than once each year; and

(J) convene a workgroup to develop and recommend model criteria, standards, and components of such programs as described in subparagraph (E), that are appropriate for the development of accreditation standards, which workgroup shall include—

(i) an expert in higher education;

(ii) an expert in special education;

(iii) a disability organization that represents students with intellectual disabilities;

(iv) a representative from the National Advisory Committee on Institutional Quality and Integrity; and

(v) a representative of a regional or national accreditation agency or association.

(6) REPORT.—Not later than five years after the date of the establishment of the coordinating center under this subsection, the coordinating center shall report to the Secretary, the authorizing committees, and the National Advisory Committee on Institutional Quality and Integrity on the recommendations of the workgroup described in paragraph (5)(J).

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EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

* * * * *

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

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SUBTITLE B—REGULATORY PROVISIONS

* * * * *

PART 4—FIDUCIARY RESPONSIBILITY

* * * * *

ESTABLISHMENT OF PLAN

SEC. 402. (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term “named fiduciary” means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1)),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 405(c)(1), may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

(d)(1) No covered person may—

(A) require participants or beneficiaries to agree to a predispute arbitration provision as a condition for participation in, or receipt of benefits under, a plan;

(B) agree to a postdispute arbitration provision with a participant or beneficiary with respect to a plan or plan benefit unless the conditions of clauses (i) through (iv) of section 502(n)(1)(B) are satisfied with respect to such provision; or

(C) agree to any other covered provision with respect to a plan or plan benefit under any circumstances under which such provision would not be valid and enforceable under subparagraphs (C) through (E) section 502(n)(1).

(2) In this subsection—

(A) the term “covered person” means—

(i) a plan;

(ii) a plan sponsor;

(iii) an employer; or

(iv) a person engaged by a plan for purposes of administering or operating the plan; and

(B) the terms “covered provision”, “predispute arbitration provision” and “postdispute arbitration provision” have the meanings given such terms in section 502(n)(2).

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PART 5—ADMINISTRATION AND ENFORCEMENT

* * * * *

CIVIL ENFORCEMENT

SEC. 502. (a) A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 409;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, **【or (B)】** (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this title or the terms of the plan, *or (C) to require re-adjudication and payment of benefits to remedy violations of this title notwithstanding the availability of relief under other provisions of this title;*

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 105(c);

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this title, **【or (B)】** (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this title, *or (C) to require re-adjudication and payment of benefits to remedy violations of this title notwithstanding the availability of relief under other provisions of this title;*

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c) or under subsection (i) or (l);

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 609(a)(2)(A));

(8) by the Secretary, or by an employer or other person referred to in section 101(f)(1), (A) to enjoin any act or practice which violates subsection (f) of section 101, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection;

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts;

(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 305, if the plan sponsor—

(A) has not adopted a funding improvement or rehabilitation plan under that section by the deadline established in such section, or

(B) fails to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section,

by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding

improvement or rehabilitation plan or to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section and the funding improvement or rehabilitation plan; **[or]**

(11) in the case of a multiemployer plan, by an employee representative, or any employer that has an obligation to contribute to the plan, (A) to enjoin any act or practice which violates subsection (k) of section 101 (or, in the case of an employer, subsection (l) of such section), or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection **[.]**; or

(12) *in any case relating to the provision of mental health benefits and substance use disorder benefits under a group health plan or under group health insurance coverage offered by a health insurance issuer in connection with a group health plan (as such terms are defined in section 733), by the Secretary, or by a participant, beneficiary, or fiduciary, to enforce any provision of this title or the terms of the plan or coverage relating to such benefits against a group health plan, a health insurance issuer, a fiduciary of a plan, or any other person that contracts with a group health plan to provide group health insurance coverage or assistance in the administration of a group health plan (including a third party administrator, managed behavioral health organization, and a pharmacy benefit manager), if such person participates in or conceals a violation of any requirement of part 7 relating to such benefits or a wrongful denial of a claim for mental health benefits or substance use disorder benefits under the terms of the plan or coverage, to obtain appropriate relief, in addition to any other relief otherwise available under this section, including—*

(A) to recover all losses to participants and beneficiaries;

(B) to reform impermissible plan or coverage terms and policies (as written or in operation) in accordance with the requirements of this title and its implementing regulations;
or

(C) to ensure the readjudication of claims and payment of benefits in accordance with the plan or coverage terms without any impermissible limitation, plan or coverage term, or policy.

(b)(1) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1986 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

(A) requested by the Secretary of the Treasury, or

(B) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he deter-

mines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(2) The Secretary shall not initiate an action to enforce section 515.

(3) Except as provided in subsections (c)(9) and (a)(6) (with respect to collecting civil penalties under subsection (c)(9)), *and except with respect to enforcement by the Secretary of section 712 or any other provision of part 7 in any case relating to mental health benefits and substance use disorder benefits*, the Secretary is not authorized to enforce under this part any requirement of part 7 against a health insurance issuer offering health insurance coverage in connection with a group health plan (as defined in section **[706(a)(1)] 733(a)(1)**). Nothing in this paragraph shall affect the authority of the Secretary to issue regulations to carry out such part.

(c)(1) Any administrator (A) who fails to meet the requirements of paragraph (1) or (4) of section 606, section 101(e)(1), section 101(f), or section 105(a) with respect to a participant or beneficiary, or (B) who fails or refuses to comply with a request for any information which such administrator is required by this title to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to \$100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper. For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation.

(2) The Secretary may assess a civil penalty against any plan administrator of up to \$1,000 a day from the date of such plan administrator's failure or refusal to file the annual report required to be filed with the Secretary under section 101(b)(1). For purposes of this paragraph, an annual report that has been rejected under section 104(a)(4) for failure to provide material information shall not be treated as having been filed with the Secretary.

(3) Any employer maintaining a plan who fails to meet the notice requirement of section 101(d) with respect to any participant or beneficiary or who fails to meet the requirements of section 101(e)(2) with respect to any person or who fails to meet the requirements of section 302(d)(12)(E) with respect to any person may in the court's discretion be liable to such participant or beneficiary or to such person in the amount of up to \$100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper.

(4) The Secretary may assess a civil penalty of not more than \$1,000 a day for each violation by any person of subsection (j), (k), or (l) of section 101 or section 514(e)(3).

(5) The Secretary may assess a civil penalty against any person of up to \$1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 101(g).

(6) If, within 30 days of a request by the Secretary to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to \$100 a day from the date of such failure (but in no event in excess of \$1,000 per request). No penalty shall be imposed under this paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.

(7) The Secretary may assess a civil penalty against a plan administrator of up to \$100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with subsection (i) or (m) of section 101. For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(8) The Secretary may assess against any plan sponsor of a multiemployer plan a civil penalty of not more than \$1,100 per day—

(A) for each violation by such sponsor of the requirement under section 305 to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status, or

(B) in the case of a plan in endangered status which is not in seriously endangered status, for failure by the plan to meet the applicable benchmarks under section 305 by the end of the funding improvement period with respect to the plan.

(9)(A) The Secretary may assess a civil penalty against any employer of up to \$100 a day from the date of the employer's failure to meet the notice requirement of section 701(f)(3)(B)(i)(I). For purposes of this subparagraph, each violation with respect to any single employee shall be treated as a separate violation.

(B) The Secretary may assess a civil penalty against any plan administrator of up to \$100 a day from the date of the plan administrator's failure to timely provide to any State the information required to be disclosed under section 701(f)(3)(B)(ii). For purposes of this subparagraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(10) SECRETARIAL ENFORCEMENT AUTHORITY RELATING TO USE OF GENETIC INFORMATION.—

(A) GENERAL RULE.—The Secretary may impose a penalty against any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, for any failure by such sponsor or issuer to meet the requirements of subsection (a)(1)(F), (b)(3), (c), or (d) of section 702 or section 701 or

702(b)(1) with respect to genetic information, in connection with the plan.

