REGULATORY REFORM TASK FORCES CHECK–IN: PART II

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON
INTERGOVERNMENTAL AFFAIRS

AND THE

SUBCOMMITTEE ON HEALTHCARE,
BENEFITS, AND ADMINISTRATIVE RULES

OF THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

NOVEMBER 14, 2017

Serial No. 115–57

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://oversight.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

30–244 PDF WASHINGTON : 2018

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REGULATORY REFORM TASK FORCES CHECK–IN: PART II

Tuesday, November 14, 2017

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS, JOINT
WITH THE SUBCOMMITTEE ON HEALTHCARE, BENEFITS
AND ADMINISTRATIVE RULES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 10:08 a.m., in Room 2154, Rayburn House Office Building, Hon. Gary J. Palmer [chairman of the Subcommittee on Intergovernmental Affairs] presiding.

Present: Representatives Palmer, Grothman, Walker, Meadows, Mitchell, Demings, Krishnamoorthi, DeSaulnier, Norton, Watson Coleman, and Kelly.

Mr. PALMER. The Subcommittee on Intergovernmental Affairs and the Subcommittee on Healthcare Benefits and Administrative Rules will come to order. Without objection, the chair is authorized to declare a recess at any time.

I now recognize myself for 5 minutes for my opening statement.

First of all, I want to welcome three more agencies to discuss the administration's efforts to clean up and reduce the country's out-of-control regulatory state. Last month, the committee heard from the Department of Defense, the Department of Transportation, and the General Services Administration on their implementation of Executive Orders 13771 and 13777. These executive orders create a process by which agencies must refill two regulations for every new regulation it wants to issue.

The regulatory reform task forces help identify regulations for repeal and coordinate the review process within the agency. I can say that it is truly impressive to see the focus that the agencies have placed on this initiative and the work that is being done for the American public and the enthusiasm with which it's being conducted.

At our last hearing, the Department of Defense reported identifying over $10 million in savings and is on track to review all of its regulations by the end of 2018. The GSA has generated nearly 1800 proposals to reduce regulatory burden on vendors and the public stating it is optimistic the work of its task force will have a significant impact on improving GSA's regulatory and operational landscape. And when you hear that 1800 proposals have been submitted, I would—it sounds like it's more than a task force, that there are a lot of people engaged in this. That's exactly what we hoped would happen.

The Department of Transportation shared how its reviews have been able to save the American public significant time and money without reducing the safety of the Nation's transportation system. And by way of example, in fiscal year 2016, under the previous administration, Department of Transportation issued rules opposing an estimated $3.2 billion in cost. The rules issued in 2017 have resulted in approximately $21.9 million in savings. This is meaningful progress. In many cases, it's the task forces and the staff that are the driving force and expertise behind the agency's reviews and recommendations. And, again, what we've seen in our first hearing is not only a commitment to do it but enthusiasm for doing it.

We look forward to hearing how your task forces are working with these subject matter experts, many of whom intimately understand what is duplicative, outdated, or imposes the most burden on the public. I'm also encouraged that my colleagues across the aisle identified important areas for review, such as agency guidance documents which often have the effect of a regulation, and I'm pleased to hear the progress that agencies are making in their review.

I would finally like to echo the praise Chairman Meadows bestowed at our last hearing and applaud your efforts and the time you've taken testify today. Ultimately, the work you are doing with these task forces represent an important first step in a necessary culture change with respect to how our government works with and not at States, local governments, and the American public.

I now recognize the ranking member of intergovernmental affairs, Mrs. Demings, for 5 minutes for her opening statement.

Mrs. DEMINGS. Good morning, everyone. I'd like to thank Chairman Palmer for holding this important hearing today on agency regulatory reform task forces. I would also like to thank our three witnesses for joining us this morning.

Regulatory review and reform need not be a partisan exercise. President Obama too created a retrospective review process in 2011 to review outmoded, ineffective, insufficient, or excessively burdensome regulations. But the Trump administration, I believe, has not taken a balanced look back. The Trump regulatory review process is aimed at removing regulations that protect the public, including student loan borrowers, those in need of health insurance, and even meat processing workers. The regulatory reform task force at the Department of Health and Human Services is undermining the Affordable Care Act to make it harder for average Americans to get health coverage.

The Department of Health and Human Services has undermined the open enrollment period by unnecessarily shortening the time for enrollment, reducing the number of individuals providing enrollment assistance, and cutting the advertising budget by 90 percent.

And even when individuals are able to buy health insurance, the regulatory reform task force has proposed allowing States slash what the plans actually cover. The task force at the Department of Agriculture is speeding up production lines and poultry and hog slaughter facilities and reducing the number of inspectors required to be onsite. High-speed production lines have been shown to increase risk to health workers and potentially lead to contamination of meat products consumed by American families.

The task force at the Department of Education is actively rolling back regulations meant to protect the next generation of K through 12 and higher education students. They are obstructing the gainful employment rule meant to ensure that college students taking out loans will receive an education enabling them to get higher-paying jobs by stopping the necessary data collection that would make the rule operate.

They have halted the borrowers defense rule which created a process for defrauded borrowers to apply for loan forgiveness to which they are legally entitled and protect American taxpayers by requiring certain schools to set money aside to cover the cost of loan forgiveness rather than requiring the public to bear the burden of fraud.

The Department of Education has been long rolling back several Title IX regulatory guidance documents which permit schools to make it much more difficult for victims of sexual assault to obtain justice and causing confusion about whether transgender students have any legal protections at all. This is very, very concerning to me. I hope it's concerning to others. And it's certainly concerning to the American public.

During today's hearing, I hope we can understand the aims of the task forces at these three agencies and how they intend to protect American families' health, safety, and economic security. I look forward to hearing from our witnesses today, and we thank the chairman for holding this very important oversight hearing.

I yield back.

Mr. PALMER. I'll now recognize the ranking member of the Subcommittee of Healthcare, Benefits and Administrative Rules, Mr. Krishnamoorthi, for 5 minutes for his opening statement.

Mr. KRISHNAMOORTHI. Thank you, Chairman Jordan and Chairman Palmer, for convening this hearing today. I'd also like to thank Ranking Member Demings for her friendship and leadership and all other witnesses for participating today.

This is the second hearing our subcommittees have had on regulatory reform task forces, and I'm very pleased that we have the witnesses here today that we do. In particular, I am pleased we have a representative from the Department of Health and Human Services.

My constituents know that having health insurance saves lives. It is for this reason that I am deeply troubled by recent Trump administration actions that undermine the health protections and coverage that millions of Americans have come to depend on through the Affordable Care Act, also known as ObamaCare. The administration's actions and proposed regulations are literally making it harder for Americans to receive health coverage.

The Department of Health and Human Services has cut in half the open enrollment period for plans to be purchased on the health exchanges, meaning that some individuals will either not have health insurance or will be penalized for obtaining insurance late. The administration has cut the open enrollment advertising budget by 90 percent and is waiving requirements that States contact difficult-to-reach individuals, meaning that many people living in rural areas may not even know they need to sign up for health insurance.

The administration has refused to provide funds to stabilize the healthcare market as required by law. Failing to do so has raised premiums and deductibles for families buying health insurance on the exchanges and will end up costing American taxpayers more in the long run.

HHS has also permitted all employers to deny female employees no copay access to contraception. HHS has proposed allowing States to lower standards for essential health benefits so that States can engage in a race to the bottom in terms of what health insurance plans are required to cover.

Similarly, the administration has proposed expanding short-term, limited-duration plans which need not meet the requirements of traditional health plans permitting healthy individuals to circumvent the ACA's requirements nearly in total. HHS has also proposed loosening the medical loss ratio so that insurance plans can spend more on advertising and executive salaries and less on doctors, nurses, surgeries, and medications for those who need it.

These are just the beginning of all the actions the administration is taking to undermine the Affordable Care Act. There is an old saying that there is no Republican or Democratic way to pick up the trash or fill a pothole. The only thing that matters is that you deliver for your constituents.

I think we should increase inefficiencies and cut unnecessary regulations as long as doing so improves the quality and availability of healthcare for all Americans. Unfortunately, that does not appear to be what the Trump regulatory task forces are doing. Instead, in this case, their task force is making it harder for Americans to get quality health coverage.

I'm very grateful to the chairman for calling this hearing so we can further investigate the reasons behind the administrative actions at issue and the policy goals they serve. However, I will be asking some important questions about the effects of these actions on the availability of healthcare coverage on the exchanges. I look forward to discussing this and other issues with the witnesses today.

Thank you, and I yield back.

Mr. PALMER. I thank the gentleman.

I'm pleased to introduce our witnesses. Mr. Robert Eitel, senior counsel to the Secretary at the Department of Education; Ms. Rebeckah Adcock, senior adviser to the Secretary at the Department of Agricultural; and Mr. Charles Keckler, associate deputy secretary at the Department of Health and Human Services. Welcome to you all.

Pursuant to committee rules, all witnesses will be sworn in before they testify. Please rise and raise your right hand.

Do you solemnly swear or affirm the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

The record will reflect all witnesses answered in the affirmative.

Please be seated.

In order to allow time for discussion, please limit your testimony to 5 minutes. Your entire written statement will be made part of the record.

As a reminder, the clock in front of you shows the remaining time. Unlike a traffic light, when the light turns yellow, you do need to speed up, you have 30 seconds left, and red when your time is up. And I'll remind you if that doesn't get your attention.

Please also remember to press the button to turn your microphone on before speaking.

I would now ask Mr. Eitel to give his testimony.

WITNESS STATEMENTS

STATEMENT OF ROBERT EITEL

Mr. EITEL. Good morning, Chairman Palmer, Ranking Member Demings, Ranking Member Krishnamoorthi, and members of the subcommittees. I'm delighted to be here today to present the work of the Department of Education in the area of regulatory reform and to provide you with an update on its progress.

Regulatory review and reform are a top priority of Secretary DeVos in the Department. It is critical that the Department maintain regulations and guidance that are understandable, clear, and effective, and that they actually serve the interests of students, parents, teachers, and other stakeholders. To that end, in April, Secretary DeVos convened a task force of career civil servants and noncareer appointees appointing as co-chairs a senior civil servant from the Office of the General Counsel, who is also our regulatory policy officer, and myself, its regulatory reform officer. She also directed that the task force conduct itself with three guiding principles in mind: Transparency, stakeholder engagement, and thoughtful deliberation.

So with regard to transparency, the task force has taken transparency seriously. Indeed, to that end, it has posted on the Department website two reports: A progress reported dated May 25 and a status report dated October 18, together with extensive attachments describing the activity of the task force to date. We will continue to provide public updates as the Department's regulatory reform work continues.

With regard to stakeholder engagement, the task force has also taken to heart the Secretary's direction to engage the public concerning its regulatory review. This public engagement is, in fact, a requirement of Executive Order 13777 and, for that matter, Executive Orders 12866 from 1993 and Executive Order 13563 from 2011.

So how did the task force accomplish this worthy goal of stakeholder engagement? First, the Department published a Federal register notice in June asking for public comment on which, if any, regulations and guidance to repeal, modify, replace, or to keep. The Department provided the public with 90 days to submit comments to regulations.gov and received in excess of 16,000 comments about its regulations and guidance by the time the comment period closed on September 20th. The Department is presently reviewing those comments.

Second, at the request of the task force, each principal office in the Department engaged in stakeholder outreach to its constituency. So for, by way of illustration, the office of post-secondary education has public hearings at South Lake Community College in

Utah and at the Department of Education. Other offices conducted their own outreach efforts.

With regard to the principle of thoughtful deliberation, the task force has taken several considered steps to comply with the executive orders. The first step that the task force took was simply to catalog all of the Department's regulation and guidance. That is to ask what do we have in terms of regulations and guidance on the books?

Turning first to regulations, we found that the Department maintained in excess of 150 departmental regulations. As part of its initial review, four regulations or proposed regulations in the area of elementary and secondary education were identified for withdrawal, mostly because they were simply out of date and related to programs that had not been authorized by a Congress. And two regulations in the area of higher education were identified for negotiated rulemaking. The Department will be withdrawing the elementary and secondary rules in the coming months and has begun negotiated rulemaking on the higher education rule.

Turning to guidance. We discovered, to our amazement, that the Department maintained an astounding 1,772 policy-oriented guidance documents, including Dear Colleague letters, FAQs, policy memos and the like. Of these, nearly 600 items were simply out of date, some of them dating back to the early 1980s, and interpreting laws that were no longer in effect or relating to long-ago events, such as the flooding in the upper Midwest that occurred in 1997.

Based on recommendations from career staff in each principal office and with the approval of career attorneys in the office of general counsel, and I would like to stress that, based on the recommendations of career staff and after review by career attorneys, the Department took steps to withdraw this out-of-date guidance to provide clarity to the public. That guidance is attached to our October 18th report on the Web.

With that, I thank you for the opportunity to be here today, and I look forward to answering your questions.

[Prepared statement of Mr. Eitel follows:]

ROBERT S. EITEL
SENIOR COUNSELOR TO THE SECRETARY
U. S. DEPARTMENT OF EDUCATION

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS
AND
SUBCOMMITTEE ON HEALTHCARE, BENEFITS, AND ADMINISTRATIVE RULES
U.S. HOUSE OF REPRESENTATIVES

Regulatory Reform Task Forces Check-In: Part II

November 14, 2017

Good morning Chairman Palmer, Chairman Jordan, Ranking Member Demings, Ranking Member Krishnamoorthi, and members of the Subcommittees. I am Robert S. Eitel, Senior Counselor to the Secretary of Education. I appreciate the opportunity to testify today on the subject of the Department of Education's progress implementing President Trump's Executive Order (EO) 13771, *Reducing Regulation and Controlling Regulatory Costs,* and EO 13777, *Enforcing the Regulatory Reform Agenda.* I am delighted to present the work of the Department, under the leadership of Secretary DeVos, in the area of regulatory reform and to provide you with an update on the progress of the Department's Regulatory Reform Task Force.

Regulatory Reform Orders

As you know, under EO 13771, unless prohibited by law, the Department must finalize at least two "deregulatory actions" (as defined in guidance issued by the Office of Management and Budget) for each new significant regulation that the Department publishes, beginning with fiscal year 2017 and by the end of each fiscal year thereafter. Moreover, unless prohibited by law, the Department must meet its regulatory cost allowance by sufficiently offsetting the incremental costs of new significant regulations with cost savings from deregulatory actions.

In order to "alleviate unnecessary regulatory burdens placed on the American people," EO 13777 directs the appointment of a Regulatory Reform Officer and the establishment of a Regulatory Reform Task Force to oversee the implementation of the Department's regulatory reform initiatives. Reporting periodically to the Secretary and regularly consulting with agency leadership, the Task Force for each agency must evaluate existing regulations and guidance and make recommendations to the Secretary regarding any repeal, replacement, or modification.

