

**House Report 108-636 - DEPARTMENTS OF LABOR, HEALTH AND
HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES
APPROPRIATION BILL, 2005**

**MINORITY VIEWS OF THE HONORABLE DAVID OBEY,
STENY HOYER, NITA LOWEY, ROSA DELAURO, JESSE
JACKSON, JR., PATRICK KENNEDY, AND LUCILLE
ROYBAL-ALLARD**

While this bill is a modest improvement over the President's budget request, it fails to meet America's needs in education, health care, medical research, and human services. The bill's inadequacies, however, are not the fault of the Committee or Chairman Regula. This bill's shortcomings are the direct and foreseeable result of the Majority's reckless FY 2005 budget resolution which, as with each of the budgets the Majority produced over the past three years, abandons fiscal discipline, mortgages our nation's future, and makes impossible critical investments that benefit all Americans. It is the product of the skewed priorities of the Majority, who value super-sized tax cuts for our wealthiest and most privileged citizens over honoring our commitments and protecting our most vulnerable citizens.

Even when provided with an opportunity to change course, the Majority held rigidly to its failed budget blueprint. Earlier this year, the Majority rejected a Democratic alternative to the FY 2005 budget that was fiscally responsible and allowed a greater investment in education, health care, and many other critical priorities. Then, on June 24, the Majority defeated a Democratic resolution to revise the budget resolution that would have made a greater investment in education, training, and health by modestly scaling back tax cuts for those with annual incomes of \$1 million or more.

Given the Majority Party's misguided budgetary choices, shortfalls in appropriations are inevitable. In fact, the Labor-HHS-Education Subcommittee received a relatively good share of an inadequate total, allowing an increase of about \$3 billion above the current year. That increase was largely allocated to a few areas: providing \$1 billion increases for two high-priority education programs, keeping up with rising costs in the Pell Grant program, partially covering increased research costs at NIH, and funding the administrative expenses of the Social Security Administration.

After doing these things, the subcommittee had more than exhausted the additional funds it was allocated above the FY 2004 level. Consequently, other priorities in the bill had to be cut.

EDUCATION--NOT AT THE TOP OF THE CLASS

Next year, K-12 and higher education enrollments will again reach record levels. Nearly 55 million students will attend the nation's elementary and secondary schools--4 million more students than in 1995. Full-time college enrollment will reach 16.7 million students--14 percent more than a decade ago.

At the same time that schools are serving more students, the stakes are raised higher by the mandates of the No Child Left Behind Act (NCLB). During the 2005 school year, schools must actually test each student in grades 3-8 in reading and math or face federal sanctions. Student achievement must improve. And, every teacher of a core academic subject must become 'highly qualified.'

Against the backdrop of record school enrollments, unprecedented Federal education accountability requirements, and rising demand for college assistance, the Committee bill fails to match these growing demands with sufficient resources. The bill provides a \$2.0 billion (3.6 percent) increase over FY 2004 for the Department of Education's discretionary programs, continuing a downward slide in new discretionary education investments under the Bush Administration.

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No Child Left Behind

While all 50 states and 15,500 school districts are striving to address NCLB's worthy goals, money remains short in many schools. Nonetheless, the Committee bill actually *cuts* NCLB funding \$120 million below the Administration's request, while providing only \$328 million

(1.3 percent) more than FY 2004. In total, the bill provides \$9.5 billion less than the funding promised in NCLB.

Fully funding Title 1--which serves low-income children in schools with the greatest educational challenges--is the centerpiece of federal education reform efforts. Title 1 grants to school districts receive a \$1 billion (8.1 percent) increase in the Committee bill, the same amount as the President's request. Despite this needed increase, Title 1 appropriations in FY 2005 would still fall \$7.2 billion short of the NCLB funding promise--accounting for most of the total \$9.5 billion NCLB shortfall in the Committee bill.

A key concept in NCLB is that students who are falling behind are able to receive tutoring and a broad array of enrichment services in school and

community-based after school centers. Yet the Committee bill freezes funding for 21st Century Community Learning Centers at \$999 million--only half of the \$2.0 billion authorized by NCLB. At the \$2.0 billion level, an additional 1.3 million children could be served in such communities as Davenport, Iowa, Columbus, Ohio, Greenville, South Carolina, and Salt Lake City, Utah, all of which are struggling to keep existing after school centers open to serve children in working families.

The Committee bill freezes funding at last year's levels for several programs that are important to the success of NCLB. For example, English language learning assistance for more than 5 million children who must learn to read and speak English is frozen at \$681 million, the second year in a row--even while these children must meet the same rigorous academic standards as all other children. About 6,500 rural school districts will see their Rural Educational Achievement Program grants level funded at \$168 million, in the aggregate; despite the difficulty they face in recruiting and retaining teachers. In addition, investments in school violence prevention, substance abuse prevention and school safety activities are frozen at \$595 million, nearly 10 percent less than the safe and drug-free schools funding level three years ago.