(B) AMOUNT.—

(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be \$100 for each day in the noncompliance period with respect to each participant or beneficiary to whom such failure relates.

(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term “noncompliance period” means, with respect to any failure, the period—

(I) beginning on the date such failure first occurs; and

(II) ending on the date the failure is corrected.

(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

(i) IN GENERAL.—In the case of 1 or more failures with respect to a participant or beneficiary—

(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such participant or beneficiary shall not be less than \$2,500.

(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting “\$15,000” for “\$2,500” with respect to such person.

(D) LIMITATIONS.—

(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

(I) such failure was due to reasonable cause and not to willful neglect; and

(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to

reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the plan sponsor (or predecessor plan sponsor) during the preceding taxable year for group health plans; or

(II) \$500,000.

(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.

(F) DEFINITIONS.—Terms used in this paragraph which are defined in section 733 shall have the meanings provided such terms in such section.

(11) The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1144(c)(8) of the Social Security Act.

(12) The Secretary may assess a civil penalty against any sponsor of a CSEC plan of up to \$100 a day from the date of the plan sponsor's failure to comply with the requirements of section 306(j)(3) to establish or update a funding restoration plan.

(d)(1) An employee benefit plan may sue or be sued under this title as an entity. Service of summons, subpoena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this title against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this title.

(e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this title brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 101(f)(1). State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this title is brought in a district court of the United States, it may be brought in the district where

the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g)(1) In any action under this title (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this title by a fiduciary for or on behalf of a plan to enforce section 515 in which a judgment in favor of the plan is awarded, the court shall award the plan—

- (A) the unpaid contributions,
- (B) interest on the unpaid contributions,
- (C) an amount equal to the greater of—
 - (i) interest on the unpaid contributions, or
 - (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
- (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and
- (E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of the Internal Revenue Code of 1986.

(h) A copy of the complaint in any action under this title by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) In the case of a transaction prohibited by section 406 by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of such Code) within 90 days after notice

from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of such Code.

(j) In all civil actions under this title, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28, United States Code), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this Act, or to compel him to take action required under this title, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

(1)(1) In the case of—

(A) any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount.

(2) For purposes of paragraph (1), the term “applicable recovery amount” means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1)—

(A) pursuant to any settlement agreement with the Secretary, or

(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5).

(3) The Secretary may, in the Secretary’s sole discretion, waive or reduce the penalty under paragraph (1) if the Secretary determines in writing that—

(A) the fiduciary or other person acted reasonably and in good faith, or

(B) it is reasonable to expect that the fiduciary or other person will not be able to restore all losses to the plan (or to provide the relief ordered pursuant to subsection (a)(9)) without severe financial hardship unless such waiver or reduction is granted.

(4) The penalty imposed on a fiduciary or other person under this subsection with respect to any transaction shall be reduced by the amount of any penalty or tax imposed on such fiduciary or other person with respect to such transaction under subsection (i) of this section and section 4975 of the Internal Revenue Code of 1986.

(m) In the case of a distribution to a pension plan participant or beneficiary in violation of section 206(e) by a plan fiduciary, the Secretary shall assess a penalty against such fiduciary in an amount equal to the value of the distribution. Such penalty shall not exceed \$10,000 for each such distribution.

(n)(1) In any civil action brought by, or on behalf of, a participant or beneficiary pursuant to this section or with respect to a common law claim involving a plan or plan benefit, notwithstanding any other provision of law—

(A) no predispute arbitration provision shall be valid or enforceable if it requires arbitration of a matter related to a claim brought under this section;

(B) no postdispute arbitration provision shall be valid or enforceable unless—

(i) the provision was not required by any person, obtained by coercion or threat of adverse action, or made a condition of participating in a plan, receiving benefits under a plan, or receiving any other employment, work, or any employment-related or work-related privilege or benefit;

(ii) each participant or beneficiary agreeing to the provision was informed, through a paper notice, in a manner reasonably calculated to be understood by the average plan participant, of the right of the participant or beneficiary under subparagraph (C) to refuse to agree to the provision without retaliation or threat of retaliation;

(iii) each participant or beneficiary agreeing to the provision so agreed after a waiting period of not fewer than 45 days, beginning on the date on which the participant or beneficiary was provided both the final text of the provision and the disclosures required under clause (ii); and

(iv) each participant or beneficiary agreeing to the provision affirmatively consented to the provision in writing;

(C) no covered provision shall be valid or enforceable, if prior to a dispute to which the covered provision applies, a participant or beneficiary undertakes or promises not to pursue, bring, join, litigate, or support any kind of individual, joint, class, representative, or collective claim available under this section in any forum that, but for such covered provision, is of competent jurisdiction;

(D) no covered provision shall be valid or enforceable, if after a dispute to which the covered provision applies arises, a participant or beneficiary undertakes or promises not to pursue, bring, join, litigate, or support any kind of individual, joint, class, representative, or collective claim under this section in any forum that, but for such covered provision, is of competent jurisdiction, unless the covered provision meets the requirements of subparagraph (B); and

(E) no covered provision related to a plan other than a multiemployer plan shall be valid or enforceable that purports to confer discretionary authority to any person with respect to benefit determinations or interpretation of plan language, or to provide a standard of review of such determinations or interpretation by a reviewing court in an action brought under this sec-

tion that would require anything other than *de novo* review of such determinations or interpretation.

(2) In this subsection—

(A) the term “covered provision” means any document, instrument, or agreement related to a plan or plan benefit, regardless of whether such provision appears in a plan document or in a separate agreement;

(B) the term “predispute arbitration provision” means a covered provision that requires a participant or beneficiary to arbitrate a dispute related to the plan or an amendment to the plan that had not yet arisen at the time such provision took effect;

(C) the term “postdispute arbitration provision” means a covered provision that requires a participant or beneficiary to arbitrate a dispute related to the plan or an amendment to the plan that arose before the time such provision took effect; and

(D) the term “retaliation” means any action in violation of section 510.

(3)(A) Any dispute as to whether a covered provision that requires a participant or beneficiary to arbitrate a dispute related to a plan is valid and enforceable shall be determined by a court, rather than an arbitrator, regardless of whether any contractual provision purports to delegate such determinations to the arbitrator and irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.

(B) For purposes of this subsection, a dispute shall be considered to arise only when a plaintiff has actual knowledge (within the meaning of such term in section 413) of a breach or violation giving rise to a claim under this section.

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PART 7—GROUP HEALTH PLAN REQUIREMENTS

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SUBPART B—OTHER REQUIREMENTS

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SEC. 712. PARITY IN MENTAL HEALTH AND SUBSTANCE USE DISORDER BENEFITS.

(a) IN GENERAL.—

(1) AGGREGATE LIFETIME LIMITS.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health or substance use disorder benefits—

(A) NO LIFETIME LIMIT.—If the plan or coverage does not include an aggregate lifetime limit on substantially all medical and surgical benefits, the plan or coverage may not impose any aggregate lifetime limit on mental health or substance use disorder benefits.

(B) LIFETIME LIMIT.—If the plan or coverage includes an aggregate lifetime limit on substantially all medical

and surgical benefits (in this paragraph referred to as the “applicable lifetime limit”), the plan or coverage shall either—

(i) apply the applicable lifetime limit both to the medical and surgical benefits to which it otherwise would apply and to mental health and substance use disorder benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health and substance use disorder benefits; or

(ii) not include any aggregate lifetime limit on mental health or substance use disorder benefits that is less than the applicable lifetime limit.

(C) RULE IN CASE OF DIFFERENT LIMITS.—In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different aggregate lifetime limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health and substance use disorder benefits by substituting for the applicable lifetime limit an average aggregate lifetime limit that is computed taking into account the weighted average of the aggregate lifetime limits applicable to such categories.