Consistent with applicable law, EO 13777 requires the Task Force to identify regulations that, among other things (1) eliminate jobs or inhibit job creation; (2) are outdated, unnecessary, or ineffective; (3) impose costs that exceed benefits; (4) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or (5) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

EO 13777 further directs the Department's Task Force to seek input and other assistance from entities "significantly affected" by the agency's regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations. When implementing the regulatory offsets required by the "two-for-one" EO 13771, EO 13777 also directs the Secretary to prioritize those regulations that the Task Force has identified as being outdated, unnecessary, or ineffective.

It is important to note that EO 12866 (issued in 1993), as amended, remains the primary governing EO regarding regulatory planning and review and that EO 13777 builds on EO 12866. Accordingly, as a general matter, departments and agencies must continue to analyze and consider costs and benefits of regulatory and deregulatory actions when making regulatory decisions and to issue regulations only upon a reasoned determination that the benefits justify costs.

With these Executive Orders in mind, regulatory review and reform are a top priority of Secretary DeVos. The Department holds the view that it should publish only regulations that are necessary. To that end, Secretary DeVos has directed that thoughtful deliberation, stakeholder engagement, and transparency serve as the guiding procedural principles of the Department's regulatory reform effort.

I will now explain what steps the Department has taken to comply with the EOs.

Department of Education's Regulatory Reform Task Force

Establishment of the Regulatory Reform Task Force

On April 25, 2017, in accordance with Section 2 of the EO 13777, I was appointed the Department's Regulatory Reform Officer. On the same date, adhering to Section 3 of the Order, the Secretary appointed the Regulatory Reform Task Force, with Elizabeth McFadden, the Department's Regulatory Policy Officer (RPO), and me appointed as Co-Chairs of the Task Force. The Department's Regulatory Reform Task Force also includes representatives of the Department's central policy office (Office of Planning, Evaluation, and Policy Development) and its relevant Principal Offices (encompassing at least three senior agency officials).

Since May, the Department's Task Force has met at least once monthly. During this time, it has taken important steps to comply with EO 13777 that I set forth below.

Actions by the Regulatory Reform Task Force

The Department of Education's Task Force has embarked on a careful review of the Department's regulations and policy-centered significant guidance in an effort that involves political appointees and career civil servants and that has actively sought and received input from Department stakeholders and the general public.

As an initial step, the Task Force, working through each Principal Office of the Department, reviewed the Department's regulations and policy-oriented significant guidance, cataloging over 150 departmental regulations, ranging from matters of general applicability (the Department Seal, Service of Process, Freedom of Information Act, Privacy Act, and the like) to the privacy of education records (FERPA) to regulations implementing the Higher Education Act of 1965. The Task Force also identified 1,772 policy-oriented guidance documents across the Department, including Dear Colleague Letters, Questions and Answers or Frequently Asked Questions, policy memos, and the like, many of which were out of date. With this catalog of regulations and guidance in hand, the Task Force started its review and began the deliberations required by the EOs.

Stakeholder Outreach by the Regulatory Reform Task Force

To comply with the Order's requirement at Section 3(e) to seek input from the public, the Department sought comments from the general public and from specific stakeholders.

The Department published a request for comments in the *Federal Register* on June 22, inviting the public to provide comments on identifying regulations and guidance for repeal, replacement, or modification. After extending the comment period closing date from August 21 to September 20, the Department received over 16,300 comments from the public. The Department is currently reviewing these comments.

In addition to the Department-wide *Federal Register* notice seeking public comment, several Principal Offices have asked for the views of their specific stakeholders in a variety of ways. The method depended on the Principal Office.

To obtain the views of the postsecondary education community, the **Office of Postsecondary Education (OPE)** conducted hearings at Salt Lake Community College in Sandy,

Utah and at the Department on September 26 and October 4, respectively. The **Office of Career, Technical, and Adult Education (OCTAE)** attended the meeting of the National Coalition on Literacy on October 5, to seek views on adult education guidance and regulations that may merit repeal, replacement, or modification. On November 15, OCTAE's Division of Adult Education and Literacy will discuss regulatory reform with the State Directors of Adult Education at the National Adult Education Professional Development Consortium National Training Institute.

Similarly, with **Office of Elementary and Secondary Education (OESE)** leadership, the Secretary convened a listening session on October 2, with education policy leaders, who presented their individual views on the topic of regulatory relief for State educational agencies, local school districts, schools, teachers, and administrators. OESE also sent a letter to various elementary and secondary education groups on May 30, asking for their views. OESE has received comments from a range of groups, including the School Superintendents Association (AASA), the Cook Inlet Tribal Council, the Council of Chief State School Officers, the National Governors Association, and the National Alliance for Public Charter Schools.

The **Office of Innovation and Improvement (OII)** also consulted with the public in its review of Department regulations and guidance. OII's Office of Nonpublic Education met with the Council for American Private Education (CAPE), a coalition of 21 national organizations and 38 State affiliates serving private elementary and secondary schools and representing about 80 percent of private school enrollment nationwide. Similarly, on August 14, OII's Charter Schools Program (CSP) alerted charter schools, charter school authorizers, charter management organizations, charter support organizations, and other stakeholders about the opportunity to provide comments related to matters affecting charter schools. CSP also met with leaders from national organizations,

such as the National Association of Charter School Authorizers and the National Alliance for Public Charter Schools.

The **Office of Special Education and Rehabilitative Services (OSERS)** took a multi-faceted approach to solicit input from the public, including on-site meetings, teleconferences, blogs, newsletters, and conference presentations. Its Office of Special Education Programs hosted over a thousand people at its Annual Leadership Conference on July 17-19, and provided attendees three opportunities at the conference to provide feedback on the regulatory reform process. Representatives included State special education, early childhood special education, and early intervention leaders and parent leaders. On September 11, OSERS also conducted an on-site meeting with over 60 organizations representing parents, disability advocates, civil rights groups, and education associations to obtain their views on the Department's evaluation of regulations and guidance. During monthly and quarterly telephone calls, OSERS also alerted State Directors of Special Education, State Part C Coordinators for Early Intervention, and members of the Council of State Administrators of Vocational Rehabilitation to the opportunity to submit comments on regulatory reform at the Department. OSERS further convened a question-and-answer telephone conference with stakeholders on October 24.

Throughout the summer and fall, the **Office for Civil Rights** met with a diverse number of organizations, including the National Association of College and University Attorneys, the Thurgood Marshall College Fund, the Clery Center, and the National Disability Rights Network.

Identifying Deregulatory Actions

OPE has identified two sets of regulations (Borrower Defense to Repayment and Gainful Employment) for review through negotiated rulemaking. This effort is ongoing, with OPE

convening negotiated rulemaking committee and subcommittee meetings until March of 2018 in these areas. Additionally, the Department, as explained in its Spring 2017 Unified Agenda of Federal Regulatory & Deregulatory Activity posted by OMB in July, plans to take other deregulatory actions that it is taking in the area of higher education.

In a similar vein, in the Spring Unified Agenda, **OESE** identified for withdrawal the Supplement-not-Supplant notice of proposed rulemaking under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, which was published in the Federal Register on September 16, 2016 (81 FR 61148). OESE also identified for withdrawal the regulations governing the Migrant Even Start Family Literacy Program; the Christa McAuliffe Fellowship Program; and the Selection Criteria for Empowerment Zone or Enterprise Community, as Congress has not reauthorized or extended these programs. The Department will be taking steps to rescind these out-of-date regulations in the coming months.

Task Force Transparency

The Task Force has published the foregoing information, together with extensive attachments, in two reports – a progress report dated May 25 and a status report dated October 18 -- that it has posted on its website for the public to review.

Next Steps

The Department of Education has made significant strides in implementing the Administration's regulatory reform agenda, and our work continues. The Department remains focused on alleviating regulatory burdens that impose costs greater than their benefits and that stifle innovation in education but will do so with awareness for concerns about taxpayer protection and educational quality and equity. Though it has not yet been finalized, , the Department, with input from its Regulatory Reform Task Force, has submitted to OMB its

portion of the Fall 2017 Unified Regulatory and Deregulatory Agenda and, as discussed earlier, the Department anticipates that the Unified Agenda will show additional plans for deregulatory efforts for Fiscal Year 2018.

The Task Force also plans to continue developing deregulatory recommendations for future action beyond the Fall 2017 Unified Agenda, including burdens imposed by regulations but also those caused by agency significant guidance documents, an area of intense concern to Secretary DeVos and the Administration. Although guidance is not legally binding, even non-binding guidance that is promulgated by the Department may result in action by and costs to the regulated entities. As with the Department's regulations, the Task Force will continue to examine guidance documents closely as part of its regulatory review and reform effort.

Conclusion

Thank you again for the opportunity to discuss with you the work of the Department's Regulatory Reform Task Force. I would be pleased to answer any other questions you have about our regulatory reform work to date.

Robert S. Eitel serves as Senior Counselor to the Secretary of Education and Regulatory Reform Officer of the U.S. Department of Education. Immediately prior to joining the Department, Mr. Eitel was a vice president of regulatory legal compliance and a vice president of regulatory operations at Bridgepoint Education and Career Education Corporation, respectively. Mr. Eitel has also served as

Deputy General Counsel of the U.S. Department of Education and practiced law in New Orleans, Louisiana and Washington, D.C. He earned his A.B. from Georgetown University and his law degree from Tulane University Law School.

Mr. PALMER. Thank you.
The chair recognizes Ms. Adcock for her testimony.

STATEMENT OF REBECKAH ADCOCK

Ms. ADCOCK. Chairman, ranking members, and members of the committee, thank you for the invitation to testify before your subcommittees today. As a designated regulatory reform officer for the Department of Agriculture, I am pleased to share with you Secretary Perdue's commitment to fulfilling the President's promise to reduce unnecessary regulatory burdens and barriers within the Department.

In line with Executive Orders 13771 and 13777, Secretary Perdue is determined to obey the practice of legislating through Department regulations and guidance and staying within the bounds of congressional authority. USDA embraces the five regulatory reform principles of reducing regulatory burdens and process barriers, regulating effectively and efficiently, promoting due process, providing fair notice and transparency, and respecting individual freedoms and property rights.

Consistent with the executive orders, it's our goal to collaborate with the public and identify regulations that are creating more problems than they're solving. And to achieve that goal, we published a call for public input on July 17th, 2017, and that lasts through next July 2018. USDA is receiving comments during this time during four rounds of review: September and November of this year; February and July of next year. To date, USDA has received and begun the review of over 145 comments. And I believe, actually, the number rose a little bit over the last a couple of days.

Last month, the Secretary held a public listening session on cutting the red tape where policy experts, nonprofit organizations, and industry groups aired their concerns about different regulatory burdens. Those event materials should have been supplied to you via the committee for your review. USDA listened, and with our submissions to the spring agenda released in June and those that will be released in the upcoming fall unified regulatory agenda, we are taking actions to revise and reconsider regulations and, where appropriate, deregulate.

Additionally, as a function of the Secretary's leadership of the President's interagency task force on agriculture and rural prosperity, USDA held listening sessions with stakeholders across the countryside, not aimed solely at regulatory reform or barriers. But during his travels through rural America, he did hear from producers, business people, rural residents, and community leaders on everything from farm programs to forest service directives to wetlands and the challenges we have there. Some of those ideas and concerns may be issues that can be and will be addressed during our ongoing review of regulatory and reform process at USDA.

USDA is a very large organization, and it touches the lives of virtually every American in ways they don't ever know about. We have nearly 100,000 employees made up of dedicated civil servants who believe in the work we do to support the production of food, fiber, and fuel, as well as the rural communities we support.

Our internal regulatory reform task force is composed almost exclusively of career-level senior staff from each of our mission areas, agencies, and offices. During their first round over the course of the last summer and early fall, preparing for the fall agenda, the task force identified over 275 potential recommendations aimed at decreasing duplication and working more efficiently and effectively as an agency.

Some recommendations were administrative actions that were as simple as making it happen. And they've been already adopted and are underway. But over half of the recommendations were potential regulatory reforms, many of which will be reflected in the upcoming fall agenda from OMB.

The Secretary views regulatory and operational reform as an ongoing process aimed at improving the culture of how USDA runs and relates to our customers and constituents. He expects that final regulatory decisions will be lawful, fact-based, and supported by data collected through sound scientific methodology.

In addition to the President's five principles, we do our best to consider how each regulation or action will—reviewed, has an impact on jobs and the economy as well as weighing the cost, the benefits, the burdens, and the opportunities to stakeholders.

At USDA, we trust in the American people, especially those in rural America, to do the right thing for their businesses, their communities, and their country. The Federal Government must also do our part at minimizing burdens and reducing barriers. We know we can do better, and Secretary Perdue and the dedicated people of USDA are committed to making that happen.

Thank you again for the opportunity to testify today on behalf of USDA, and I look forward to answering your questions.

[Prepared statement of Ms. Adcock follows:]

Testimony
House Committee on Oversight and Government Reform
Subcommittee on Intergovernmental Affairs
and
Subcommittee on Health Care, Benefits, and Administrative Rules
Rebeckah Adcock, Senior Advisor to the Secretary, U.S. Department of Agriculture
Regulatory Reform Task Forces Check in: Part II
November 14, 2017

Thank you for the invitation to testify before your Subcommittees today. As the designated Regulatory Reform Officer for the U.S. Department of Agriculture (USDA), I am delighted to assure both Subcommittees that Secretary Sonny Perdue is committed to fulfilling the President's promise to reduce unnecessary regulatory burdens and process barriers at the Department. In line with the President's Executive Orders 13771 and 13777, Secretary Perdue is determined to abate the practice of legislating through Department regulations and staying within the bounds of Congressional authority.

USDA embraces the President's five regulatory reform principles – reducing burdens and barriers, regulating effectively and efficiently, promoting due process, providing fair notice and transparency, and respecting individual freedoms and property rights. Consistent with the Executive Orders, it is our goal to collaborate with the public and identify regulations that are creating more problems than they are solving. To achieve that goal, we published a call for public input on July 17, 2017, that lasts through July 2018. USDA will review comments received during this time period in four batches—in September and November 2017 and February and July 2018. To date, USDA has received over 145 comments.

Additionally, as a function of the Secretary's leadership of the President's Interagency Task Force on Agriculture and Rural Prosperity, USDA held a series of listening sessions with our stakeholders across the countryside. During Secretary Perdue's travels through rural America, he heard from producers, industry stakeholders, rural residents, and community leaders on everything from farm program implementation to Forest Service directives to wetlands. Here in Washington, the Secretary held a public listening session on 'cutting the red tape' where policy experts, non-profit organizations, and industry groups aired their concerns about different regulatory burdens. USDA listened, and with our submissions to the Spring—and most recently—the Fall Unified Regulatory Agendas, we are taking actions to revise, reconsider and, where appropriate, deregulate.

We are also committed to communicating clearly about our stakeholders' rights and options, including the opportunity to appeal decisions. For both new regulations and old, we are carefully reviewing the Federal Register to ensure that we are zeroing in on rules that the public feels are unnecessary. Due process demands that we give advance notice of which regulations are under consideration and we commit to carefully considering all feedback. In our communications, we use plain language to ensure constituents understand what the regulations and laws mean for their business practices.