The Committee bill makes only modest investments in a few areas. For example, it provides a \$63 million net increase for teacher training in math and science instruction (after accounting for an offsetting reduction in NSF support). It provides 1,300 school districts located on or near military bases and other federal facilities a \$21 million (1.7 percent) increase under the Impact Aid program. Further, it rejects the Administration's proposal to cut vocational and career education by \$316 million and, instead, provides an increase to offset inflation.

These modest increases, however, are offset by deep reductions in other education initiatives, including the outright elimination of 22 programs. For example, the Committee bill wipes out the Title VI education block grant, although the Administration proposed to continue its flexible funding of nearly \$300 million to help the nation's school districts pay for locally identified needs, such as up-to-date instructional materials, counseling services, and parental involvement activities. Moreover, arts education, teacher training to improve American history instruction, drop out prevention, K-12 foreign language assistance, and community technology centers to bridge the digital divide in low-income communities--all priority activities reauthorized in NCLB--are terminated. Because of budget constraints, the bill even denies over \$100 million in education initiatives requested by the President.

Special education

President Bush's Commission on Excellence in Special Education concluded, 'children with disabilities remain those most at risk of being left behind.' The

Committee bill makes progress in fulfilling federal commitments in special education by providing a \$1 billion (9.9 percent) increase over FY 2004 for IDEA Part B State Grants, the same amount as the President's request. Under the Committee bill, the federal contribution toward special education costs incurred by the nation's schools will increase from 18.7 percent in FY 2004 to 19.8 percent in FY 2005. Nonetheless, the Committee bill falls \$2.5 billion short of the \$13.6 billion promised last year by the Majority party when it passed H.R. 1350, the IDEA reauthorization bill.

College assistance

In today's increasingly technological society, a college education is essential for a good-paying job. For low- and moderate-income families, however, the task of sending a child to college--which has never been easy--is now a daunting challenge, given an average 26 percent tuition increase in the last two years at 4-year public colleges and universities.

The Committee bill, however, makes little progress in making college more affordable for disadvantaged students. The bill freezes the maximum Pell Grant for low-income college students at \$4,050 for the second year in a row, freezes College Work Study assistance, and cuts Perkins Loans by \$99 million below last year's level.

College students will receive help with dramatically rising tuition bills only through a \$24 million (3.1 percent) increase for Supplemental Educational Opportunity Grants (SEOGs), and a restoration of the \$66

million LEAP grants for state need-based student financial assistance programs, which the Administration sought to eliminate.

INVESTING LESS IN AMERICA'S LABOR FORCE

For the Department of Labor's employment and training assistance programs for unemployed Americans, the Committee bill invests \$236 million *less* than the Administration's request and \$40 million *less* than last year, despite a loss of 1.8 million private sector jobs since President Bush took office.

While the Committee bill provides a \$25 million (1.7 percent) increase over FY 2004 to assist dislocated workers affected by mass layoffs, it denies 80 percent of the Administration's \$250 million request for the Community College technical training initiative and eliminates the \$90 million prisoner re-entry initiative due to budget constraints. The bill shaves the Administration's proposed 2.8 percent increase for salaries and other operating costs for Job Corps, the highly successful initiative that helps hard-core disadvantaged and unemployed youth, to a 1.8 percent increase over FY 2004.

Unemployment remains unacceptably high with 8.0 million Americans out of work; however, the Committee bill actually cuts assistance for individuals seeking jobs through the Employment Service, a building block for the nation's one-stop employment services delivery system. State Employment Service funding is cut to \$696 million, a 10 percent reduction below FY 2004 and the lowest level in more than 10 years. The Committee bill also rescinds \$100 million in prior funding, as requested by the Administration, for the H-1B training grants that help train Americans in high-skill, high-wage jobs and reduce the nation's reliance on foreign workers.

Further, funding to promote international labor standards and combat abusive child labor will be eviscerated with a 68 percent cut in the Committee bill, which adds only \$5 million to the Administration's request. The \$35.5 million provided in the bill includes only \$16 million for child labor projects compared with the \$82 million allocated in FY 2004.

FALLING SHORT OF THE PROMISE OF A SAFE AND HEALTHY NATION

For the health-related programs of the Department of HHS, the Committee's bill falls short of what is needed to maintain the health care safety net, protect the public health, and advance medical research.

The measure does substantially increase funding for Community Health Centers, expand a Global Disease Detection initiative at CDC, and provide modest increases for AIDS drug assistance and chronic disease prevention programs. In some respects it is an improvement over the President's budget--it rejects the Administration's proposal to cut bio-terrorism preparedness assistance to health departments and hospitals, and reduces the President's proposed cuts in rural health and health professions programs.

However, a number of health programs are still cut below the current-year level by the Committee bill. Examples include the Healthy Communities Access Program, several rural health programs, some health professions training programs (especially those related to primary care and public health), and block grants for public health services. A large number of other programs have their funding frozen, often for the second or third year in a row. These freezes, while health care costs and the number of people needing assistance are continuing to increase, mean real erosion in the health care safety net and public health protection.

The Committee bill terminates the Healthy Communities Access Program (HCAP), which makes grants to local consortia of hospitals, health centers, and other providers to build better integrated systems of care for the

uninsured. This means that roughly 70 communities will lose their existing three-year grants and about 35 new grants will not be made.