(2) ANNUAL LIMITS.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health or substance use disorder benefits—

(A) NO ANNUAL LIMIT.—If the plan or coverage does not include an annual limit on substantially all medical and surgical benefits, the plan or coverage may not impose any annual limit on mental health or substance use disorder benefits.

(B) ANNUAL LIMIT.—If the plan or coverage includes an annual limit on substantially all medical and surgical benefits (in this paragraph referred to as the “applicable annual limit”), the plan or coverage shall either—

(i) apply the applicable annual limit both to medical and surgical benefits to which it otherwise would apply and to mental health and substance use disorder benefits and not distinguish in the application of such limit between such medical and surgical benefits and mental health and substance use disorder benefits; or

(ii) not include any annual limit on mental health or substance use disorder benefits that is less than the applicable annual limit.

(C) RULE IN CASE OF DIFFERENT LIMITS.—In the case of a plan or coverage that is not described in subparagraph (A) or (B) and that includes no or different annual limits on different categories of medical and surgical benefits, the Secretary shall establish rules under which subparagraph (B) is applied to such plan or coverage with respect to mental health and substance use disorder benefits by sub-

stituting for the applicable annual limit an average annual limit that is computed taking into account the weighted average of the annual limits applicable to such categories.

(3) FINANCIAL REQUIREMENTS AND TREATMENT LIMITATIONS.—

(A) IN GENERAL.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health or substance use disorder benefits, such plan or coverage shall ensure that—

(i) the financial requirements applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant financial requirements applied to substantially all medical and surgical benefits covered by the plan (or coverage), and there are no separate cost sharing requirements that are applicable only with respect to mental health or substance use disorder benefits; and

(ii) the treatment limitations applicable to such mental health or substance use disorder benefits are no more restrictive than the predominant treatment limitations applied to substantially all medical and surgical benefits covered by the plan (or coverage) and there are no separate treatment limitations that are applicable only with respect to mental health or substance use disorder benefits.

(B) DEFINITIONS.—In this paragraph:

(i) FINANCIAL REQUIREMENT.—The term “financial requirement” includes deductibles, copayments, coinsurance, and out-of-pocket expenses, but excludes an aggregate lifetime limit and an annual limit subject to paragraphs (1) and (2),

(ii) PREDOMINANT.—A financial requirement or treatment limit is considered to be predominant if it is the most common or frequent of such type of limit or requirement.

(iii) TREATMENT LIMITATION.—The term “treatment limitation” includes limits on the frequency of treatment, number of visits, days of coverage, or other similar limits on the scope or duration of treatment.

(4) AVAILABILITY OF PLAN INFORMATION.—The criteria for medical necessity determinations made under the plan with respect to mental health or substance use disorder benefits (or the health insurance coverage offered in connection with the plan with respect to such benefits) shall be made available by the plan administrator (or the health insurance issuer offering such coverage) in accordance with regulations to any current or potential participant, beneficiary, or contracting provider upon request. The reason for any denial under the plan (or coverage) of reimbursement or payment for services with respect to mental health or substance use disorder benefits in the case of any participant or beneficiary shall, on request or as otherwise required, be made available by the plan administrator (or the

health insurance issuer offering such coverage) to the participant or beneficiary in accordance with regulations.

(5) OUT-OF-NETWORK PROVIDERS.—In the case of a plan or coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits, if the plan or coverage provides coverage for medical or surgical benefits provided by out-of-network providers, the plan or coverage shall provide coverage for mental health or substance use disorder benefits provided by out-of-network providers in a manner that is consistent with the requirements of this section.

(6) COMPLIANCE PROGRAM GUIDANCE DOCUMENT.—

(A) IN GENERAL.—The Secretary, the Secretary of Health and Human Services, and the Secretary of the Treasury, in consultation with the Inspector General of the Department of Health and Human Services, the Inspector General of the Department of Labor, and the Inspector General of the Department of the Treasury, shall issue a compliance program guidance document to help improve compliance with this section, section 2726 of the Public Health Service Act, and section 9812 of the Internal Revenue Code of 1986, as applicable. In carrying out this paragraph, the Secretaries may take into consideration the 2016 publication of the Department of Health and Human Services and the Department of Labor, entitled “Warning Signs - Plan or Policy Non-Quantitative Treatment Limitations (NQTLs) that Require Additional Analysis to Determine Mental Health Parity Compliance”.

(B) EXAMPLES ILLUSTRATING COMPLIANCE AND NON-COMPLIANCE.—

(i) IN GENERAL.—The compliance program guidance document required under this paragraph shall provide illustrative, de-identified examples (that do not disclose any protected health information or individually identifiable information) of previous findings of compliance and noncompliance with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable, based on investigations of violations of such sections, including—

(I) examples illustrating requirements for information disclosures and nonquantitative treatment limitations; and

(II) descriptions of the violations uncovered during the course of such investigations.

(ii) NONQUANTITATIVE TREATMENT LIMITATIONS.—To the extent that any example described in clause (i) involves a finding of compliance or noncompliance with regard to any requirement for nonquantitative treatment limitations, the example shall provide sufficient detail to fully explain such finding, including a full description of the criteria involved for approving medical and surgical benefits and the criteria involved

for approving mental health and substance use disorder benefits.

(iii) ACCESS TO ADDITIONAL INFORMATION REGARDING COMPLIANCE.—In developing and issuing the compliance program guidance document required under this paragraph, the Secretaries specified in subparagraph (A)—

(I) shall enter into interagency agreements with the Inspector General of the Department of Health and Human Services, the Inspector General of the Department of Labor, and the Inspector General of the Department of the Treasury to share findings of compliance and noncompliance with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable; and

(II) shall seek to enter into an agreement with a State to share information on findings of compliance and noncompliance with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable.

(C) RECOMMENDATIONS.—The compliance program guidance document shall include recommendations to advance compliance with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable, and encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. Such internal controls may include illustrative examples of nonquantitative treatment limitations on mental health and substance use disorder benefits, which may fail to comply with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable, in relation to nonquantitative treatment limitations on medical and surgical benefits.

(D) UPDATING THE COMPLIANCE PROGRAM GUIDANCE DOCUMENT.—The Secretary, the Secretary of Health and Human Services, and the Secretary of the Treasury, in consultation with the Inspector General of the Department of Health and Human Services, the Inspector General of the Department of Labor, and the Inspector General of the Department of the Treasury, shall update the compliance program guidance document every 2 years to include illustrative, de-identified examples (that do not disclose any protected health information or individually identifiable information) of previous findings of compliance and noncompliance with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable.

(7) ADDITIONAL GUIDANCE.—

(A) IN GENERAL.—The Secretary, the Secretary of Health and Human Services, and the Secretary of the Treasury shall issue guidance to group health plans and health insurance issuers offering group health insurance coverage to assist such plans and issuers in satisfying the requirements of this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable.

(B) DISCLOSURE.—

(i) GUIDANCE FOR PLANS AND ISSUERS.—The guidance issued under this paragraph shall include clarifying information and illustrative examples of methods that group health plans and health insurance issuers offering group or individual health insurance coverage may use for disclosing information to ensure compliance with the requirements under this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable, (and any regulations promulgated pursuant to such sections, as applicable).