In addition, customer service is a priority for the Secretary. USDA has been communicating with our customers and stakeholders asking them to inform us of potentially inappropriate enforcement actions and bad service interactions. Based on this early input, we realized there were some internal reforms that USDA could take to improve the services we provide to the American public. This included the reorganization of the former Farm and Foreign Agricultural Services mission area to include the Natural Resource Conservation Service, whose mission overlapped with the Farm Service Agency and the Risk Management Agency's focus on domestic producers. We are looking at ways to ensure that when a producer walks into a USDA service center, they have a one-stop shop where they can quickly find the answers and guidance they need to navigate the regulatory environment. It is our hope that the newly named Farm Production and Conservation mission area will meet that need.

As you know, USDA has a large organization that touches the lives of virtually every American in ways that most may never notice. We have nearly 100,000 employees, made up of dedicated civil servants who believe in the work we do to support the production of food, fiber and fuel, as well as rural communities. Even as we continue to wait for the confirmation of new leadership, our internal Regulatory Reform Task Force, composed almost exclusively of career senior staff from all mission areas, made over 275 recommendations about how we can decrease duplication of efforts and work more efficiently and effectively. Many of the administrative actions recommended are already underway and many recommended regulatory reforms will be announced in the Unified Fall Regulatory Agenda. We view reform as an ongoing process aimed at improving the culture of how USDA regulates. Final regulatory decisions will be fact-based and supported by data collected through sound scientific methodology. We evaluate all regulatory actions based on the President's five principles as well as doing our best to consider how the action impacts jobs and the economy as well as costs, benefits and burden to stakeholders.

At the U.S. Department of Agriculture, we trust in the American people and their representatives to do the right thing for their businesses, communities, and the country. America's rural businesses, farmers, ranchers and producers are all-too-aware that their long-term economic success depends on responsibly managing the land and its resources. Because of the breadth and diversity of USDA's programs and missions, we see strong evidence of Americans being good stewards of the land while also promoting economic growth and caring for one another. We believe there is tremendous opportunity for Americans to grow the economy responsibly while restoring citizens' faith in their government. Alleviating unnecessary regulatory burdens, through a transparent process that improves the efficiency and effectiveness of our government, helps American society grow and prosper. Simply put, we believe USDA can and must do better and are committed to that end. Thank you for the opportunity to testify today.

Mr. PALMER. Thank you.

The chair now recognizes Mr. Keckler for his testimony. Thank you.

STATEMENT OF CHARLES KECKLER

Mr. KECKLER. Thank you. Good morning, Chairman Jordan, Chairman Palmer, Ranking Member Krishnamoorthi, Ranking Member Demings, and members of the subcommittees. Thank you for the opportunity today to discuss the Department of Health and Human Services' efforts regarding regulatory reform.

HHS is committed to improving the regulatory process as laid out by the President's executive orders, and our Department is always willing to engage with both the members of this committee and your staff to help us improve our work.

On February 24th, 2017, the President signed Executive Order 13777. It required the head of each agency to designate a regulatory reform officer. This officer would oversee the implementation of regulatory reform, initiatives, and policies. The order also requires agencies to establish a regulatory reform task force. This task force was instructed to evaluate existing regulations and make recommendations regarding the repeal, replacement, or modification of those regulations.

The President's February executive order instructed each task force to identify regulations that eliminate jobs or inhibit job creation and to find regulations that are outdated, unnecessary, or ineffective. The task forces must also review regulations that impose costs that exceed benefits and evaluate regulations that create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

Importantly, this executive order also instructed agencies that the task force should seek input and other assistance from those entities significantly affected by Federal regulations. In particular, agencies should seek input from State and local governments, small businesses, and consumers.

HHS established its regulatory reform task force on April 13th, 2017. The task force meets once per week to evaluate deregulatory proposals from operating and staff divisions across HHS using instructions and criteria outlined in Executive Orders 13771, and 13777, and OMB guidance documents M1721, and M1723.

The deregulatory proposals are presented to the task force for consideration only after they have been evaluated by regulatory reform working groups. The working groups are designed to offer a forum for the Department's subject matter experts to carefully assess deregulatory proposals using criteria that complement the goals of the executive orders. Each working group meets regularly and consists of 15 to 23 career staff experts from across HHS.

Each operating and staff division has a regulatory reform officer who is responsible for submitting deregulatory proposals once per month to the relevant working groups. The deregulatory proposals are then assessed by the working groups and ultimately the task force. The RRO is also charged with communicating important information on regulatory reform to their respective division. Once a

month, a call is held with the RROs to answer questions and share best practices.

The regulatory reform process at the Department of Health and Human Services encompasses all agency rulemaking including the Centers for Medicare and Medicaid Services. CMS is committed to putting patients first and easing the regulatory burden that is harming the relationship between a patient and his or her doctor and other type of healthcare provider.

Regulations have their place and are important to ensuring quality, integrity, and safety in our healthcare system. But, if rules are misguided, outdated, or too complex, they can have a suffocating effect on healthcare delivery by shifting the focus of providers away from patients and toward unnecessary paperwork and ultimately increase the cost of care.

CMS Administrator Verma has launched a review of all quality measures, for example, to ensure they are most meaningful. Too often, healthcare quality measures focus on process and not whether on that process has improved the quality or safety of healthcare. Clinicians and hospitals have to report an array of measures to different payors. These measures are often different, and there are many steps involved in submitting them, taking time away from patients. For example, across CMS hospital quality reporting programs, in-patient hospitals report up to 61 quality measures.

According to the American Academy of Family Physicians, some family practitioners have to report nearly 30 measures to seven different payors which can lead to less time focused on patients and contribute to clinicians' burnout.

Through CMS' review, we will focus measurement on assessing those core issues that are most vital to providing high quality care and improving patient outcomes.

Thank you for your opportunity to testify today. I am glad the committee is taking the time to review the complex and often overbearing regulatory system that exists in the United States.

Stakeholder feedback is critical to the part of work we are undertaking at HHS to reduce regulatory burden. As we reach out and listen to providers, patients, experts, and consumers, I wish to note that Congress remains our most valued stakeholder. Please know that our Department is always ready to discuss any regulations that you believe are problematic or those that need to be strengthened.

In preparing for this hearing, we've had several productive conversations with both majority and minority committee staff. I want to thank them for their thoughtful effort they put into this matter. We look forward to working with them even more in the future.

I'm happy to answer any questions you may have.

[Prepared statement of Mr. Keckler follows:]

Committee on Oversight and Government Reform
Subcommittee on Health Care, Benefits, and Administrative Rules
Subcommittee on Government Operations

Hearing titled, "Regulatory Reform Task Forces Check-In: Part II"

November 14, 2017

Written testimony on behalf of the following witness from the Department of Health and Human Services (HHS):

Charles Keckler, Associate Deputy Secretary, HHS

Good morning Chairman Jordan, Chairman Palmer, Ranking Member Krishnamoorthi and Ranking Member Demings and Members of the SubCommittees. Thank you for the opportunity today to discuss the Department of Health and Human Services' efforts regarding regulatory reform.

HHS is committed to improving the regulatory process as laid out by the President's Executive Orders, and our Department is always willing to engage with both the Members of this Committee and your staff to help us improve our work.

On January 30, 2017, the President signed Executive Order 13771. The purpose of this Executive Order was to announce the policy of the Executive Branch to be "prudent and financially responsible" when burdening private entities with federal regulations. To that end the Executive Order asked that for "every one new regulation issued, at least two prior regulations be identified for elimination."

On February 24, 2017, the President signed Executive Order 13777. This Executive Order established the structure that would help implement the previous Order. It required the head of each agency to designate a Regulatory Reform Officer. This Officer would oversee the implementation of regulatory reform initiatives and polices. The Order also requires agencies to establish a Regulatory Reform Task Force. This Task Force was instructed to evaluate existing regulations and make recommendations regarding the repeal, replacement, or modification of those regulations.

The President's February Executive Order instructed each Task Force to identify regulations that eliminate jobs, or inhibit job creation; and to find regulations that are outdated, unnecessary, or ineffective. The Task Forces must also review regulations that impose costs that exceed benefits and evaluate regulations that create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

Importantly, this Executive Order also instructed agencies that the Task Force should seek input and other assistance from those entities significantly affected by federal regulations. In particular, agencies should seek input from state and local governments, small businesses, and consumers.

HHS established its Regulatory Reform Task Force on April 13, 2017. Its leadership is comprised of the following:

- The Regulatory Reform Officer is the Deputy Secretary; The Deputy Secretary cannot currently serve as the RRO because he is the Acting Secretary. Therefore, he has designated Charles Keckler from his senior staff to serve as the Acting RRO;
- The Regulatory Policy Officer is the Acting General Counsel; and
- The representative to the Task Force from the "central policy office" is the Executive Secretary.

Among others the remaining members of the Regulatory Reform Task Force are:

- The Secretary's Senior Counselors and Counselors

- The Assistant Secretary for Financial Resources;
- The Assistant Secretary for Planning and Evaluation;
- A senior official from Food and Drug Administration (FDA); and
- A senior official from Centers for Medicare and Medicaid Services (CMS).

The Task Force meets once per week to evaluate deregulatory proposals from Operating and Staff Divisions across HHS using instructions and criteria outlined in Executive Orders 13771 and 13777 and OMB Guidance documents M-17-21 and M-17-23. The deregulatory proposals are presented to the Task Force for consideration only after they have been evaluated by the Regulatory Reform Working Groups.

The Working Groups are designed to offer a forum for the Department's subject matter experts to carefully assess deregulatory proposals using criteria that complement the goals of the executive orders. Each Working Group meets regularly and consists of 15-23 career staff experts from across HHS.

There are six Working Groups:

- **The FDA Working Group** assesses proposed deregulatory actions by FDA twice a month;
- **The CMS Working Group** assesses proposed deregulatory actions by CMS, Office of the National Coordinator, Departmental Appeals Board, Office of the Inspector General, and Office of Medicare Hearings and Appeals twice a month;

- **The Services Working Group** assesses proposed deregulatory actions by Administration for Children and Families, Health Resources and Services Administration, Indian Health Service, Office of Civil Rights, Office of the General Counsel, and Substance Abuse and Mental Health Services Administration once a month;
- **The Science and Public Health Working Group** assesses proposed deregulatory action by Centers for Disease Control and Prevention, National Institutes of Health, and Office of the Assistant Secretary for Health once a month;
- **The Performance Measures Working Group** meets once a month and develops measures to report on HHS regulatory reform performance; and
- **The Analytics Team** meets regularly and develops internal guidance to Operating and Staff Divisions on how to measure regulatory costs, cost-savings, and benefits.

Each Operating and Staff Division has a Regulatory Reform Officer (RRO) who is responsible for submitting deregulatory proposals once a month to relevant Working Groups. The deregulatory proposals are then assessed by the Working Groups, and ultimately the Task Force. The RRO is also charged with communicating important information on regulatory reform to their respective division. Once a month, a call is held with the RROs to answer questions and share best practices.

The regulatory review process at the Department of Health and Human Services encompasses all agency rule making, including the Centers for Medicare & Medicaid Services. CMS is committed to putting patients first, and easing the regulatory burden that is harming the relationship between a patient and his or her doctor or other type of healthcare provider.

Regulations have their place and are important to ensuring quality, integrity, and safety in our health care system. But, if rules are misguided, outdated, or are too complex, they can have a suffocating effect on health care delivery by shifting the focus of providers away from the patient and toward unnecessary paperwork, and ultimately increase the cost of care.

CMS is working hard to evaluate and streamline regulations with a goal to reduce unnecessary burden, increase efficiencies, and improve the beneficiary experience by allowing their providers to spend more time with them. In October 2017, CMS announced a new Patients Over Paperwork initiative, which is an effort to review all of the agency's regulations to reduce regulatory burden on providers. CMS Administrator Verma hosted stakeholders from across the healthcare spectrum at CMS for a Listening Session on Regulation Reform – an opportunity for clinicians, hospitals, specialties, family physicians, nurses, nursing homes, skilled nursing facilities, and long-term care facilities to provide feedback on their work and on how they think CMS can decrease burden, ultimately allowing them to better serve patients. CMS wants to know the impact of current regulations, so it is taking a close look at its rules to determine if they are necessary, and whether they impact patient care or improve outcomes. Through this important initiative, CMS will move the needle and begin to remove regulatory obstacles that get in the way of providers spending time with patients. CMS has already made great strides internally by setting up an enterprise-level process to evaluate and streamline regulations and operations.

CMS Administrator Verma also launched a review of all quality measures to ensure they are the most meaningful. Too often, health care quality measures focus on process, and not on whether that process improved the quality or safety of health care. Clinicians and hospitals have to report

an array of measures to different payers. The measures are often different, and there are many steps involved in submitting them, taking time away from patients. For example, across the CMS hospital quality reporting programs, inpatient hospitals report up to 61 quality measures. According to the American Academy of Family Physicians, some family practitioners have to report nearly 30 measures to 7 different payers, which can lead to less time focused on patients and contributes to clinician burnout. Through CMS's review, we will focus measurement on assessing those core issues that are most vital to providing high-quality care and improving patient outcomes, with a focus on achieving results, as opposed to trying to micromanage and measure processes.

CMS knows that clinicians, patients and other stakeholders are best positioned to tell us about the relief they need from regulatory burden. To gather this feedback, CMS has included Requests for Information (RFIs) as part of its annual Medicare payment rulemaking process to obtain feedback on positive solutions to better achieve transparency, flexibility, program simplification, and innovation. This feedback will inform the discussion of ways to reduce burden in program requirements. Through these RFIs, CMS is starting a national conversation about improving the healthcare delivery system, how Medicare can contribute to making the delivery system less bureaucratic and complex, and how CMS can reduce burden for clinicians, providers, and patients in a way that increases quality of care and decreases costs – thereby making the healthcare system more effective, simple, and accessible while maintaining program integrity. CMS is reviewing the robust feedback received through these RFIs to determine the next steps in reducing burden in the health care system. Our goal is to address the burden areas CMS hears most about with innovative approaches that improve patient care and lessen regulatory burden.

Similarly, the Food and Drug Administration also seeks public engagement in how to strengthen and modernize the FDA's regulatory framework. As part of the FDA's commitment to protecting and promoting the public health, the agency is undertaking a comprehensive review of their regulations.

The FDA has announced a number of broad policy efforts to address public health opportunities in areas such as regenerative medicine, tobacco products, and increased drug competition to improve patient access to affordable medicines. As with everything the FDA does, this work is rooted in the mission to protect and promote the public health, foster safe and effective innovation that can benefit patients, adopt regulatory approaches that enable the efficient development of new innovations, and provide for a safe, healthy and nutritious food supply.

In line with that framework, in May 2017, FDA extended the compliance date for the final rule requiring disclosure of certain nutrition information for standard menu items in certain restaurants and retail food establishments. This extension allows for further consideration of what opportunities there may be to reduce costs and enhance the flexibility of these requirements beyond those reflected in the final rule. FDA is also reviewing how rules concerning new drugs are being used in ways that may create obstacles to the timely entry of generic competition. We want to make sure FDA's policies aren't being misused in ways that thwart the competition that Congress intended when it created the modern generic drug framework. We know that vigorous generic competition can help benefit patients by lowering drug costs, which improves access to

medicines. It's one example of where a closer analysis of FDA's existing policies can help make sure FDA's regulations are having their intended purpose.

This comprehensive review is a large undertaking given the breadth of FDA's public health mission and the fact that FDA-regulated products account for about 20 cents of every dollar consumers spend each year.

Today, FDA's regulations comprise more than 4,000 pages in the Code of Federal Regulations. Some regulations may not adequately reflect advances in science, technology or changes in industry practice. For example, FDA will be seeking to withdraw a regulation that accords new drug status to any drug that has been sterilized by irradiation, thus subjecting the drug to new drug approval requirements. While this regulation made sense decades ago, we now better understand the science of irradiation, and appropriate and effective sterilization is encompassed within other FDA requirements.

Other regulations may be geared toward products and practices that have largely ceased to exist. For example, FDA is working to finalize removing requirements to submit multiple paper copies of medical device regulatory pre-submissions and submissions, and replace them with a requirement to submit one copy in an electronic format. These revisions would facilitate an electronic submission program and increase efficiency. In a world of increasing challenges and opportunities, we need to ensure that FDA is risk-based in everything that it does in order to make sure FDA is using its resources efficiently. Our goal is to have regulations that reflect modern risks and opportunities and use the full scope of FDA's authorities to achieve its consumer protection mission.

In addition to the ongoing internal review and changes that have already been made, in just the past few months, the FDA has released seven requests for information. These requests seek comments and information from interested parties to help the FDA identify existing regulations and related paperwork requirements that could be modified, repealed, or replaced, consistent with the law, to achieve meaningful burden reduction while allowing the FDA to achieve their public health mission and fulfill statutory obligations. These requests for information covered many subjects: general regulatory issues, the Center for Drug Evaluation and Research, the Center for Biologics Evaluation and Research, the Center for Devices and Radiological Health, the Center for Tobacco Products, the Center for Food Safety and Applied Nutrition, and the Center for Veterinary Medicine.

CONCLUSION

Thank you for the opportunity to testify today. I am glad that the Committee is taking the time to review the complex and often overbearing regulatory system that exists in the United States. Stakeholder feedback is a critical part of the work we are undertaking at HHS to reduce regulatory burden.

As we reach out and listen to providers, patients, experts, and consumers, I also wish to note that Congress remains our most valued stakeholder. Please know that our Department is always ready to discuss any regulations that you believe are problematic, or even those that need to be strengthened. In preparing for this hearing, we have had several productive conversations with both the Majority and Minority Committee staff. I want to thank them for the thoughtful effort

they have put into this matter, and we look forward to working with them even more in the future.

I am happy to answer any questions you may have.

Mr. PALMER. Thank you.

The chair now recognizes the gentleman from Michigan, Mr. Mitchell for, 5 minutes.

Mr. MITCHELL. Thank you, Mr. Chair.

I came to the hearing today in admittedly the naive hope that we'd actually talk about regulatory improvement and streamlining and not simply the political environment. You'd think after 10 months I'd learn better.

My colleagues on the other side of the aisle say they don't want to be this political process and then immediately proceed to suggest or directly indicate that any action that you take to repeal regulations has some stealth political aim rather than simply be a belief that regulations need to make sense. In fact, it would be nice if they weren't outdated.

Mr. Eitel, let me start with you. I note you were talking about 150 regulations for review and 1772 guidance documents, with your colleague letters, policy letters.

My understanding, having experience with some of that, is that those letters aren't subject to a most political rulemaking, comment, review. They're issued by the Department, and they have the effect of law unless challenged in court, correct?

Mr. EITEL. It is true that guidance is supposed to be simply that, that it is guidance from the Department to assist our stakeholders in navigating the laws and regulations that they have to abide by. Guidance, as a consequence, as it can be simply issued by the agency, can be simply withdrawn by the agency in accordance with OMB guidance.

Mr. MITCHELL. Right.

Mr. EITEL. Rules, on the other hand, that is the regulations, must go through the rulemaking process. So that rule which we wish to promulgate must go through the rulemaking process, the MPRM, et cetera. To withdraw it, we have to a follow a similar procedure.

Mr. MITCHELL. But one of the challenges with "Dear Colleague" letters and the like is that the Department takes action based on their interpretation of regulations without any public comment or discussion, whether that interpretation, in fact, is a valid interpretation. And that happens a number of times in a variety of agencies, including the Department of Ed.

How was it that we get beyond a huge number of policy guidances and just have some regulations that make some sense? How do we reduce that burden?

Mr. EITEL. I think there needs to be a return to the requirements at the APA. And that is when an agency, a Federal agency, desires to bind the public with a rule, it should go through notice and comment rulemaking, generally, in accordance with OMB guidance and the APA.

Mr. MITCHELL. Let's talk briefly, since my colleague wanted to make a comment, in my opinion, a political comment, about gainful employment and the fact you withdrew the regulation pending, an NPRM, and rewriting that regulation. What was the rationale of the Department for withdrawing that regulation, sir?

Mr. EITEL. I was not personally involved in the decision to commence negotiated rulemaking on gainful employment. I am personally recused from that matter, and I've had no role in it personally.

Mr. MITCHELL. Sorry. I should have known that.

Mr. EITEL. I would also add that, based on what I have read in the media and the Federal Register, that rule will be undergoing negotiated rulemaking, and it would be, I think, inappropriate for me to comment anyway on that issue.

Mr. MITCHELL. Well, allow me to take a moment to comment on it, which was one of the fundamental problems of gainful employment, which my colleagues should know, is that it only assessed, theoretically assessed, was questionable data. The success rates of private career schools. They failed to provide information to consumers or the Department on the success rates of universities, colleges, community colleges.

In fact, it was politically targeted, and the data is flawed. That's the underlying reason why we're dealing with gainful employment again, or some version of that. And it will be an issue we'll deal with in education workforce. So I look forward to engaging in that conversation.

Ms. Adcock, in the few minutes I've got left, for better or for worse, you gained more name ID. I'm sorry for you. I truly am.

In the last—since you joined the Department, how many meetings with various stakeholders have you had roughly, do you think? Estimate. I understand it's an estimate.

Ms. ADCOCK. I would really—a dozen, a half—or a dozen or two. I—a lot more internal meetings. Most of my effort has been focused on regulatory reform and rural prosperity.

Mr. MITCHELL. I understand. And the point I wanted to make was that there's no one sitting in this room in a policymaking position, including on this dais, that does not spend quality time meeting with stakeholders throughout the industry that we deal with. Take the transparency, Mr. Eitel and I have met previously. I can't tell you the number of education groups I met with, agriculture groups I met with, both businesses as well as farm bureau and others. The reality is that's part of the job.

So I am sorry that your integrity was questioned by comments that you had actually had the temerity to groups that you folks would deal with that were in the industry. It shouldn't happen, and I'm sorry for you, and welcome to Washington.

With that, I yield back, sir.

Mr. PALMER. The chair now recognizes the ranking member, Mrs. Demings, for her questions.

Mrs. DEMINGS. Thank you so much, Mr. Chairman. And I feel compelled to comment—make a comment regarding my colleague's comment. Perhaps he's a little overly sensitive today because he finds himself another year older. Today is his birthday. But everything's going to be okay, Paul.

I don't—I have not heard anyone say that any action or any effort to remove any regulation is totally unacceptable. That is not what we are trying to do here. What we are trying to do is make sure that every action that is taken either by Congress or by you and your agencies protects the American public. And I think that is all of our responsibility, whether it is our birthday or not.

The Obama Department of Education issued the borrower defense rule which created a process, as you all know, for defrauded borrowers to apply for loan forgiveness to which they are legally entitled and protect American taxpayers by requiring certain schools to set aside money to cover the cost of loan forgiveness.

Mr. Eitel, was the idea of postponement that we're seeing out of the current administration originally your idea? And if it was or wasn't, which role did you personally—or what role did you personally play in the postponement or the rewrite?

Mr. EITEL. Congresswoman, as you know, the rule is undergoing revision in negotiated rulemaking as we speak. It would be inappropriate for me to talk about the subject matter of the borrower defense regulation while that negotiated rulemaking is occurring.

Mrs. DEMINGS. Was the postponement your idea?

Mr. EITEL. To say that it was my idea would not be accurate. There is an entire infrastructure in place at the Department that deals with borrower defense matters and other regulatory matters.

Mrs. DEMINGS. Are you involved in the rewrite?

Mr. EITEL. No. That matter is undergoing, negotiated rulemaking, as we speak. And I cannot comment on negotiate rulemaking that is occurring presently.

I would also add that the borrower defense rule is being—or the decision by the Department has been challenged in litigation. And for that matter, I also cannot speak on the borrower defense regulatory matter.

Mrs. DEMINGS. So can you answer did you speak with anyone at the White House about the rule? Yes or no.

Mr. EITEL. I cannot speak to that given the posture of litigation and given the fact that we are engaged in negotiated rulemaking on this issue.

Mrs. DEMINGS. And please explain your reason again for not being able to answer yes-or-no questions about who you spoke with about it, whether the Secretary of Education or anyone at the White House. What's your rationale again, please, for that?

Mr. EITEL. The rationale is that the matter is in negotiated rulemaking. It would be inappropriate for me to comment on the rule in any way, shape, or form. And in addition to that, the rule—the decisions of the Department on this matter have been challenged in litigation, and there is ongoing litigation proceeding as we speak in Federal court. I cannot comment further.

Mrs. DEMINGS. Can you tell me, between February 13th and April 5th, when the OMB report came out, were you employed at Bridgepoint Education?

Mr. EITEL. I was on unpaid leave of absence from Bridgepoint Education during that time——

Mrs. DEMINGS. So you were employed at Bridgepoint, if you were on a leave of absence.

Mr. EITEL. That's correct.

Mrs. DEMINGS. You were still employed.

Mr. EITEL. It was an unpaid leave of absence from Bridgepoint Education.

Mrs. DEMINGS. But you were employed by Bridgepoint Education.

Mr. EITEL. I was on an unpaid leave of absence from Bridgepoint Education. And to explain further, I consulted with the Department's ethics officer prior to coming to the Department. I met with her, received advice, and complied with that advice fully and completely.

Mrs. DEMINGS. And what was the advice that you received?

Mr. EITEL. That I could come to the Department, that I could work at the Department on an unpaid leave of absence and recuse myself from matters—particular matters involving specific and prior employers that I worked for in the past.

Mrs. DEMINGS. Okay. And how long were you in that unpaid status? Do you remember?

Mr. EITEL. Well, to be clear, I was in an unpaid status from Bridgepoint Education.

Mrs. DEMINGS. Right. How long were you——

Mr. EITEL. I joined the Department on February 13th——

Mrs. DEMINGS. Okay.

Mr. EITEL. —and formally resigned in early April.

Mrs. DEMINGS. Okay. Thank you so much, Mr. Chairman. I yield back.

Mr. PALMER. The chair now recognizes the gentleman from North Carolina, Mr. Meadows, for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman. Thank you for conducting this hearing. And as we look at regulatory reform, I guess—is it Eitel?

Mr. EITEL. Eitel, sir.

Mr. MEADOWS. Eitel. Okay. All right. That's a little tough for a North Carolina Member to get it correct on the first drop.

So, Mr. Eitel, let me come to you. If we're looking at regulatory reform, and as you have just demonstrated to my colleague opposite, during negotiations it would be inappropriate to talk about the negotiations that go back and forth, will Congress be able to review that, any recommendations that you made coming back to Congress in the formal rulemaking process? Is there a statute that would allow us to do that?

Mr. EITEL. Not to my knowledge. In connection with negotiated rulemaking under the——

Mr. MEADOWS. But when you make your final decision, does that not come back to Congress?

Mr. EITEL. Well, there is a notification requirement.

Mr. MEADOWS. Right. And so we would still have a review period as outlined for our congressional responsibility; is that correct?

Mr. EITEL. I believe so, under the congressional review act sir.

Mr. MEADOWS. All right. So let me go back to guidance, because you talked about guidance a little bit ago, and that's one of those areas that I have, I guess, a keen sense of guidance being offered that is never noticed to Congress and yet has the same effects of a rule. How many would you say guidance is out there? How many different guidance memos would be out there that have the effect of a rule in your particular agency?

Mr. EITEL. Well, we did do a canvass at the beginning of the process, and we discovered that we had 1,772 pieces of guidance in the form of "Dear Colleagues," policy memos, FAQs, and the like. The question is to what extent do they have the force of law.

Mr. MEADOWS. Well, but we know that they, many times, do have the force of law, because we've actually had that litigated when you—in their juris prudence that would suggest many times the guidance has the enforce of a rule.

Mr. EITEL. That is correct, sir. The guidance is——

Mr. MEADOWS. So out of those 1700-plus guidance memos and Dear Colleagues, how many of those were noticed to Congress?

Mr. EITEL. I do not know that for sure, but I would imagine——

Mr. MEADOWS. Can you get that back to us?

Mr. EITEL. Yes, I think so.

Mr. MEADOWS. You would think there would be none, right?

Mr. EITEL. Yes.

Mr. MEADOWS. So if it has the effect of being a rule, and it wasn't noticed to Congress, would you not see a problem with that from a standpoint of being enforced as a rule? Would you not see that as a way to get around the rulemaking notice provision that is in statute?

Mr. EITEL. It could present a problem to the agency.

Mr. MEADOWS. Because you could just pass one rule and do 20 guidance memos, and Congress would never be able to weigh in. Do you not see that as a problem?

Mr. EITEL. I do see that as a problem.

Mr. MEADOWS. Okay. Can you get that to this committee in terms of how many guidance memos were not noticed?

Mr. EITEL. Yes.

Mr. MEADOWS. Okay. Ms. Adcock, can you do the same for USDA?

Ms. ADCOCK. Yes, sir.

Mr. MEADOWS. All right. So would you see it as a problem?

Ms. ADCOCK. Yes, sir. We are in the process of cataloging, understanding better where our breadth of guidance documents are throughout the agency, yes, sir.

Mr. MEADOWS. So what would you estimate your guidance documents, the breadth of that would be?

Ms. ADCOCK. I——

Mr. MEADOWS. More than 1700 that Mr. Eitel has——

Ms. ADCOCK. I would think less. I would think less.

Mr. MEADOWS. You would think less. Okay.

Mr. Keckler.

Mr. KECKLER. Yes, sir.

Mr. MEADOWS. You probably figured I was coming down the road, so I guess you prepared for this answer.

All right. So——

Mr. KECKLER. Sir, we have begun a review of the extensive number of guidance documents within the Department. But I, as I sit here today, am not in a position to give you an estimate or a number, but we can certainly get back to you with——

Mr. MEADOWS. What's a reasonable amount of time to get that to this committee?

Mr. KECKLER. With regard to how many——

Mr. MEADOWS. Yeah. I mean, if you've started your canvass, is it going to go on for 2 years or—I mean, can you get that number to this committee in the next 45 days?