(ii) DOCUMENTS FOR PARTICIPANTS, BENEFICIARIES, CONTRACTING PROVIDERS, OR AUTHORIZED REPRESENTATIVES.—The guidance issued under this paragraph shall include clarifying information and illustrative examples of methods that group health plans and health insurance issuers offering group health insurance coverage may use to provide any participant, beneficiary, contracting provider, or authorized representative, as applicable, with documents containing information that the health plans or issuers are required to disclose to participants, beneficiaries, contracting providers, or authorized representatives to ensure compliance with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable, compliance with any regulation issued pursuant to such respective section, or compliance with any other applicable law or regulation. Such guidance shall include information that is comparative in nature with respect to—

(I) nonquantitative treatment limitations for both medical and surgical benefits and mental health and substance use disorder benefits;

(II) the processes, strategies, evidentiary standards, and other factors used to apply the limitations described in subclause (I); and

(III) the application of the limitations described in subclause (I) to ensure that such limitations are applied in parity with respect to both medical and surgical benefits and mental health and substance use disorder benefits.

(C) NONQUANTITATIVE TREATMENT LIMITATIONS.—The guidance issued under this paragraph shall include clarifying information and illustrative examples of methods,

processes, strategies, evidentiary standards, and other factors that group health plans and health insurance issuers offering group health insurance coverage may use regarding the development and application of nonquantitative treatment limitations to ensure compliance with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable, (and any regulations promulgated pursuant to such respective section), including—

(i) examples of methods of determining appropriate types of nonquantitative treatment limitations with respect to both medical and surgical benefits and mental health and substance use disorder benefits, including nonquantitative treatment limitations pertaining to—

(I) medical management standards based on medical necessity or appropriateness, or whether a treatment is experimental or investigative;

(II) limitations with respect to prescription drug formulary design; and

(III) use of fail-first or step therapy protocols;

(ii) examples of methods of determining—

(I) network admission standards (such as credentialing); and

(II) factors used in provider reimbursement methodologies (such as service type, geographic market, demand for services, and provider supply, practice size, training, experience, and licensure) as such factors apply to network adequacy;

(iii) examples of sources of information that may serve as evidentiary standards for the purposes of making determinations regarding the development and application of nonquantitative treatment limitations;

(iv) examples of specific factors, and the evidentiary standards used to evaluate such factors, used by such plans or issuers in performing a nonquantitative treatment limitation analysis;

(v) examples of how specific evidentiary standards may be used to determine whether treatments are considered experimental or investigative;

(vi) examples of how specific evidentiary standards may be applied to each service category or classification of benefits;

(vii) examples of methods of reaching appropriate coverage determinations for new mental health or substance use disorder treatments, such as evidence-based early intervention programs for individuals with a serious mental illness and types of medical management techniques;

(viii) examples of methods of reaching appropriate coverage determinations for which there is an indirect relationship between the covered mental health or

substance use disorder benefit and a traditional covered medical and surgical benefit, such as residential treatment or hospitalizations involving voluntary or involuntary commitment; and

(ix) additional illustrative examples of methods, processes, strategies, evidentiary standards, and other factors for which the Secretary determines that additional guidance is necessary to improve compliance with this section, section 2726 of the Public Health Service Act, or section 9812 of the Internal Revenue Code of 1986, as applicable.

(D) PUBLIC COMMENT.—Prior to issuing any final guidance under this paragraph, the Secretary shall provide a public comment period of not less than 60 days during which any member of the public may provide comments on a draft of the guidance.

(8) COMPLIANCE REQUIREMENTS.—

(A) NONQUANTITATIVE TREATMENT LIMITATION (NQTL) REQUIREMENTS.—In the case of a group health plan or a health insurance issuer offering group health insurance coverage that provides both medical and surgical benefits and mental health or substance use disorder benefits and that imposes nonquantitative treatment limitations (referred to in this section as “NQTLs”) on mental health or substance use disorder benefits, such plan or issuer shall perform and document comparative analyses of the design and application of NQTLs and, beginning 45 days after the date of enactment of the Consolidated Appropriations Act, 2021, make available to the Secretary, upon request, the comparative analyses and the following information:

(i) The specific plan or coverage terms or other relevant terms regarding the NQTLs, that applies to such plan or coverage, and a description of all mental health or substance use disorder and medical or surgical benefits to which each such term applies in each respective benefits classification.

(ii) The factors used to determine that the NQTLs will apply to mental health or substance use disorder benefits and medical or surgical benefits.

(iii) The evidentiary standards used for the factors identified in clause (ii), when applicable, provided that every factor shall be defined, and any other source or evidence relied upon to design and apply the NQTLs to mental health or substance use disorder benefits and medical or surgical benefits.

(iv) The comparative analyses demonstrating that the processes, strategies, evidentiary standards, and other factors used to apply the NQTLs to mental health or substance use disorder benefits, as written and in operation, are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, and other factors used to apply

the NQTLs to medical or surgical benefits in the benefits classification.

(v) The specific findings and conclusions reached by the group health plan or health insurance issuer with respect to the health insurance coverage, including any results of the analyses described in this subparagraph that indicate that the plan or coverage is or is not in compliance with this section.

(B) SECRETARY REQUEST PROCESS.—

(i) SUBMISSION UPON REQUEST.—The Secretary shall request that a group health plan or a health insurance issuer offering group health insurance coverage submit the comparative analyses described in subparagraph (A) for plans that involve potential violations of this section or complaints regarding non-compliance with this section that concern NQTLs and any other instances in which the Secretary determines appropriate. The Secretary shall request not fewer than 20 such analyses per year.

(ii) ADDITIONAL INFORMATION.—In instances in which the Secretary has concluded that the group health plan or health insurance issuer with respect to group health insurance coverage has not submitted sufficient information for the Secretary to review the comparative analyses described in subparagraph (A), as requested under clause (i), the Secretary shall specify to the plan or issuer the information the plan or issuer must submit to be responsive to the request under clause (i) for the Secretary to review the comparative analyses described in subparagraph (A) for compliance with this section. Nothing in this paragraph shall require the Secretary to conclude that a group health plan or health insurance issuer is in compliance with this section solely based upon the inspection of the comparative analyses described in subparagraph (A), as requested under clause (i).

(iii) REQUIRED ACTION.—

(I) IN GENERAL.—In instances in which the Secretary has reviewed the comparative analyses described in subparagraph (A), as requested under clause (i), and determined that the group health plan or health insurance issuer is not in compliance with this section, the plan or issuer—

(aa) shall specify to the Secretary the actions the plan or issuer will take to be in compliance with this section and provide to the Secretary additional comparative analyses described in subparagraph (A) that demonstrate compliance with this section not later than 45 days after the initial determination by the Secretary that the plan or issuer is not in compliance; and

(bb) following the 45-day corrective action period under item (aa), if the Secretary makes a final determination that the plan or issuer still is not in compliance with this section, not later than 7 days after such determination, shall notify all individuals enrolled in the plan or applicable health insurance coverage offered by the issuer that the plan or issuer, with respect to such coverage, has been determined to be not in compliance with this section.

(II) EXEMPTION FROM DISCLOSURE.—Documents or communications produced in connection with the Secretary's recommendations to a group health plan or health insurance issuer shall not be subject to disclosure pursuant to section 552 of title 5, United States Code.

(iv) REPORT.—Not later than 1 year after the date of enactment of this paragraph, and not later than October 1 of each year thereafter, the Secretary shall submit to Congress, and make publicly available, a report that contains—

(I) a summary of the comparative analyses requested under clause (i), including the identity of each group health plan or health insurance issuer, with respect to certain health insurance coverage that is determined to be not in compliance after the final determination by the Secretary described in clause (iii)(I)(bb);

(II) the Secretary's conclusions as to whether each group health plan or health insurance issuer submitted sufficient information for the Secretary to review the comparative analyses requested under clause (i) for compliance with this section;

(III) for each group health plan or health insurance issuer that did submit sufficient information for the Secretary to review the comparative analyses requested under clause (i), the Secretary's conclusions as to whether and why the plan or issuer is in compliance with the disclosure requirements under this section;

(IV) the Secretary's specifications described in clause (ii) for each group health plan or health insurance issuer that the Secretary determined did not submit sufficient information for the Secretary to review the comparative analyses requested under clause (i) for compliance with this section; and

(V) the Secretary's specifications described in clause (iii) of the actions each group health plan or health insurance issuer that the Secretary determined is not in compliance with this section must take to be in compliance with this section,

including the reason why the Secretary determined the plan or issuer is not in compliance.