Mr. KECKLER. We can make a determined effort whether——

Mr. MEADOWS. You're starting to sound like a politician. I need a time.

Mr. KECKLER. We'll give you an answer, with an estimate, in 90 days.

Mr. MEADOWS. With an estimate of what?

Mr. KECKLER. Of our policy documents.

Mr. MEADOWS. I tell you what.

Mr. KECKLER. Okay.

Mr. MEADOWS. Let's change this.

Mr. KECKLER. Okay.

Mr. MEADOWS. Within 14 days, get to this committee your plan of action on how you're going to address that request. How about that?

Mr. KECKLER. Yes, sir.

Mr. MEADOWS. All right. Thank you.

I yield back.

Mr. PALMER. The chair now recognizes the gentleman from Illinois, Mr. Krishnamoorthi, for 5 minutes.

Mr. KRISHNAMOORTHI. Thank you, Mr. Chairman.

I'm deeply worried that actions that HHS have taken leading up to and during this 2018 open enrollment season will cause more Americans to go without health coverage. From cutting the funds for outreach to cutting the open enrollment season in half from 90 to 45 days, to shuttering healthcare.gov every Sunday from 12:00 a.m. To 12:00 p.m. During the open enrollment season, one could be forgiven for assuming that HHS wants fewer Americans to have health insurance. I'm pleased that Ranking Member Cummings has taken a keen interest in this and that we have been investigating the, quote/unquote, "maintenance windows" that are going to be happening every Sunday and their affect on American's ability to enroll in health coverage.

Mr. Keckler, are you aware that, on September 29th, Ranking Member Cummings and I sent a letter to HHS requesting documents relating to the decision to schedule website maintenance downtime during open enrollment?

Mr. KECKLER. No, sir, I'm not personally aware of that letter.

Mr. KRISHNAMOORTHI. Were you aware that, on November 3rd, HHS officials briefed us and said they would provide the documents that we requested within 1 week?

Mr. KECKLER. No, sir, I was also not part of that process.

Mr. KRISHNAMOORTHI. Are you aware that, on November 13th, HHS finally replied and sent a letter that failed to provide the documents we had requested?

Mr. KECKLER. No, sir, I was not aware of that.

Mr. KRISHNAMOORTHI. In fact, what they provided us were these four sheets of paper, the sum total of their document production. These four sheets of paper are insufficient. They're the only data they provided in yesterday's letter. I'm not sure if you can see it from here, but this is hardly the full data that we requested regarding the decision to maintain—quote/unquote, maintain the website and take it down for 12 hours every Sunday during open enrollment. In fact, one of these pages is nothing but a screenshot that tells people the website is down without even telling them when to come back to enroll. This is unacceptable.

Mr. Keckler, are you aware of CMS administrator Verma's claim on November 7th that increasing Medicaid enrollment numbers was a, quote/unquote, "hollow victory?"

Mr. KECKLER. I'm not—I did not participate in that statement or I have seen a report in the media to that effect.

Mr. KRISHNAMOORTHI. Do you agree with her that more Americans having access to healthcare via increased Medicaid is a "hollow victory?"

Mr. KECKLER. I'm not certain what that—what her meaning was in that statement.

Mr. KRISHNAMOORTHI. Okay. What is the plain meaning of that to you? What does "hollow victory" mean to you, and would you characterize increased Medicaid enrollment as a hollow victory?

Mr. KECKLER. That's not a term that I would use as I'm not sure precisely what is meant by it.

Mr. KRISHNAMOORTHI. And that's not a term I would use either. I agree with you. And I hope that you admonish Administrator Verma from using terms like that to describe increased Medicaid enrollment numbers.

Mr. Keckler, I have to say that I profoundly disagree with Administrator Verma that more Americans having access to healthcare through Medicaid is a hollow victory. It's not a hallow victory for people who no longer have to decide between paying for their groceries or paying for their healthcare. It's not a hollow victory for people who are finally able to get treatments for chronic debilitating conditions.

I've never met a beneficiary of the expanded Medicaid expansion program who called it a hollow victory to me. In fact, they thought that it was life-changing. And I'd be happy to introduce them to you or to Administrator Verma. Mr. Keckler, I have one final question. Is it now the policy of HHS that fewer Americans should have health coverage through the Affordable Care Act?

Mr. KECKLER. I'm not familiar with any such policy.

Mr. KRISHNAMOORTHI. It's a—so you're saying the answer is no?

Mr. KECKLER. Not to my knowledge.

Mr. KRISHNAMOORTHI. I find it hard to square that sentiment that you just uttered with the very real actions taken by HHS this year, actions that will harm people and that are harming people. If you want to increase health coverage, HHS should not have cut the ACA outreach budget, should not have cut the open enrollment period in half, and should schedule website maintenance in a way that does not interfere with people's ability to purchase health coverage.

I yield back.

Mr. PALMER. The chair now recognizes the gentleman from Wisconsin, Mr. Grothman, for 5 minutes.

Mr. GROTHMAN. Yeah, I've got some general questions for you.

How many recommendations has your task force reported, or your agency had to repeal or amend duplicative, outdated, or unnecessary regulatory actions or other policies? Do you just have a general number, any of you? Any of you. We'll go to Ms. Adcock first.

Ms. ADCOCK. Yes, I'll start.

Yes. We identified, through the regulatory reform task force, over 275 broad actions, and about half of those were regulatory. And we're getting ready to dig back in again and sort through public comments and dig deeper in what we consider round two. So that was our first go at it.

Mr. GROTHMAN. Do you other folks have any——

Mr. EITEL. As for the Department of Education, we have identified, as of today, six regulations for deregulatory action. We have additional items pending on our fall agenda that is under review with OMB for the fall. And in addition to that, we have withdrawn approximately 600 out-of-date guidance documents of various types.

Mr. KECKLER. The Department of Health and Human Services, our regulatory reform task force gets sort of a—only some of the overall regulatory activity that goes on. But thus far, the task force itself has made 34 recommendations after receiving reports from our working groups for deregulatory actions at this time.

Mr. GROTHMAN. Okay. I'll ask you to respond to something that could be criticism to what we're doing here, or a concern I have. Obviously, they're good regulations—I—"good regulations"—but there are mandatory regulations in the sense that Congress passes bills that demand interpretation. And so you publish new regulations that actually are less burdensome on business, less burdensome on other areas in Government. And I don't necessarily think that's a bad thing.

Could you give me just general statements as far as when you withdraw regulations or begin to promulgate new regulations as to what you're aiming at. I guess what I'm getting at, like I said, is sometimes the only way to deal with a bad regulation is to not repeal it because then maybe you offer the underlying statute but to improve it or make it less burdensome.

And I guess I'd just like a comment from each of you as how you're approaching regulations or what you plan on doing. Like Mr. Eitel, I don't know if I got that right, you know, a lot of us feel the Department of Education is really kind of a thorn in the side of local school districts. But your guiding principles as far as what principles you use to get rid of regulation or promulgate new ones.

Mr. EITEL. I think that the—there's a number. I think the first is legal sufficiency. That is our reacting with the intent of Congress based on legislative language and the history and the intent of the law, are we going beyond the law.

Second is to provide clarity and better understanding for stakeholders, whether it be a State educational agency or a local school district or an educational institution, parents, students, and teachers.

I think the third would be to examine what is the cost of the regulation and what is the benefit to the public.

Mr. GROTHMAN. Okay. Any others?

Ms. ADCOCK. We have followed very closely with the principles laid out by the President's relating to due process, many of the considerations the Department of Education has mentioned. We also, at USDA, at the behest of the Secretary, are looking into very strongly the cost, the benefits, the barriers, the opportunities, what is the impacts on jobs and the economy, how does it serve the rural

constituents and customers that we have through our various agencies, everywhere from the Forest Service to our frontline offices at NRCS and FSA and our food and nutrition program.

So we are very going through and trying to be very thoughtful and using—we're relying very heavily on the expertise of the folks that have been at the agency for a long time to weigh what they know about how we can do better and—whether it's operational, regulatory, or otherwise. And as you mentioned, it's not always remove the regulation. Often it is modernize it or revise it or combine it and find deficiencies in those manners.

Mr. GROTHMAN. Okay. I'm almost out of time, so I'm going to jump back to Mr. Eitel.

Have you looked at all at the special ed regulations, which I think can kind of be unintentionally damaging to some children? Is that something you'd review over there or try to read to give more flexibility to the local school districts?

Mr. EITEL. We are looking at that, but we have not made any final decisions on how to proceed.

Mr. GROTHMAN. Thank you for letting me go over.

Mr. PALMER. The chair now recognizes Mrs. Watson Coleman for 5 minutes.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

I am very concerned about the lack of disclosure around these task forces at many of the agencies. The task forces are making major decisions about the fate of the health, safety, and the education of Americans. For example, it is very important that the public know who is on the task forces. The perspectives and the backgrounds of individual members may determine whether a regulation stays or it goes.

Mr. Eitel, the names of the Department of Education's task force members is on your website. Why did the Department decide to put the name names online?

Mr. EITEL. For purposes of public disclosure, so that the public would know who is on our task force.

Mrs. WATSON COLEMAN. Thank you. Good answer.

From today's New York Times, this is an article entitled "An Open Door for Pesticide Lobbyist at the USDA."

Mr. Chairman, I ask unanimous consent to insert this article into this record.

Mr. PALMER. Without objection, so ordered.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

I quote from that article: At a private meeting in September, congressional aids asked Rebeckah Adcock, a top official at the Department of Agriculture, to reveal the identities of the people serving on the deregulation team that she leads at the agency. Ms. Adcock, a former pesticide industry executive, brushed off the request.

Ms. Adcock, you are here before the oversight committee, which is a principal investigative committee of Congress, and I do have a question for you.

Who are the members of the regulatory task force that you lead? What are their respective backgrounds, and what is their status as a political appointee or a civil servant?

Ms. ADCOCK. My understanding is from the committee, and I apologize if your staff thought that I brushed off that request. That

was not my intention. My intention was to share with them that we had not made the list public. We hadn't asked the members whether that would be acceptable, and then I would take that back to see if we could share that list. So if there was a misunderstanding, I apologize for that.

Mrs. WATSON COLEMAN. Thank you. Have you gone back to the task force and discussed with these Federal employees whether or not it is appropriate to release their names and their backgrounds and their status?

Ms. ADCOCK. It is my understanding that that list has been forwarded to the committee through our office of congressional relations.

Mrs. WATSON COLEMAN. When was that?

Ms. ADCOCK. I—it could have been in the last few days. I'm not certain.

Mrs. WATSON COLEMAN. All right. Mr. Chairman.

Ms. ADCOCK. But I'm happy—the bottom line is you will be provided a name. I can give you a brief summary. It's approximately 40 people, almost exclusively composed of career staff throughout USDA.

Mrs. WATSON COLEMAN. I'm very interested in that list. Mr. Chairman, I would expect for our side to receive that, to share that information with us as soon as possible.

Mr. PALMER. It will be.

Mrs. WATSON COLEMAN. Thank you.

Mr. Keckler, are the names of the HHS task force members available on its website?

Mr. KECKLER. No ma'am.

Mrs. WATSON COLEMAN. Why not?

Mr. KECKLER. It's not—this is an internal group, the deliberative group. We normally thus far have handled most of the outreach via the component agencies of HHS, with a stakeholder outreach.

Mrs. WATSON COLEMAN. Well, Mr. Keckler, let me just say to you that this is a particularly unique situation, and the decisions that they would be considering have a tremendous impact of both positive, I hope, and negative on the constituencies that I define as the people of the United States of America.

So, given that this may be an internal sort of operational situation, it is vitally important that you share this information with the public so that we know the kind of people and the background and the things that they would be considering, because we do know that who you are will affect how you react to certain things.

Can you possibly make those available to us?

Mr. KECKLER. Yes, ma'am. We'll be happy to send that list to you. In my written testimony today, the composition of the task force, in terms of the positions of persons, is provided, but we can also send you a list of the current members.

Mrs. WATSON COLEMAN. Yes. And you know what, this request is not only for your three agencies in general, Mr. Chairman. We should ask each of the departments to share this information with us. These are very important considerations that are going to take place, and transparency is very important as well as ensuring that there are no conflicts of interest anywhere in the deliberations of

these issues. And sometimes that whole issue of conflict of interest has arisen very much in this current administration.

With that, I thank you, Mr. Chairman. I yield back.

Mr. PALMER. I thank the gentlelady.

The chair now recognizes the gentlelady from Illinois, Ms. Kelly, for 5 minutes.

Ms. KELLY. Thank you, Mr. Chair.

I'm deeply concerned about the way the Department of Health and Human Services is treating the neediest among us. Medicaid was created to ensure that the Nation's poor had access to quality healthcare.

A provision of the Social Security Act, Section 1115, gives the HHS Secretary the authority to approve State experimental, pilot, or demonstration projects that are, quote, "likely to assist in promoting the objectives of the Medicaid program."

This administration has received a number of 1115 waiver requests, and I am concerned that not all of the proposed projects will actually help ensure that Medicaid recipients get the healthcare they need.

Mr. Keckler, what are the objectives of the Medicaid program?

Mr. KECKLER. That's beyond—it's sort of general sort of programmatic goals. That's not an area that I've been briefed on for today.

Obviously, it's designed to provide healthcare for low-income Americans.

Ms. KELLY. Well, for example, some States have proposed imposing work requirements on Medicaid recipients.

Does imposing a work requirement promote the objective of ensuring all income-eligible for Medicaid receive health insurance?

Mr. KECKLER. I think that my answer to that would be I can take that back for something that can be analyzed by our subject matter experts in that and their views, and we can answer that in a fuller way in a written form.

Ms. KELLY. I look forward to your answer.

Also, some States have proposed adding premiums. This means that individuals on Medicaid who are often already below the poverty level would pay for health insurance that should be their right.

Does adding premiums promote the objective of ensuring all people income-eligible for Medicaid receive health insurance?

Mr. KECKLER. Again, ma'am, I think that a better answer for that would be provided in terms of a policy analysis and answer that we can provide to you in a written form.

Ms. KELLY. Well, I have another one for you. Some States have proposed limiting retroactive eligibility, meaning that States will not provide Medicaid for months prior to the month in which the individual is enrolled.

Does limiting retroactive eligibility promote the objective of ensuring all people income-eligible for Medicaid receive health insurance?

Mr. KECKLER. Again, I think a better answer could be provided to you by those that are—have a deeper familiarity with the policy elements.

Ms. KELLY. Is that true for the case of States that have proposed drug screening for applicants? Are you going to give me the same answer?

Mr. KECKLER. Yes, ma'am.

Ms. KELLY. Okay. Well, thank you.

Just yesterday, President Trump announced Alex Azar to be the new HHS Secretary. It's been reported that Mr. Azar has been critical of the ACA's Medicaid expansion and has proposed block granting the program in the past.

I hope, if confirmed, he will not attempt to undermine Medicaid. We should not make it more difficult for Americans to obtain lifesaving health insurance, which is a right.

Thank you, and I yield back.

Mr. PALMER. I thank the gentlelady.

I would like to enter into the record a letter from the Department of Health and Human Services to our member Mr. Krishnamoorthi, and point out that the downtime that was scheduled on November 5th for maintenance was completed before 5 a.m., so it was down less than 5 hours.

And on Sunday, November 12th, the downtime from scheduled from midnight to noon, but no maintenance was needed and no downtime occurred.

So it will be entered into the record.

Mr. PALMER. The chair now recognizes the gentlelady from the District of Columbia, Ms. Holmes Norton, for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman.

I have concerns, which I hope can be cleared up without referring everything back. I think we're supposed to be talking with people who can give us the information.

And these are the changes that are being made, Ms. Adcock, at USDA about the line limits, the speedups. A study has found that three-quarters of those who work on these—under these fast speeds believe that their jobs are dangerous.

As I look at what these speeds are, I must say I can't blame them as I try to imagine working, for example, under what most—where most poultry plants now operate, up to speeds of 140 birds per minute. But then some plants operate under another system. Apparently, it's called the New Poultry Inspection System, NPIS. And that allows plants to operate not at 140 birds per minute, but 175 birds per minute. And in addition, most Federal inspectors are replaced with company workers under this NPIS system. I don't understand that at all.

This past September, the National Chicken Council filed a petition with USDA's Food Safety and Inspection Service to allow the remaining plants—and this is getting incredible—the remaining plants to operate under this NPIS system and increasing the line speeds without any upper limit.

Am I still living in the United States of America? Are these figures coming out of some Third World country? Ms. Adcock, will the Department act on this petition to allow some plants to operate under this NPIS system, increasing the line speeds without any upper limit? Will the Department act on this petition?

Ms. ADCOCK. I am not personally aware of the petition, and I don't know that I can tell you today what its status is, but I am certainly happy to check in and——

Ms. NORTON. You know, Mr. Chairman, I don't know if the administration is sending us people who deliberately can say to us, we don't know the answer to your question, but this is not how the Oversight and Government Reform Committee has ever operated before, to allow people to say, I'm sorry, I don't know.

Now, this is a perfectly obvious question of systems and petitions that are before the agency now, and you haven't heard of this?

Ms. ADCOCK. This is not an issue which has come before my desk and so I'm not personally aware of it, but I will certainly get back to you with a response.

Ms. NORTON. Well, I guess you will. What else can you say if you are unaware. And I'm amazed that—what is your position again, Ms. Adcock?

Ms. ADCOCK. I am a senior adviser, working on regulatory reform and rural prosperity.

Ms. NORTON. And you never heard of this?

Ms. ADCOCK. I am not familiar with this particular petition, because it's not in the subject matter——

Ms. NORTON. All right. Let me ask you this, since you claim ignorance, but you know about these speeds. Given your expertise, should the Department grant waivers to say you can operate at any speed you like?

Ms. ADCOCK. I'm not familiar with the waiver, so I don't know the details. I am familiar with the regulatory proposal on line speeds. I'm not familiar with the petition.

Ms. NORTON. No, I'm not asking you that. I'm asking you whether or not—since you said you didn't know anything, so I'm not going to ask somebody who tells me I know nothing.

But I'm asking you, in your expertise, should a waiver ever be granted to increase speeds without any upper limit?

Ms. ADCOCK. I simply don't have the expertise to answer that question in either direction. It would be a disservice to those who——

Ms. NORTON. What is your background, Ms. Adcock?

Ms. ADCOCK. I have primarily worked on agriculture and environmental issues.

Ms. NORTON. Yeah. Well, that's what these are.

Mr. Chairman, I have to say I've heard, you know, these answers, these I don't know answers. I hope you will not tolerate this, because I'm telling you you're having hearings where—for the Oversight and Government Reform Committee where you're allowing people to come forward without any information.

And I just want to protest absolutely that the Department would send us people who could get away with saying I don't know anything and maybe I can get back with you. And, Mr. Chairman, who knows whether those matters will ever be made public. I know you would want to make them public, but the hearing is over.

So I'm going to cease asking Ms. Adcock any questions. She's having the same responses that Mr. Keckler had: We'll get back to you. We've been sent to respond to you, but please know that we

know nothing, even though we are the responsible officials in the Department.

And I yield back.

Mr. PALMER. I thank the gentlelady.

I think one of the reasons why the witnesses have been unable to answer some of the questions is that their scope of responsibility is in regard to the task forces. It was not policy. So I think some of the questions that have been asked have been outside their area of expertise and outside the area that they're focused on.

So I think that it is inappropriate to focus on a witness' background instead of their subject matter. I think it's inappropriate to focus on things outside their area of expertise when they've indicated that they don't have expertise in that area or don't have knowledge of it.

I think the purpose of this hearing is to talk about the work of the task forces. And in that regard, I want to recognize myself for 5 minutes for my questions.

Mr. Eitel, you said you received over 16,300 public comments. What would you say was the reform that was most often recommended?

Mr. EITEL. Probably the area of civil rights and Title IX.

Mr. PALMER. Civil rights and Title IX. And then I would assume that the task force made that a priority to address those areas?

Mr. EITEL. It had—yes. It was actually a personal priority of the Secretary, given the delicate issues in play, particularly with the Title IX guidance that we recently rescinded.

Mr. PALMER. In regard to the task forces, for all three of you, I direct this question.

When you're looking at regulations and you're looking at what's obsolete, what's duplicative or contradictory, are you also taking into consideration whether or not a program has been reauthorized?

Mr. Eitel, I'll begin with you.

Mr. EITEL. Yes. Indeed, we are in the process of withdrawing three regulations for programs that have not been reauthorized by Congress.

Mr. PALMER. How about you, Ms. Adcock?

Ms. ADCOCK. Yes.

Mr. PALMER. Mr. Keckler?

Mr. KECKLER. That's certainly a concern of the Department generally. I have not heard it discussed in those terms in the task force.

Mr. PALMER. Okay. Sticking with you, Mr. Keckler, there are numerous concerns raised about FDA regulations regarding access to new drugs. Is the task force looking at FDA regulations that are outdated or unnecessary that impede access to new drugs, particularly experimental drugs?

Mr. KECKLER. Yes, sir. The FDA working group has that as a general concern and thus far has—we have worked particularly on looking at access to some generics in that space. But that's an overall concern over at the FDA.

Mr. PALMER. So you say they've been looking at it. Have they identified any outdated or duplicative or overly burdensome regulations or guidance to date?

Mr. KECKLER. Yes, sir. In my written testimony, we have discussed briefly some of the goals here to improve the access to generics. FDA is reviewing how rules concerning new drugs are being used in ways that may create obstacles in the timely entry of generic competition, and they are making sure that the current policies aren't misused in ways that would thwart the competition that Congress intended when it created the modern generic drug framework. So that's an area where we are already working.

Mr. PALMER. Okay. Just in general, can you give me an idea of how many regulations have been recommended for removal, or I guess you've identified regulations that you could make less complicated, less burdensome, Mr. Eitel?

Mr. EITEL. Well, as I've said, we are engaging in negotiated rulemaking on borrower defense and gainful employment. And the hope is that there will be a better rule that better protects students and also provides due process to institutions. That would be two primary initial examples.

Mr. PALMER. But I hope you got more than two.

Mr. EITEL. We do. Those have a large impact. We are looking at our guidance in the Office of Elementary and Secondary Education.

Please understand that we are—we have a duty to go through the comments that we've received. And we are organizing those, studying those, and developing priorities, based on the comments we receive from the public.

Mr. PALMER. Well, I want to encourage you to continue to do that. I think the task forces have done good work, and I think it's being conducted the way it should be conducted.

Ms. Adcock, do you have an idea of how many regulations that the Department of Agriculture has identified that could be eliminated or made less complicated?

Ms. ADCOCK. Our early—our first round, because we're going at this for over a year. We've divided it up. We've identified probably somewhere in the area of 140 possible options, and then we're working through those methodically. As you know, there's many requirements: The APA, OMB guidelines, those sorts of things.

So when you identify an action that you think is likely for revision or deregulation, you have to go through many steps, including often certain requirements for, depending on where it is in the process, public comments and all those sorts of things. So those things inherently mean that you're not automatically deregulating, you're not automatically revising.

We have had three to four very significant deregulatory actions that have been announced over the course of this summer up to as early as a few days ago, and there will be a significant number more that you will see reflected in the fall regulatory agenda when it is released by OMB.

Mr. PALMER. Mr. Keckler, I know you guys are working on things. I just want to emphasize that in regard to the Department of Agriculture and HHS, I grew up in rural northwest Alabama on a farm, so I really want to do what we can to improve the opportunities for people in rural areas, particularly in giving people access to healthcare. So I really appreciate the work that's being done.

I want to emphasize that the purpose of this hearing is to hear from you about the progress that is being made to improve the abil-

ity of all Federal agencies to serve the American public efficiently and with the least burdensome rules and regulations. That's the purpose of the task forces. That's the purpose of these hearings, to hear a report back from you.

It has been reported that regulations cost the average American family $15,000 per year. That's—you know, for a household earning $70,000 a year, that's over 20 percent of their average income. It's more than they spend on practically everything else in their budget. This cost falls disproportionately on lower income households like the one I grew up in, which makes the work of this task force even more relevant and important.

And I'd like to believe that making our regulations effective, yet less burdensome, would be and should be a worthy bipartisan objective.

I'd like to thank the witnesses for their testimony today.

And I remind the members of the committee the hearing record will remain open for 2 weeks for any member—the chair recognizes the ranking member Mrs. Demings for one more question.

Mrs. DEMINGS. Yes, just one more. Thank you so much.

Just a point of clarification from Ms. Adcock.

Regarding the roster of the task force members, when did you submit that roster to——

Ms. ADCOCK. I did not submit it. I think our Office of Congressional Relations submitted it very recently. But we will make sure we get it to you——

Ms. DEMINGS. Do you know——

Ms. ADCOCK. —the first time we have it.

Mrs. DEMINGS. Before the hearing, though, was it submitted? Because I'm just receiving some conflicting information and I'm just trying to make sure we——

Ms. ADCOCK. I did not send it, so I don't want to misinform you. But if you don't receive it, contact me personally and I will make sure you get it.

Mrs. DEMINGS. So you aren't sure when it was submitted?

Ms. ADCOCK. I'm not sure, no, ma'am.

Mrs. DEMINGS. Okay. Thank you.

Mr. PALMER. Just for clarification, we do have that, and it has been shared with the members of the committee.

With that, the hearing record will remain open for 2 weeks for any member to submit a written opening statement or questions for the record.

If there's no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 11:28 a.m., the subcommittees were adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

The New York Times article titled, "An Open Door for Pesticide Lobbyists at the U.S.D.A." can be found at: https://www.nytimes.com/2017/11/13/business/trump-regulations-usda-lobbyists.html.

Questions for Robert Eitel
Senior Counselor
Office of the Secretary
Department of Education

Questions from Ranking Member Raja Krishnamoorthi
Subcommittee on Healthcare, Benefits, and Administrative Rules
Committee on Oversight and Government Reform

1. *What is the process by which recommendations of the Regulatory Reform Task Force ("RRTF") become law? Please identify the names and positions of senior career officials or political appointees at each stage of that process.*

The RRTF does not perform a law-making function. Rather, the RRTF seeks to leverage the skills, experience, and expertise of career and non-career employees to make recommendations to the Secretary for possible elimination or modification of ED regulations and guidance. If the Secretary decides to implement RRTF recommendations, she adheres to applicable law, including the Administrative Procedure Act where appropriate, to modify or rescind guidance or regulations.

The majority of the members of the RRTF are senior officials in those Principal Offices within ED that are responsible for the development and issuance of regulations and policy guidance. The composition of the RRTF is in accordance with Section 3 of Executive Order 13777, *Enforcing the Regulatory Reform Agenda*, issued on February 25, 2017, which directs each agency to establish a Regulatory Reform Task Force composed of the agency Regulatory Reform Officer, the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866, a representative from the agency's central policy office or equivalent central office (in this case, the Office of Planning, Evaluation, and Policy Development (OPEPD)), and at least three additional senior agency officials as determined by the agency head. To that end, the following persons were designated to serve on the RRTF: Robert S. Eitel, RRO, Senior Counselor to the Secretary; Elizabeth McFadden, RPO, Deputy General Counsel, Office of the General Counsel (OGC); Hilary Malawer, Assistant General Counsel, Division of Regulatory Services, OGC; Jennifer Bell-Ellwanger, Acting Assistant Secretary, Director, Policy and Program Studies Service, OPEPD; Ebony Lee, Deputy Chief of Staff for Policy; Joseph Conaty, Senior Policy Advisor, Delegated to Perform the Duties of the Deputy Secretary; Kim R. Ford, Acting Assistant Secretary, Deputy Assistant Secretary, Office of Career Technical and Adult Education; Holly Ham, then Assistant Secretary for Management; Margo Anderson, Acting Assistant Secretary, Associate Assistant Deputy Secretary, Office of Innovation and Improvement; Jim Manning, Acting Under Secretary, Senior Advisor to the Under Secretary; Lynn Mahaffie, Deputy Assistant Secretary, Office of Postsecondary Education; Jason Botel, Acting Assistant Secretary, Principal Deputy Assistant Secretary, Office of Elementary and Secondary Education; Candice Jackson, Acting Assistant Secretary, Deputy Assistant Secretary for Strategic Operations and Outreach, Office for Civil Rights; Ruth Ryder, Deputy Director, Special Education Programs, Office of Special Education and Rehabilitative Services; and Jose Viana, Assistant Deputy Secretary and Director, Office of English Language Acquisition.

2. *The October 2017 report of the RRTF noted that the Department has received 16,391 comments from the public on regulatory policies and is currently reviewing these comments. When does the Department anticipate concluding its review of these comments? When will the Department make public all of those comments?*

   Principal Offices in the Department are reviewing the comments that concern their regulations and guidance and hope to conclude that review by April 30, 2018. The comments are currently publicly available on regulations.gov.

3. *Under the so-called "two-for-one order" of Executive Order 13771, the Department faces the requirement "that for every one new regulation issued, at least two prior regulations be identified for elimination." Which specific actions does the RRTF and the Department consider to fulfill this requirement? For instance, would withdrawal of guidance, delays of effective dates, or announcements of future rulemaking fulfill the requirement?*

   The Department continues to review its planned deregulatory and regulatory actions for purposes of compliance with Executive Order 13771, including the "two-for-one" requirement, and in accordance with the Office of Management and Budget's guidance on the Executive Order. Our current planned deregulatory actions are listed in the Department's Fall 2017 Unified Agenda of Federal Regulatory and Deregulatory Actions available on reginfo.gov.

4. *When will the RRTF make public details, including agendas and minutes, of meetings with stakeholders regarding the decisions to repeal, replace, or modify guidance and regulations?*

   The RRTF has not conducted task force meetings as a group with stakeholders. As stated in our publicly released progress reports dated May 25, 2017, and October 18, 2017, Principal Offices in the Department with responsibility for regulations and guidance have conducted outreach to stakeholders and other members of the public relevant to those offices' areas of responsibility. With reference to minutes, please reference the following:

   OCFO conducted outreach through a grantee-wide communication that was posted to the G5 webpage for all ED grantees on October 24, 2017.