(C) COMPLIANCE PROGRAM GUIDANCE DOCUMENT UPDATE PROCESS.—

(i) IN GENERAL.—The Secretary shall include instances of noncompliance that the Secretary discovers upon reviewing the comparative analyses requested under subparagraph (B)(i) in the compliance program guidance document described in paragraph (6), as it is updated every 2 years, except that such instances shall not disclose any protected health information or individually identifiable information.

(ii) GUIDANCE AND REGULATIONS.—Not later than 18 months after the date of enactment of this paragraph, the Secretary shall finalize any draft or interim guidance and regulations relating to mental health parity under this section. Such draft guidance shall include guidance to clarify the process and timeline for current and potential participants and beneficiaries (and authorized representatives and health care providers of such participants and beneficiaries) with respect to plans to file complaints of such plans or issuers being in violation of this section, including guidance, by plan type, on the relevant State, regional, or national office with which such complaints should be filed.

(iii) STATE.—The Secretary shall share information on findings of compliance and noncompliance discovered upon reviewing the comparative analyses requested under subparagraph (B)(i) shall be shared with the State where the group health plan is located or the State where the health insurance issuer is licensed to do business for coverage offered by a health insurance issuer in the group market, in accordance with paragraph (6)(B)(iii)(II).

(b) CONSTRUCTION.—Nothing in this section shall be construed—

(1) as requiring a group health plan (or health insurance coverage offered in connection with such a plan) to provide any mental health or substance use disorder benefits; or

(2) in the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides mental health or substance use disorder benefits, as affecting the terms and conditions of the plan or coverage relating to such benefits under the plan or coverage, except as provided in subsection (a).

(c) EXEMPTIONS.—

(1) SMALL EMPLOYER EXEMPTION.—

(A) IN GENERAL.—This section shall not apply to any group health plan (and group health insurance coverage offered in connection with a group health plan) for any plan year of a small employer.

(B) **SMALL EMPLOYER.**—For purposes of subparagraph (A), the term “small employer” means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 2 (or 1 in the case of an employer residing in a State that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year.

(C) **APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.**—For purposes of this paragraph—

(i) **APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.**—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

(ii) **EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.**—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) **PREDECESSORS.**—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

(2) **COST EXEMPTION.**—

(A) **IN GENERAL.**—With respect to a group health plan (or health insurance coverage offered in connection with such a plan), if the application of this section to such plan (or coverage) results in an increase for the plan year involved of the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance use disorder benefits under the plan (as determined and certified under subparagraph (C)) by an amount that exceeds the applicable percentage described in subparagraph (B) of the actual total plan costs, the provisions of this section shall not apply to such plan (or coverage) during the following plan year, and such exemption shall apply to the plan (or coverage) for 1 plan year. An employer may elect to continue to apply mental health and substance use disorder parity pursuant to this section with respect to the group health plan (or coverage) involved regardless of any increase in total costs.

(B) **APPLICABLE PERCENTAGE.**—With respect to a plan (or coverage), the applicable percentage described in this subparagraph shall be—

(i) 2 percent in the case of the first plan year in which this section is applied; and

(ii) 1 percent in the case of each subsequent plan year.

(C) **DETERMINATIONS BY ACTUARIES.**—Determinations as to increases in actual costs under a plan (or coverage)

for purposes of this section shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. All such determinations shall be in a written report prepared by the actuary. The report, and all underlying documentation relied upon by the actuary, shall be maintained by the group health plan or health insurance issuer for a period of 6 years following the notification made under subparagraph (E).

(D) 6-MONTH DETERMINATIONS.—If a group health plan (or a health insurance issuer offering coverage in connection with a group health plan) seeks an exemption under this paragraph, determinations under subparagraph (A) shall be made after such plan (or coverage) has complied with this section for the first 6 months of the plan year involved.

(E) NOTIFICATION.—

(i) IN GENERAL.—A group health plan (or a health insurance issuer offering coverage in connection with a group health plan) that, based upon a certification described under subparagraph (C), qualifies for an exemption under this paragraph, and elects to implement the exemption, shall promptly notify the Secretary, the appropriate State agencies, and participants and beneficiaries in the plan of such election.

(ii) REQUIREMENT.—A notification to the Secretary under clause (i) shall include—

(I) a description of the number of covered lives under the plan (or coverage) involved at the time of the notification, and as applicable, at the time of any prior election of the cost-exemption under this paragraph by such plan (or coverage);

(II) for both the plan year upon which a cost exemption is sought and the year prior, a description of the actual total costs of coverage with respect to medical and surgical benefits and mental health and substance use disorder benefits under the plan; and

(III) for both the plan year upon which a cost exemption is sought and the year prior, the actual total costs of coverage with respect to mental health and substance use disorder benefits under the plan.

(iii) CONFIDENTIALITY.—A notification to the Secretary under clause (i) shall be confidential. The Secretary shall make available, upon request and on not more than an annual basis, an anonymous itemization of such notifications, that includes—

(I) a breakdown of States by the size and type of employers submitting such notification; and

(II) a summary of the data received under clause (ii).

(F) AUDITS BY APPROPRIATE AGENCIES.—To determine compliance with this paragraph, the Secretary may audit the books and records of a group health plan or health insurance issuer relating to an exemption, including any actuarial reports prepared pursuant to subparagraph (C), during the 6 year period following the notification of such exemption under subparagraph (E). A State agency receiving a notification under subparagraph (E) may also conduct such an audit with respect to an exemption covered by such notification.

(d) SEPARATE APPLICATION TO EACH OPTION OFFERED.—In the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the plan, the requirements of this section shall be applied separately with respect to each such option.

(e) DEFINITIONS.—For purposes of this section *and section 502(a)(12)*—

(1) AGGREGATE LIFETIME LIMIT.—The term “aggregate lifetime limit” means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount that may be paid with respect to such benefits under the plan or health insurance coverage with respect to an individual or other coverage unit.

(2) ANNUAL LIMIT.—The term “annual limit” means, with respect to benefits under a group health plan or health insurance coverage, a dollar limitation on the total amount of benefits that may be paid with respect to such benefits in a 12-month period under the plan or health insurance coverage with respect to an individual or other coverage unit.

(3) MEDICAL OR SURGICAL BENEFITS.—The term “medical or surgical benefits” means benefits with respect to medical or surgical services, as defined under the terms of the plan or coverage (as the case may be), but does not include mental health or substance use disorder benefits.

(4) MENTAL HEALTH BENEFITS.—The term “mental health benefits” means benefits with respect to services for mental health conditions, as defined under the terms of the plan and in accordance with applicable Federal and State law.

(5) SUBSTANCE USE DISORDER BENEFITS.—The term “substance use disorder benefits” means benefits with respect to services for substance use disorders, as defined under the terms of the plan and in accordance with applicable Federal and State law.

(f) SECRETARY REPORT.—The Secretary shall, by January 1, 2012, and every two years thereafter, submit to the appropriate committees of Congress a report on compliance of group health plans (and health insurance coverage offered in connection with such plans) with the requirements of this section. Such report shall include the results of any surveys or audits on compliance of group health plans (and health insurance coverage offered in connection with such plans) with such requirements and an analysis of the reasons for any failures to comply.

(g) NOTICE AND ASSISTANCE.—The Secretary, in cooperation with the Secretaries of Health and Human Services and Treasury, as appropriate, shall publish and widely disseminate guidance and information for group health plans, participants and beneficiaries, applicable State and local regulatory bodies, and the National Association of Insurance Commissioners concerning the requirements of this section and shall provide assistance concerning such requirements and the continued operation of applicable State law. Such guidance and information shall inform participants and beneficiaries of how they may obtain assistance under this section, including, where appropriate, assistance from State consumer and insurance agencies.

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SUBPART C—GENERAL PROVISIONS

* * * * *

SEC. 733. DEFINITIONS.

(a) GROUP HEALTH PLAN.—For purposes of this part and section 502(a)(12)—

(1) IN GENERAL.—The term “group health plan” means an employee welfare benefit plan to the extent that the plan provides medical care (as defined in paragraph (2) and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. Such term shall not include any qualified small employer health reimbursement arrangement (as defined in section 9831(d)(2) of the Internal Revenue Code of 1986).

(2) MEDICAL CARE.—The term “medical care” means amounts paid for—

(A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body,

(B) amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and

(C) amounts paid for insurance covering medical care referred to in subparagraphs (A) and (B).

(b) DEFINITIONS RELATING TO HEALTH INSURANCE.—For purposes of this part and section 502(a)(12)—

(1) HEALTH INSURANCE COVERAGE.—The term “health insurance coverage” means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

(2) HEALTH INSURANCE ISSUER.—The term “health insurance issuer” means an insurance company, insurance service, or insurance organization (including a health maintenance or-

ganization, as defined in paragraph (3)) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2)). Such term does not include a group health plan.

(3) HEALTH MAINTENANCE ORGANIZATION.—The term “health maintenance organization” means—

(A) a federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (42 U.S.C. 300e(a))),

(B) an organization recognized under State law as a health maintenance organization, or

(C) a similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(4) GROUP HEALTH INSURANCE COVERAGE.—The term “group health insurance coverage” means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(c) EXCEPTED BENEFITS.—For purposes of this part, the term “excepted benefits” means benefits under one or more (or any combination thereof) of the following:

(1) BENEFITS NOT SUBJECT TO REQUIREMENTS.—

(A) Coverage only for accident, or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

(C) Liability insurance, including general liability insurance and automobile liability insurance.

(D) Workers’ compensation or similar insurance.

(E) Automobile medical payment insurance.

(F) Credit-only insurance.

(G) Coverage for on-site medical clinics.

(H) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.

(2) BENEFITS NOT SUBJECT TO REQUIREMENTS IF OFFERED SEPARATELY.—

(A) Limited scope dental or vision benefits.

(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.

(C) Such other similar, limited benefits as are specified in regulations.

(3) BENEFITS NOT SUBJECT TO REQUIREMENTS IF OFFERED AS INDEPENDENT, NONCOORDINATED BENEFITS.—

(A) Coverage only for a specified disease or illness.

(B) Hospital indemnity or other fixed indemnity insurance.

(4) BENEFITS NOT SUBJECT TO REQUIREMENTS IF OFFERED AS SEPARATE INSURANCE POLICY.—Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage pro-

vided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under a group health plan.

(d) OTHER DEFINITIONS.—For purposes of this part—

(1) COBRA CONTINUATION PROVISION.—The term “COBRA continuation provision” means any of the following:

(A) Part 6 of this subtitle.

(B) Section 4980B of the Internal Revenue Code of 1986, other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines.

(C) Title XXII of the Public Health Service Act.

(2) HEALTH STATUS-RELATED FACTOR.—The term “health status-related factor” means any of the factors described in section 702(a)(1).

(3) NETWORK PLAN.—The term “network plan” means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(4) PLACED FOR ADOPTION.—The term “placement”, or being “placed”, for adoption, has the meaning given such term in section 609(c)(3)(B).

(5) FAMILY MEMBER.—The term “family member” means, with respect to an individual—

(A) a dependent (as such term is used for purposes of section 701(f)(2)) of such individual, and

(B) any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual or of an individual described in subparagraph (A).

(6) GENETIC INFORMATION.—

(A) IN GENERAL.—The term “genetic information” means, with respect to any individual, information about—

(i) such individual’s genetic tests,

(ii) the genetic tests of family members of such individual, and

(iii) the manifestation of a disease or disorder in family members of such individual.

(B) INCLUSION OF GENETIC SERVICES AND PARTICIPATION IN GENETIC RESEARCH.—Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.

(C) EXCLUSIONS.—The term “genetic information” shall not include information about the sex or age of any individual.

(7) GENETIC TEST.—

(A) IN GENERAL.—The term “genetic test” means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

- (B) EXCEPTIONS.—The term “genetic test” does not mean—
 - (i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or
 - (ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.
- (8) GENETIC SERVICES.—The term “genetic services” means—
 - (A) a genetic test;
 - (B) genetic counseling (including obtaining, interpreting, or assessing genetic information); or
 - (C) genetic education.
- (9) UNDERWRITING PURPOSES.—The term “underwriting purposes” means, with respect to any group health plan, or health insurance coverage offered in connection with a group health plan—
 - (A) rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the plan or coverage;
 - (B) the computation of premium or contribution amounts under the plan or coverage;
 - (C) the application of any pre-existing condition exclusion under the plan or coverage; and
 - (D) other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

* * * * *

Introduction

We continue to see the terrible consequences of students and young adults suffering from mental health issues. In the wake of prolonged school closures, Democrats have received a giant warning: stop playing to the base and start working across the aisle to save lives.

School closures were particularly damaging for young people. In 2021, more than one-third of high school students reported they experienced poor mental health during the COVID-19 pandemic, and over 40 percent reported persistent feelings of sadness or hopelessness during the preceding year.¹ Studies show that the prolonged shutdown of schools exacerbated students' mental health issues.² The pandemic created a pervasive sense of fear, economic instability, and forced physical distancing, which significantly worsened the stresses young people already faced. School closures carried high social and economic costs, and the impact was particularly severe for the most vulnerable students and families.³ According to the Centers for Disease Control and Prevention, fewer than half of youth reported feeling close to peers and teachers at school during the pandemic.⁴ Youth who were more disconnected from school were found to be more likely to have feelings of hopelessness, serious considerations of suicide, or attempts of suicide.⁵ Additionally, fifteen percent of youth reported suffering from at least one major depressive episode in the preceding year.⁶ Childhood depression is more likely to persist into adulthood if gone untreated.⁷ Suicide is the fourth leading cause of death among teens and young adults globally and the second leading cause of death in youth in the United States.⁸

Titles I - IV

Democrats included two currently funded programs and two new programs related to education and Head Start programs in H.R. 7780 as the base for their proposal to address mental health challenges in schools. While these were a good start to addressing the mental health needs of students, there are improvements that could be made to better target this support. To truly work for the students, these programs should be better connected to the needs on the ground.

Despite current funding for these efforts being just under \$125 million, H.R. 7780 authorizes over \$5 billion in additional spending, an irresponsible amount with no guarantee that the Department can award those funds to high-quality programs.

That is why Republicans took a more practical, reliable, and responsible approach to help local school and community leaders address the mental health needs for students. First, the Republican proposal is funded at \$125 million over five years. This corresponds to the existing funding and, with the legislative improvements proposed, would be real funds available for states and school districts to use to address mental health. In the time since this bill was marked up, Congress

¹ <https://www.cdc.gov/media/releases/2022/p0331-youth-mental-health-covid-19.html>

² [Student anxiety, depression increasing during school closures, survey finds | EdSource](#)

³ [Student anxiety, depression increasing during school closures, survey finds | EdSource](#)

⁴ <https://www.cdc.gov/media/releases/2022/p0331-youth-mental-health-covid-19.html>

⁵ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>

⁶ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>

⁷ [Youth Data 2021 | Mental Health America \(mhanational.org\)](#)

⁸ <https://www.nimh.nih.gov/health/statistics/suicide>

hastily passed other legislation that included these programs, thus making this bill obsolete before the report was filed. Unfortunately, that legislation included significant new funding for these programs without addressing the basic concern of ensuring these taxpayer funds will be used in an effective manner to meet its intended purpose: to help students.