   A transcript of OSERS Oct 24, 2017 stakeholder meeting is available at:
   https://www2.ed.gov/policy/speced/reg/eo13777/transcript-stakeholder-conference-call-10-24-2017.pdf

   Transcripts of the public hearings on postsecondary education are available at:
   https://www2.ed.gov/policy/highered/reg/reform/2017/index.html

As co-chair of the Department's RRTF, you are responsible for reviewing regulations that are characterized to "impose costs that exceed benefits" and make recommendations to the Secretary regarding any repeal, replacement, or modification of regulations meeting that threshold.

5. *Please provide a copy of any formal or informal analysis of regulations related to determining whether they impose costs that exceed benefits, including any specific formulas or metrics of analysis to quantify the benefits provided by the regulations.*

Each Principal Office with responsibility for regulations and guidance is represented on the RRTF, and through its representative on the RRTF is conducting the review required by EO 13777. These reviews are being conducted in accordance with the factors listed in Section 3(d) of Executive Order 13777 and, as indicated previously, are currently under way.

The October 2017 report of the RRTF noted that "as previously discussed, OPE [Office of Post-Secondary Education] has identified two sets of regulations (Borrower Defense to Repayment/Financial Responsibility and Gainful Employment) for review through negotiated rulemaking. .. "

6. *What role did the RRTF play in OPE's identification of these two regulations for review?*

I am voluntarily recused from matters relating to the Gainful Employment regulations and cannot answer this portion of the question. The RRTF did not play a direct role in the decision to commence negotiated rulemaking to amend the Borrower Defense to Repayment regulations.

The October 2017 report of the RRTF also noted that, "[a]dditionally, the Department proposed two OPE deregulatory actions (delaying the Borrower Defense regulations) in its spring 2017 Unified Agenda of Federal Regulatory & Deregulatory Activity that 0MB published on or about July 7, 2017."

7. *What was the RRTF's involvement with the Department' s decision to consider delaying of provisions of the borrower defense regulations, including any verbal or written votes, opinions, or positions taken by the RRTF on this matter?*

Upon the advice of the Office of the General Counsel, I cannot answer this question given that the Department's decision to delay the Borrower Defense to Repayment regulations is the subject of currently pending litigation.

8. *Please provide a copy of the RRTF's recommendations regarding provisions of the gainful employment regulations, including any verbal or written votes, opinions, or positions taken by the RRTF on this matter.*

I am voluntarily recused from matters relating to the Gainful Employment regulations and cannot answer this question.

In a letter dated October 31, 2017 to United States Senator Patty Murray, the U.S. Department of Education' s Inspector General, Kathleen S. Tighe, noted that the Office of Inspector General (OIG) supports regulations to protect students and taxpayers from waste fraud and abuse, including provisions of the borrower defense and gainful employment rules. The letter noted that "the regulations included changes that the OIG had previously recommended to the Department and Congress based on our audit and investigation work; the broad regulatory framework that had previously existed had made it nearly impossible in some cases for the Department to take administrative action based on issues we had identified." The Inspector General further noted that "we disagreed with certain delays of the gainful employment regulations" and that "we disagreed with the regulatory delay" of borrower defense rules.

9. *Did the RRTF consult with Inspector General Tighe regarding these regulations, including any determinations the RRTF made regarding whether these rules were " unnecessary" or "impose costs that exceed benefits"?*

   I am voluntarily recused from matters relating to the Gainful Employment regulations and cannot answer this portion of the question. Upon the advice of the Office of the General Counsel, I cannot answer the portion of the question as it relates to the Borrower Defense to Repayment regulations given that the Department's decision to delay those regulations is the subject of currently pending litigation.

10. *What is the RRTF's policy on consulting with OIG regarding positions it has taken in the past or may take in the future regarding any repeal, replacement, or modification of Department rules?*

    The RRTF welcomes input from OIG and will seriously consider its recommendations.

11. *The Office of Federal Student Aid (" FSA") is not referred to in the RRTF reports as a "Principal Office." Does the RRTF consider FSA to be a "Principal Office" and if not, why not?*

    FSA is a Principal Office within the Department but, consistent with section 141(b)(1) of the Higher Education Act of 1965 (20 U.S.C. 1018(b)(1)), FSA does not have responsibility for the development and promulgation of policy and regulations relating to the student aid programs. That authority rests with the Secretary and is delegated to the Office of Postsecondary Education.

The October 2017 report of the RRTF noted that "several Principal Offices have asked for the views of the stakeholders especially relevant to their offices in a variety of ways" and the May 2017 report of the RRTF said that "the Office for Civil Rights ["OCR"] also plans to conduct public outreach sessions during the summer of 2017." It is our understanding that OCR has also held non-public meetings, in addition to public outreach sessions, to inform the Department's regulatory reform efforts.

12. *Please provide the topic of each public outreach session and non-public meeting, groups or individuals that the Office for Civil Rights met with during these outreach sessions and meetings, and the specific times during which those meetings occurred.*

Throughout the summer and fall of 2017, the Office for Civil Rights (OCR) held non-public listening sessions and stakeholder meetings with the below-listed organizations. The topic of each meeting pertained to various OCR regulations, guidance documents, and general civil rights topics, including Title IX (sexual violence, LGBT issues, equity in athletics), disability rights, and Title VI (racial discrimination).

AAAED (American Association for Access Equity and Diversity) (9/21/17)
AASCU (American Association of State Colleges and Universities) (6/14/17; 9/27/17)
AAU (Association of American Universities) (5/30/17)
ADF (Alliance Defending Freedom) (6/8/17)
AEI (American Enterprise Institute) (5/18/17; 6/7/17; 6/29/17)
APLU (Association of Public and Land-grant Universities) (6/9/17)
ASCA (American School Counselor Association) (7/28/17)
Atlanta Women for Equality (8/16/17)

AUCD (Association of University Centers on Disabilities) (8/15/17)
Bazelon Center for Mental Health Law (8/15/17)
CCCU (Council of Christian Colleges & Universities) (7/17/17; 9/20/17)
The Clery Center (10/16/17)
COPAA (Council of Parent Attorneys and Advocates) (8/15/17)
COSA (Council of School Attorneys) (4/25/17)
Educators4Excellence (11/8/17)
Empowering Victims (6/13/17)
End Violence Against Women International (11/3/17)
EROC (End Rape on Campus) (6/21/17; 7/24/17; 8/4/17; 9/22/17)
FACE (Families Advocating for Campus Equality) (5/24/17; 6/1/17; 7/13/17; 7/19/17; 9/15/17; 10/3/17)
FIRE (Foundation for Individual Rights in Education) (6/1/17; 6/6/17; 6/8/17)
Girls Inc. (5/30/17)
GLSEN (6/16/17)
Know Your IX (8/11/17)
LCCHR (The Leadership Conference on Civil and Human Rights) (8/15/17)
Log Cabin Republicans (6/16/17)
National Alliance to End Sexual Violence (8/11/17)
NACCOP (National Association of Clery Compliance Officers and Professionals) (9/8/17; 10/20/17)
NACSA (National Association of Campus Safety Administrators) (9/25/17)
NACUA (National Association of College and University Attorneys) (5/15/17; 6/1/17; 6/12/17; 6/21/17; 7/11/17; 7/24/17; 7/27/17; 8/11/17; 8/30/17; 10/2/17)
NASPA (National Association of Student Personnel Administrators) (11/16/17)
NBCSL (National Black Caucus of State Legislators) (6/14/17)
NCAA (11/17/17)
NCLD (National Center for Learning Disabilities) (8/15/17)
NCTE (National Center for Transgender Equality) (6/16/17)
NDRN (National Disability Rights Network) (8/15/17)
NIC (North American Interfraternity Conference) (7/25/17; 11/14/17)
NPC (National Panhellenic Conference) (7/25/17; 11/14/17)
NSBA (National School Boards Association) (4/25/17)
NWCA (National Wrestling Coaches of America) (11/17/17)
National Wrestling Coaches Association (11/17/17)
NWLC (National Women's Law Center) (6/13/17; 6/29/17)
RAINN (Rape, Abuse, and Incest National Network) (7/6/17; 7/25/17; 9/15/17)
SAVE (Stop Abusive and Violent Environments) (7/13/17; 9/29/17; 11/15/17)
Students Advocating for Students (7/10/17)
Students Against H.B. 51 (7/31/17)
SurvJustice (7/7/17; 7/12/17; 7/24/17; 8/4/17; 9/22/17)
Thomas B. Fordham Institute (6/29/17; 11/17/17)
TMCF (Thurgood Marshall College Fund) (6/23/17; 10/23/17)
TrainED (7/31/17; 11/6/17)
USCCB (United States Conference of Catholic Bishops) (8/21/17)
VRLC (Victim Rights Law Center) (9/27/17)
Women Leaders in College Sports (11/17/17)

In addition, OCR officials attended and reviewed transcripts of the public hearings sponsored by the Department on September 26, 2017 (in Salt Lake City, UT) and October 4, 2017 (in Washington, DC), where members of the public gave comments to the Department about the Department's regulations under review.

13. On what specific topics or regulations has the Office for Civil Rights sought or received feedback during their outreach sessions related to the work of the RRTF?

OCR has sought and received feedback concerning its regulations and guidance generally. Specifically, OCR has received feedback on Title IX regulations (found at 34 CFR 106), Title IX policy guidance documents (including the September 22, 2017 Dear Colleague Letter withdrawing statements of policy; the September 22, 2017 Questions and Answers re Sexual Misconduct; the February 22, 2017 Dear Colleague Letter withdrawing the Dear Colleague Letter on Transgender Students; the April 20, 2010 Dear Colleague Letter: Guidance on Accommodating Students' Athletic Interests and Abilities; the January 2001 Dear Colleague Letter: Revised Sexual Harassment Guidance), the Title VI Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline dated January 8, 2014, and the December 28, 2016 disability rights guidance package (Dear Colleague Letter on Rights of Students with Disabilities in Public Charter Schools; Dear Colleague Letter on the Use of Restraint and Seclusion in Schools; Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools).

14. What was the RRTF's role in providing any verbal or written feedback on matters relating to the now-rescinded Dear Colleague Letter on Sexual Violence dated April 4, 2011, and the Questions and Answers on Title IX Sexual Violence dated April 29, 2014?

The RRTF did not play a role in the Department's decision to rescind on September 22, 2017, the April 4, 2011, Dear Colleague Letter and the Questions and Answers on Title IX dated April 29, 2014.

As a member of the RRTF, Candice Jackson, Acting Assistant Secretary (OCR), and Deputy Assistant Secretary for Strategic Operations and Outreach, serves alongside you.

15. Has Ms. Jackson participated in soliciting or receiving stakeholder feedback for the Office for Civil Rights to inform the work of the RRTF?

Yes.

16. In conducting the cost benefit analysis for guidance and regulations overseen by the Office of Special Education and Rehabilitative Services ("OSERS"), how was protecting students' civil rights under the ADA considered? Please describe the methodology used and how these factors weighed into the consideration to rescind guidance and regulations.

The Office of Special Education and Rehabilitative Services (OSERS) is not responsible for enforcing the Americans with Disabilities Act. As such, OSERS has no guidance or regulations that implement the ADA.

17. In conducting the cost benefit analysis for guidance and regulations overseen by OSERS, how was access to a free, appropriate education in the least restrictive environment considered? Please describe the methodology used and how these factors weighed into the consideration to rescind guidance and regulations.

The Office of Special Education and Rehabilitative Services (OSERS) rescinded on October 20, 2017, 72 non-regulatory guidance documents. OSERS did not conduct a cost benefit analysis of any of these guidance documents because the rescinded documents were outdated and had no benefit or effect on the services provided to children or individuals with disabilities.

18. *Separate from the current negotiating rulemaking on Borrower Defense regulations, were you involved between February 13, 2017 and April 5, 2017 in any way in matters relating to the Borrower Defense Regulations finalized in November 2016?*

During the time period when I was on an unpaid leave of absence from my then employer (from February 13 to April 5, 2017), I discussed in the most general way the Department's priorities and regulatory agenda (including the borrower defense regulation). I could do so because review of the borrower defense regulations is not a particular matter involving specific parties or a particular matter of general applicability, and I was so advised by the Designated Agency Ethics Official (DAEO). I take seriously my ethical obligations and have meticulously followed the ethics guidance that I have received from the Department's Office of the General Counsel.

a. *If yes, please describe in detail the nature of your involvement.*

Please refer to my response to Question 18.

19. *Please describe in detail your reasons for voluntarily recusing yourself from matters related to the Gainful Employment rule.*

I raised the question with the DAEO as to whether I should recuse myself from consideration of the Gainful Employment regulation; I decided to recuse myself on that issue regardless of whether the ethics rules required such a recusal.

20. *Why did you not voluntarily recuse yourself from matters relating to Borrower Defense regulations?*

The Borrower Defense to Repayment regulation affects all Title IV eligible institutions and all borrowers. Please also refer to my response to Question 18.

Questions for Robert Eitel
Senior Counselor
Office of the Secretary
Department of Education

Questions from Representative Mark DeSaulnier (CA-11)
Committee on Oversight and Government Reform

I am concerned about individuals who were defrauded by for-profit colleges after taking out tens of thousands of dollars in loans. These students were promised a quality education, but instead they received subpar instruction, and in some cases none at all.

Over 87,000 students have filed claims accusing for-profit colleges of making false claims to attract unsuspecting students. However, the Obama Administration put in place several regulations to help these students. One such rule is the Gainful Employment Rule, which would shut down for-profit programs if their students couldn't afford to pay their student loans after graduating. Unfortunately, the Trump Administration has been systematically working to undermine these protections for defrauded students.

Considering this coordinated effort, below are specific questions we would like answers to:

1. *Have schools that have been sued for selling valueless diplomas benefited from the Trump Administration's suspension of the Gainful Employment Rule data collection requirement?*

   As I am voluntarily recused from matters involving the Gainful Employment regulations, I cannot answer this question.

2. *Please provide your analysis that suggests that this rule will be effective when the Department of Education is prevented from collecting data.*

   As I am voluntarily recused from matters involving the Gainful Employment regulations, I cannot answer this question.

3. *Is the Department of Education planning on officially repealing the Gainful Employment Rule outright?*

   As I am voluntarily recused from matters involving the Gainful Employment regulations, I cannot answer this question.

4. *Has the task force discussed a replacement regulation for the Gainful Employment Rule? If so, can you share what is in the replacement?*

   As I am voluntarily recused from matters involving the Gainful Employment regulations, I cannot answer this question.