Republican Amendment

Beyond addressing funding levels, Republicans streamlined the existing programs to avoid duplication of effort. By streamlining funding, eligible entities can spend less time filling out paperwork and tracking duplicative requirements and more time meeting the mental health needs of students. Further, the Republican proposal is structured around actual needs on the ground. By requiring a need analysis by the state, the program allows the state to use the funds to address the actual needs they are facing rather than forcing the state to use those funds on whatever needs Washington, D.C. has determined to be significant. There is also a requirement for the local eligible entity to have a need analysis which can either be a part of the state analysis or can be conducted by the eligible entity. The Republican plan makes it clear that these funds are intended to help all students in need, whether they be traditional public school students, charter school students, or private school students. As previously noted, the school closures had a severe, negative impact on students, increasing the mental health crisis communities are facing. The Republican proposal would ensure local school leaders have access to funding to address the particular needs of their community.

The Republican proposal also recognizes the need for coordination of programs. Rather than layer program on top of program like the Democrat proposal does, the Republican plan provides grants to states which in turn provide grants to local eligible entities. This ensures the state is aware of the needs in each community that receives funding and can both better support those efforts and can avoid wasteful and duplicative work. Further, the Republican plan provides the state with funding to support the local grantees through technical assistance and other support. This protects the taxpayer's investment to ensure the funds are well spent. The plan also includes funding for states to offer statewide programs to address the mental health needs students face; these programs must be tied to the need analysis. Finally, by including statewide activities, Republicans ensure greater support to students across the state.

Finally, the Republican proposal includes important accountability metrics and would restrict any funds from going to states or local entities if they cannot demonstrate adequate progress toward the stated goals in the application. In other words, if the state or local grantee is not doing what they said they would or if what they are doing simply does not work, the taxpayer would stop funding it. This plan would support success and cut off failed projects.

Title V: RISE Act

Title V of the *Mental Health Matters Act* contains the *Respond, Innovate, Succeed, and Empower (RISE) Act*. Republicans support the intent of this language: we agree that students with disabilities should face fewer hoops to jump through when documenting their disability to their college or university and receiving their legally required accommodations. Unfortunately, the RISE Act has unintended consequences that should be addressed before this package

proceeds. These flaws are the inevitable result when the majority rushes legislation through the process without taking the time either to engage with outside stakeholders or to reach across the aisle to understand the impact of a bill.

First, this bill could force colleges and universities to accept long-outdated documentation from students who are claiming disability status but who do not in fact have a qualifying disability under federal disability law. Second, the bill removes almost all discretion from colleges and universities in determining if a student qualifies as a student with a disability. The *Individuals with Disabilities Education Act*, which imposes a stricter legal framework on elementary and secondary schools than colleges and universities face under section 504 of the *Rehabilitation Act of 1973* or the *Americans with Disabilities Act*, gives elementary and secondary schools more discretion than this bill provides colleges and universities. Whether this is an admirable feature of the bill or a concerning one is debatable—and that is the point: we should debate it, among ourselves and with outside experts, so that we can fully understand the consequences of such a decision before we move forward.

Committee Republicans would happily engage with stakeholders and our friends across the aisle to come to a bipartisan resolution on this bill. And perhaps we will be able to do that in the next Congress in the context of a comprehensive reform of the *Higher Education Act*. Unfortunately, until the majority allows that process to play out, we must urge opposition to this language.

TITLES VI AND VII OF H.R. 7780

Titles VI and VII of H.R. 7780 include the text of two bills⁹ introduced less than a week before the markup of H.R. 7780 and that were never discussed at a Committee hearing. Committee Republicans are dedicated to improving access to employee benefits and reducing the burdens on employers who offer such benefits. That is why Committee Republicans worked with Committee Democrats on a bipartisan basis to pass H.R. 5891, the *Retirement Improvement and Savings Enhancement Act* (RISE Act) as part of H.R. 2954, the *Securing a Strong Retirement Act* (SSRA). Rather than push partisan legislation like H.R. 7780, which will threaten access and affordability of workplace benefits, the Committee should focus on enacting the bipartisan reforms in the RISE Act and SSRA.

H.R. 7780 Threatens and Delays Access to Workplace Benefits

DOL Enforcement Authority

Committee Republicans support mental health parity, which is why Congress has passed multiple laws to ensure employers are able to meet mental health parity requirements under the *Mental Health Parity and Addiction Equity Act* (MHPAEA). Unfortunately, Title VI of H.R. 7780 inappropriately expands DOL’s ability to bring civil actions against plans governed by the *Employee Retirement Income Security Act of 1974* (ERISA) that voluntarily offer mental health benefits. Allowing recoveries for “all losses” is ambiguous and overly broad, especially given

⁹ H.R. 7767, the *Strengthening Behavioral Health Benefits Act*, was introduced by Rep. Joe Courtney (D-CT) on May 13, 2022, and H.R. 7740, the *Employee and Retiree Access to Justice Act of 2022*, was introduced by Rep. Mark DeSaulnier (D-CA) on May 12, 2022.

the difficulty of determining what would be required to make the plan participant whole. Such a change to ERISA could cause employers to drop mental health and substance use disorder benefits altogether for fear of excessive litigation. The Partnership for Employer-Sponsored Coverage stated as follows:

Two proposals in H.R. 7780 (to encourage individual and DOL [Department of Labor]/EBSA [Employee Benefits Security Administration] enforcement of parity standards; and to ban arbitration and other discretionary clauses) essentially weaponize the relationship between employers that sponsor health coverage and their covered employees as regards to mental health care and substance abuse disorder and coverage. Litigation will add to the cost of coverage for employees and employers without meaningfully improving coverage.¹⁰

There is great value in providing patients with robust mental health coverage, which is why many employers voluntarily include mental health coverage as part of a benefits package. However, despite receiving explicit direction from Congress outlining the information DOL must provide plans, the Department has yet to issue guidance illustrating how plans may demonstrate compliance with the law. DOL's 2020 MHPAEA report to Congress stated that 100 percent of plans were out of compliance with the Department's mental health parity analysis requirements.¹¹ If DOL believes that every plan is out of compliance, the Department has clearly failed to explain to plans what is required and to assist them in adhering to those requirements.

Discretionary Clauses

Most ERISA benefit plans, including health and retirement plans, adopt discretionary clauses which grant the plan administrator discretionary authority to interpret the plan documents and resolve disputes pursuant to DOL regulations.¹² This ability to delegate authority to the plan administrator is born out of ERISA's goal of encouraging employers to sponsor and implement benefit plans. Further, ERISA's claims process is meant to be expedited, and factual determinations need to be made about the terms of the plan.

By prohibiting discretionary clauses in ERISA plans under Title VII of H.R. 7780, any benefit determinations made by the plan would be far more likely to be challenged in court. Every time an issue arises where the plan terms are not 100 percent clear, the plan administrator would be powerless to interpret the plan, leaving litigation as the only means of resolving the issue. This outcome will substantially increase the costs and liability of offering mental health and retirement benefits to workers and their families. The American Retirement Association agree with this assessment, stating as follows:

¹⁰ Letter from Partnership for Employer-Sponsored Coverage to Reps. Bobby Scott and Virginia Foxx (May 17, 2022).

¹¹ 2022 MHPAEA REPORT TO CONGRESS, <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/mental-health-parity/report-to-congress-2022-realizing-parity-reducing-stigma-and-raising-awareness.pdf>.

¹² Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101 (1989).

This change will simply result in more retirement plan administrative costs and litigation that will benefit the plaintiffs' bar but not everyday working Americans who are saving for a secure retirement. This legislation only offers more deterrent to maintaining retirement plans and should be opposed.¹³

The U.S. Chamber of Commerce shared similar concerns with the Committee:

Contrary to its name, by effectively prohibiting arbitration in ERISA claims and prohibiting discretionary clauses, this provision would limit recovery amounts, increase the costs of claims for benefits, and increase the time for courts to resolve claims for benefits, including time sensitive claims such as disability and severance.¹⁴

At best, employers sponsoring mental health and retirement plans will divert cash to pay plaintiffs' attorneys that could be better spent providing benefits to employees. At worst, plan sponsors will reduce or eliminate benefits altogether. Either way, there will be downward pressure on mental health benefits and retirement savings—at a time when soaring inflation is eating away both wages and savings.

Arbitration Clauses

Title VII of H.R. 7780 further delays ERISA's benefits claims process at the expense of plan participants by prohibiting pre-dispute arbitration and curtailing post-dispute arbitration. Arbitration clauses are important tools for protecting participants and benefit plans from the costs of litigation and the fees paid to plaintiffs' attorneys. Unlike litigation, which takes years to realize results, arbitration can facilitate the timely receipt of benefits owed to participants. The national average time between filing a civil case and a trial in U.S. district courts is more than two years; if the court is overworked, the average is often three or four years.¹⁵ In comparison, a recent study found that consumer- and employee-arbitration claimants are more likely to win, receive higher monetary awards, and spend less time in arbitration than in litigation.¹⁶ Given the advantages of arbitration to plan participants, Title VII of H.R. 7780's curtailment of arbitration only benefits trial lawyers who reap attorneys' fees in litigation.

H.R. 7780 Needlessly Spends Taxpayer Dollars

H.R. 7780 needlessly appropriates an additional \$275 million in new mandatory funding over 10 years to EBSA for mental health parity enforcement. To put this into perspective, EBSA's Fiscal Year 2022 budget is \$181 million. In addition to annual appropriations, EBSA received \$8.6

¹³ Letter from Brian H. Graff, Exec. Dir./CEO, Am. Ret. Ass'n., to Reps. Bobby Scott and Virginia Foxx (May 17, 2022).

¹⁴ Letter from Neil L. Bradley, Exec. Dir., Chief Pol'y Off., & Head of Strategic Advocacy, U.S. Chamber of Com., to Reps. Bobby Scott and Virginia Foxx (May 18, 2022).

¹⁵ *The Judicial Conference's Recommendation for More Judgeships: Hearing Before the S. Comm. on the Judiciary*, 116th Cong. (June 30, 2020) (statement of Judge Brian Stacy Miller, D.C. Ark., at 10).

¹⁶ NAM D. PHAM & MARY DONAVAN, NDP ANALYTICS, FAIRER, FASTER, BETTER III: AN EMPIRICAL ASSESSMENT OF CONSUMER AND EMPLOYMENT ARBITRATION (Mar. 2022), <https://institutelegalreform.com/wp-content/uploads/2022/03/FINAL-ndp-Consumer-and-Employment-Arbitration-Paper-2022.pdf>.

million in FY 2021 and \$23.8 million in FY 2020 to implement the mental health parity requirements of the *Consolidated Appropriations Act, 2020*.¹⁷

Republican Amendments

Rep. Rick Allen (R-GA) offered an amendment at the Committee markup to ensure that DOL assists employers and health plans to meet mental health parity requirements and to protect taxpayers from yet more needless government spending. The amendment makes implementation of Title VI of H.R. 7780 conditional on DOL fulfilling its statutory duty by issuing a rule that provides clear guidance and compliance assistance to employers and plans on how to meet its mental health parity requirements. The amendment also strikes Title VI's \$275 million in new mandatory funding for mental health parity enforcement. Congress should not provide DOL with additional enforcement authority and taxpayer dollars to create mental health parity rules through litigation and legal claims. DOL could more effectively advance mental health if it focused its efforts on establishing clear guidance and compliance assistance instead of harassing plans and employers. Democrats voted against this commonsense amendment.

Rep. Diana Harshbarger (R-TN) offered an amendment highlighting Democrats' preferential treatment for union-run benefit plans. The amendment strikes Title VII's exemption of multiemployer benefit plans from the bill's prohibition on discretionary clauses. Prohibiting discretionary clauses is a drastic and ill-conceived departure from current law that will only benefit trial lawyers at the expense of workers and retirees who rely on employee benefit plans. If Democrats insist on disrupting the administration of employee benefits, then they should not exempt their friends in Big Labor who run multiemployer benefit plans. While alarming, this blatant display of favoritism is not surprising. Last year, Democrats enacted an irresponsible and uncapped taxpayer-funded bailout of mismanaged multiemployer pension plans under the guise of COVID-19 relief in the so-called *American Rescue Plan Act*.¹⁸ Rather than apply the law equally to single employer and multiemployer plans, Democrats rejected this amendment in a party-line vote.

Rep. Mary Miller (R-IL) offered an amendment to strike the requirement to provide graduates specific education regarding how to meet the needs of lesbian, gay, bisexual, transgender, queer, or questioning, non-binary, or Two-Spirit. This grant is supposed to be for increasing the number of school-based mental health professionals serving in high-need school districts and federal grants should be structured to help local areas address the various needs they face.

Conclusion:

Mental health is a grave issue that impacts families and children alike. Washington should stop pretending there is one solution that works for every community. If America is going to solve this crisis, it will take clearer goals, stronger support, and more flexibility given to local leaders

¹⁷ Title VI's large increase in spending reflects the Department of Labor's FY 2023 budget request for mental health parity enforcement. The budget request proposes doubling EBSA's full-time employees auditing plans. FY 2023 CONGRESSIONAL BUDGET JUSTIFICATION, EMP. BENEFITS SECURITY ADMIN., <https://www.dol.gov/sites/dolgov/files/general/budget/2023/CBJ-2023-V2-01.pdf>.

¹⁸ Pub. L. No. 117-2 (2021), 29 U.S.C. § 1432.

on how best to solve the problems faced on the ground. The Republican alternative does all this in a fiscally responsible manner. Republicans are ready to work with Democrats once they are drop their bloated proposals that fail to focus on local needs.

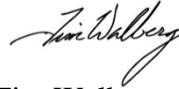


Virginia Foxx
Ranking Member

Joe Wilson
Member of Congress



Glenn "GT" Thompson
Member of Congress



Tim Walberg
Member of Congress



Glenn Grothman
Member of Congress



Elise M. Stefanik
Member of Congress



Rick W. Allen
Member of Congress

Jim Banks
Member of Congress



James Comer
Member of Congress



Russ Fulcher
Member of Congress



Fred Keller
Member of Congress

Mariannette Miller Meeks, M.D.
Member of Congress



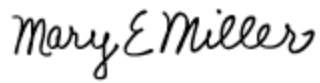
Burgess Owens
Member of Congress

Bob Good
Member of Congress



Lisa C. McClain
Member of Congress

Diana Harshbarger
Member of Congress



Mary E. Miller
Member of Congress


Victoria Spartz
Member of Congress



Scott Fitzgerald
Member of Congress

Madison Cawthorn
Member of Congress

Michelle Steel
Member of Congress



Chris Jacobs
Member of Congress



Brad Finstad
Member of Congress

Joe Sempolinski
Member of Congress

Virginia Foxx, Ranking Member
Glenn "GT" Thompson
Tim Walberg
Glenn Grothman
Elise M. Stefanik
Rick W. Allen
James Comer
Russ Fulcher
Fred Keller
Burgess Owens
Lisa C. McClain
Mary E. Miller
Scott Fitzgerald
Chris Jacobs
Brad Finstad