I also understand that you were at one point employed by Bridgepoint Education, a for-profit college. That connection brings up a second, equally concerning series of questions:

1. *Is it true that you were still employed by Bridgepoint Education while also employed by the Department of Education?*

I was employed on a temporary basis at the Department while on an unpaid leave of absence from my then employer, Bridgepoint Education. I stepped down from that position when I took a permanent position with the Department. I received ethics advice from the Department's Office of the General Counsel that I have followed and upon which I have relied. I have gone above and beyond my ethics obligations, not only in voluntarily recusing myself from matters relating to the Gainful Employment regulation but also by recusing myself from any Borrower Defense claims filed by any students from any school (not just those filed against my prior employers).

2. *If so, were you concurrently employed by Bridgepoint Education while you were working on issues related to eliminating regulations surrounding for-profit colleges, including but not limited to the Borrower Defense Rule?*

During the time period when I was on an unpaid leave of absence from my then employer (from February 13 to April 5, 2017), I discussed in the most general way the Department's priorities and regulatory agenda (including the borrower defense regulation). I could do so because review of the Borrower Defense regulations is not a particular matter involving specific parties or a particular matter of general applicability, and I was so advised by the Department's DAEO. I take seriously my ethical obligations and have meticulously followed the ethics guidance that I have received from the Department's Office of the General Counsel. I also refer you to my response in Question 1.

3. *If so, please detail which efforts on which you were working.*

I refer you to my response to Questions 1 and 2.

4. *Please provide any documentation in which you reported any conflicts of interest and share the steps you have taken to address those conflicts or recuse yourself from particular decisions.*

As evidenced by my public financial disclosure report and pursuant to the Ethics Pledge, I am disqualified from working on matters involving American Academy for Liberal Education, Bridgepoint Education Inc., Career Education Corporation, and Boy Scouts of America Troop 888. In addition, I am subject to a statutory disqualification from working on matters involving Boy Scouts of America Troop 888. Please also refer to my response to Questions 1 and 2.

To further answer this question, I began working at the Department of Education on a temporary basis on February 13, 2017, while on a disclosed, unpaid leave of absence from my then employer, Bridgepoint. Before I arrived at the Department, I reached out to the Department's DAEO to get her advice on any potential ethics issues, including how to handle taking a temporary position at the Department. I was advised by the DAEO that the ethics laws would not preclude me from working at the Department on a temporary basis while on a leave of absence. Upon arrival at the Department, I received the standard ethics briefing from the DAEO and also met with her separately to again review the general ethics laws. These meetings occurred in February 2017.

I later contacted the DAEO to inform her of a potential conflict with regard to specific borrower defense claims by students attending institutions for which I was employed during the two year period prior to February 13, 2017 (two years before coming to the Department). I was advised that, while I was disqualified from participating in any borrower defense claim if my then current or former employer were a party to the claim, I would not be disqualified under 18 U.S.C. § 208 or under paragraph 6 of the Ethics Pledge from participation in the review of, and any policy changes to, the borrower defense regulation.

In addition, I also raised the question with the DAEO of whether I should recuse myself from consideration of the gainful employment regulation; I then decided to simply recuse myself on that issue regardless of whether the ethics rules required such a recusal. The DAEO advised me on how best to communicate to my colleagues at the Department that I was recusing myself with regard to the specific borrower defense claims pertaining to then current and prior employers and with regard to consideration of the gainful employment regulation. I then informed my colleagues at the Department that I had recused myself both from any particular matters involving my then current and former employers as specific parties and from any considerations of the gainful employment regulation. I have followed through on both of these recusal commitments. I stepped down from the position with my then employer upon accepting a permanent position at the Department on April 5, 2017.

During the time period when I was on an unpaid leave of absence from my then employer from February 13 to April 5, 2017, I discussed in the most general way the Department's priorities and regulatory agenda (including the borrower defense regulation). I could do so because the borrower defense regulation would not require my recusal (whether I was on a leave of absence or not). I was advised that the ethics analysis applicable to being on an unpaid leave of absence and being permanently employed requires the same outcome. I was advised during my unpaid leave of absence that I was not subject to disqualification under paragraph 6 of the Ethics Pledge or the conflict of interest statute in regard to the review of and any possible changes to the borrower defense regulations. With regard to the conflict of interest statute, this conclusion by the DAEO followed from the fact that the borrower defense regulation is not a particular matter because it is directed to the interests of a large and diverse group of persons, including almost all of the institutions and borrowers involved with Title IV funds.

Please also refer to my responses to questions 1 and 2.

Response to Questions from Ranking Member Raja Krishnamoorthi
Subcommittee on Healthcare, Benefits, and Administrative Rules Committee on Oversight and Government Reform

to

Rebeckah Adcock, Senior Advisor to the Secretary, U.S. Department of Agriculture
Regulatory Reform Task Forces Check in: Part II Hearing
November 14, 2017

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1. What is the process by which recommendations of the Regulatory Reform Task Force ("RRTF") become law? Please identify the names and positions of senior career officials or political appointees at each stage of that process.

   Response: The Department's Regulatory Reform Officer (RRO) works with the Regulatory Reform Task Force (RRTF) to evaluate existing regulations and make recommendations to the Secretary regarding their repeal, replacement, or modification. Where flexibilities within existing statutory authorizations allow for regulatory improvements, the development and clearance process for revising these regulations is governed by USDA's Departmental Regulation (DR) 1512-001, *Regulatory Decision Making Requirements* (https://www.ocio.usda.gov/sites/default/files/docs/2012/DR1512-001_0.pdf). For regulations determined to be not significant under Executive Order (EO) 12866, Regulatory Planning and Review, regulations are cleared by the agency head, the Office of the General Counsel (OGC), the Office of Budget and Program Analysis (OBPA), the Under/Assistant Secretary for the mission area, and the Office of the Secretary (OSEC). For regulations determined to significant and economically significant, additional reviewers include the Office of the Chief Economist, the Office of the Chief Information Officer, the Office of Tribal Relations, and the Office of the Assistant Secretary for Civil Rights. All significant and economically significant regulations are submitted to the Office of Management and Budget (OMB) for review prior to publication.

   In cases where the RRTF has identified a potential improvement that is determined by OGC to require a legislative change, the agency would develop a legislative proposal. The clearance process for developing legislative proposals is governed by USDA's Departmental Manual 1260, Legislative Reports and Proposals (https://www.ocio.usda.gov/sites/default/files/docs/2012/DM1260-

001_1.pdf). All legislative proposals are cleared by the agency head, OGC, OBPA, the Office of Congressional Relations, the Office of Executive Secretariat, and the Under/Assistant Secretary for the mission area before they are forwarded to OSEC for approval. Subsequent to OSEC approval, they are submitted to OMB. If approved by OMB, the legislative proposal is officially submitted by the Department to the appropriate authorizing Committees of both houses of Congress for legislative consideration.

As requested, the names of senior career officials and political appointees clearing regulations and legislative proposals is as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE		
OFFICE OF THE SECRETARY		
Secretary of Agriculture	Sonny Perdue	Political
Senior Advisor to the Secretary, Regulatory Reform Officer	Rebeckah Adcock	Political
TRADE & FOREIGN AGRICULTURAL AFFAIRS		
Under Secretary	Ted McKinney	Political
Foreign Agricultural Service	Holly Higgins	Career
FARM PRODUCTION & CONSERVATION		
Acting Deputy Under Secretary	Robert Johansson	Career
Farm Service Agency	Steve Peterson	Career
Risk Management Agency	Heather Manzano	Career
Natural Resources Conservation Service	Leonard Jordan	Career
FOOD, NUTRITION, & CONSUMER SERVICES		
Acting Deputy Under Secretary	Brandon Lipps	Political
Food and Nutrition Service	Brandon Lipps	Political
FOOD SAFETY		
Acting Deputy Under Secretary	Carmen Rottenberg	Career
Food Safety and Inspection Service	Paul Kiecker	Career
MARKETING & REGULATORY PROGRAMS		
Under Secretary	Greg Ibach	Political
Agricultural Marketing Service	Bruce Summers	Career
Animal and Plant Health Inspection Service	Kevin Shea	Career
NATURAL RESOURCES & ENVIRONMENT		
Acting Deputy Under Secretary	Daniel Jiron	Career
Forest Service	Tony Tooke	Career

RESEARCH, EDUCATION & ECONOMICS		
Acting Deputy Under Secretary	Chavonda Jacobs-Young	Career
Agricultural Research Service	Chavonda Jacobs-Young	Career
National Institute of Food and	Sonny Ramaswamy	Political
Economic Research Service	Mary Bohman	Career
National Agricultural Statistics Service	Hubert Hamer Jr.	Career
RURAL DEVELOPMENT		
Assistant to the Secretary	Anne Hazlett	Political
Rural Business-Cooperative Service	Chad Parker	Career
Rural Housing Service	Rich Davis	Career
Rural Utilities Service	Chris McLean	Career
DEPARTMENTAL MANAGEMENT		
Acting Deputy Assistant Secretary	Don Bice	Career
Office of Chief Information Officer	Gary Washington	Career
Office of the Executive Secretariat	Jean Daniels	Career
OFFICE OF THE GENERAL COUNSEL		
Principal Deputy General Counsel	Stephen Vaden	Political
Acting Associate General Counsel	Ralph Linden	Career
Associate General Counsel	Carrie Ricci	Career
Associate General Counsel	Benny Young	Career
Associate General Counsel	Arlean Leland	Career
Acting Associate General Counsel	Ron Mulach	Career
OFFICE OF BUDGET AND PROGRAM ANALYSIS		
Acting Associate Director	Christopher Zehren	Career
OFFICE OF THE CHIEF ECONOMIST		
Chief Economist	Robert Johansson	Career
Office of Risk Assessment and Cost-Benefit Analysis	Linda Abbott	Career
ASSISTANT SECRETARY FOR CIVIL RIGHTS		
Acting Deputy Assistant Secretary	Winona Lake Scott	Career
OFFICE OF TRIBAL RELATIONS		
Director	Ben Keel	Career
OFFICE OF CONGRESSIONAL RELATIONS		
Director	Abbey Fretz	Career
OFFICE OF ADVOCACY AND OUTREACH		
Associate Director	Christian Obineme	Career

2. Under the so-called "two-for-one order" of Executive Order 13771, the Department faces the requirement "that for every one new regulation issued, at least two prior regulations be identified for elimination." Which specific actions does the RRTF and the Department consider to fulfill this requirement? For instance, would withdrawal of guidance, delays of effective dates, or announcements of future rulemaking fulfill the requirement?

   Response: Consistent with OMB's Guidance Implementing Executive Order 13771, titled "Reducing Regulation and Controlling Regulatory Costs" (M-17-21), issued April 5, 2017, executive departments may comply with two-for-one requirement by issuing two EO 13771 deregulatory actions for each EO 13771 regulatory action. The guidance document defines an "EO 13771 regulatory action" as:

   > (i) A significant regulatory action as defined in Section 3(f) of EO 12866 that has been finalized and that imposes total costs greater than zero; or
   > (ii) A significant guidance document (e.g., significant interpretive guidance) reviewed by OIRA under the procedures of EO 12866 that has been finalized and that imposes total costs greater than zero.
   > For example, EO 13771 regulatory actions include negotiated rulemakings that are significant as defined in Section 3(f) of EO 12866, that have been finalized, and that impose total costs greater than zero.

   Consistent with OMB's guidance on the issue, USDA would not consider announcements of future rulemaking to satisfy the Executive Order's two-for-one requirement. Delaying actions implemented by rulemaking or guidance may, in some cases, be considered EO 13771 deregulatory actions. A detailed list of USDA's EO 13771 deregulatory actions completed in Fiscal Year 2017 can be found at https://www.reginfo.gov/public/pdf/eo13771/FINAL_BU_20171207.pdf .

3. When will the RRTF make public details, including agendas and minutes, of meetings with stakeholders regarding the decisions to repeal, replace, or modify guidance and regulations?

   Response: Information on the activities of the RRTF, including a link to public comments submitted to USDA on regulatory reform, a list of RRTF members, and a link to the current regulatory agenda can be found at: https://www.usda.gov/our-agency/about-usda/laws-and-regulations/regulatory-reform-usda. In addition,

USDA held a Regulatory Reform Listening Session with stakeholders on October 2, 2017, and posted live and archived video of the event online at https://www.facebook.com/USDA/videos/10155790223687299/. USDA is also in the process of posting task force meeting agendas online and expects to complete posting by late January 2018.

As chair of the Department's RRTF, you are responsible for reviewing regulations that are characterized to "impose costs that exceed benefits" and make recommendations to the Secretary regarding any repeal, replacement, or modification of regulations meeting that threshold.

4. Please provide a copy of any formal or informal analysis of regulations related to determining whether they impose costs that exceed benefits, including any specific formulas or metrics of analysis to quantify the benefits provided by the regulations.

Response: For those regulations that are determined to be significant or economically significant under EO 12866, USDA follows OMB circular A-4, which provides guidance to Federal agencies on the development of regulatory analyses. Specific cost-benefit analyses are made available on Regulations.gov as part of the public record and are subject to public comment as part of the rulemaking process. Since January 20, 2017, USDA identified two rules where costs were determined to exceed the quantified benefits. In these instances, the Department has taken steps to withdraw these rulemakings. These rulemakings include: (1) an interim final rule that would have added a paragraph to the regulations further explaining the scope of sections 202(a) and (b) of the Packers and Stockyards (P&S) Act such that certain conduct or actions, depending on their nature and the circumstances, could be found to violate the P&S Act without a finding of harm or likely harm to competition; and (2) a final rule that would amend the organic livestock and poultry production requirements in the USDA organic regulations by adding new provisions for livestock handling and transport for slaughter and avian living conditions, and expanding and clarifying existing requirements covering livestock care and production practices and mammalian living conditions. In both of these instances, the agency sought public comment on alternatives for disposing the rules and the related cost-benefit analyses. The former rule has been withdrawn and the proposed rule to withdraw the latter rule is undergoing public comment. Copies of the original rules, the rules to withdraw them, and any additional analysis is attached.

No response received.

Questions for Mr. Charles Keckler
Associate Deputy Secretary
Department of Health and Human Services

Questions from Ranking Member Raja Krishnamoorthi
Subcommittee on Healthcare, Benefits, and Administrative Rules
Committee on Oversight and Government Reform

1. What is the process by which recommendations of the Regulatory Reform Task Force ("RRTF") become law? Please identify the names and positions of senior career officials or political appointees at each stage of that process.

2. Under the so-called "two-for-one order" of Executive Order 13771, the Department faces the requirement "that for every one new regulation issued, at least two prior regulations be identified for elimination." Which specific actions does the RRTF and the Department consider to fulfill this requirement? For instance, would withdrawal of guidance, delays of effective dates, or announcements of future rulemaking fulfill the requirement?

3. When will the RRTF make public details, including agendas and minutes, of meetings with stakeholders regarding the decisions to repeal, replace, or modify guidance and regulations?

As acting chair of the Department's RRTF, you are responsible for reviewing regulations that are characterized to "impose costs that exceed benefits" and make recommendations to the Secretary regarding any repeal, replacement, or modification of regulations meeting that threshold.

4. Please provide a copy of any formal or informal analysis of regulations related to determining whether they impose costs that exceed benefits, including any specific formulas or metrics of analysis to quantify the benefits provided by the regulations.