Rural Health Outreach Grants--which support primary health care, dental health, mental health, and telemedicine projects--are cut by 24 percent. Grants to improve small rural hospitals are cut in half, funding to help rural communities acquire the defibrillators that can save the lives of heart attack victims are cut by more than half, and a small new program to help improve emergency medical services in rural areas is eliminated.

Apart from grants to Health Centers, the bill continues to slow erosion of most other health care programs. The Maternal and Child Health Block Grant is funded slightly *below* its level of three years earlier, with no increase for rising health care costs, population or anything else. These grants help support prenatal care and health and dental services for low-income children, and assist children with disabilities and other special health care needs. The National Health Service Corps--which helps bring doctors and dentists into under-served areas--receives a bit less than in FY 2003. The Ryan White AIDS Care programs (other than

drug assistance) is also slightly under its FY 2003 level (while the number of AIDS patients has been rising by about 7 percent per year), and the Title X family planning program is just 1.8 percent above FY 2003.

Support for training in primary care medicine and dentistry--which is targeted to increasing the number of doctors and dentists in rural and other underserved areas--is cut 22 percent below the current year by the bill. Support for training in public health and preventive medicine is cut 24 percent, despite the difficulties that public health departments are having recruiting and retaining qualified professionals.

The Committee bill does include a small, \$5 million (3.5 percent) increase for nurse education and training programs. While a step in the right direction, it pales in comparison to the national commitment envisioned under the Nurse Reinvestment Act, which was aimed at stemming the looming nursing shortage.

CDC's childhood immunization program receives a small but welcome \$11 million increase in the Committee bill. However, the bill's FY 2005 level is just 3.4 percent above FY 2002 while the cost to immunize a child with all recommended vaccines will have increased 18.5 percent.

Also in CDC, although the bill roughly doubles an important Global Disease Detection initiative, funding for ongoing domestic activities to control and respond to infectious diseases like West Nile Virus, SARS and the flu are increased by just 1.1 percent.

The Committee bill makes a 17.5 percent cut in basic support to state and local health departments through the Preventive Health and Health Services Block Grant. This funding is used for a range of priorities, from health screening to immunization to control of chronic diseases like diabetes and asthma to basic epidemiological investigations and public health laboratory operations.

For the National Institutes of Health, the Committee bill is identical to the Administration's budget request. It provides an increase of 2.6 percent--which is the smallest in 19 years and significantly less than the 3.5 percent needed to cover estimated inflation in biomedical research costs. Although the Administration says that its budget (and hence the Committee bill) would produce a small increase in the number of new and re-competing research project grants--reversing a decrease that is occurring in FY 2004--it achieves that result only by assuming unusually tight limits on the average size of research grants, including cuts to ongoing research projects below previously committed levels. If grant amounts were instead allowed to increase at normal rates, the number of new grants would decrease for the second year in a row. Many Members have been circulating letters to the Committee urging additional funding to accelerate research into diseases like Parkinson's or Alzheimer's or cancer. Many of the Members of Congress who have signed such letters in fact voted for the Republican budget resolution which has made it impossible for the committee to provide funding levels requested in such letters. At the funding level in the Committee bill, such increases simply are not possible.

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HELPING AMERICA'S MOST VULNERABLE CITIZENS

For the human services side of the Department of HHS, the Committee bill includes increases for Low-Income Home Energy Assistance (LIHEAP), Refugee Assistance, Head Start, Abstinence-only Sex Education, and some programs of the Administration on Aging. It also rejects most (but not all) of the cut in the Community Services Block Grant proposed by the President. On the whole, however, the bill's human services appropriations fall short of what is needed.

For LIHEAP, the Committee added \$111 million above FY 2004, as proposed by the President. However, this barely does more than reverse a decrease that occurred last year. Sharply higher energy prices combined with cold winters have increased the need for LIHEAP. These same conditions have also led to growing need for the Energy Department's Weatherization Assistance Program (which was recently transferred to the Labor-HHS bill). However, the bill includes no increase at all for Weatherization, rejecting the \$64 million addition proposed by the President.

The Child Care Block Grant has its funding essentially frozen for the third year in a row under the Committee's bill, meaning a real reduction in help for working families. Appropriations for Head Start are \$45 million less than the amount proposed by the President. Overall funding for the Administration on Aging is up by 2.2 percent. However, this follows two years of even smaller increases, leaving the FY 2005 figure just 4.0 percent above its level three years earlier.

THE DEMOCRATIC ALTERNATIVE

The demands of the war on terrorism, the conflict in Iraq, homeland security needs, and a sluggish economy require a pragmatic and responsible approach to America's budget. Yet, even with all these competing needs and challenges, this bill's shortcomings were not fated.

The budget alternatives that Democrats offered earlier this year--including the package of budget resolution revisions that the House considered on June 24--would have allowed this Committee to make a greater investment in education, health care, medical research, and other pressing needs. Our budget alternatives were also fiscally responsible; they would have provided for these national needs and reduced the deficit by modestly reducing tax cuts for those with annual incomes above \$1 million.

When this bill was considered by subcommittee and by the full Appropriations Committee, amendments were offered mirroring the Labor-HHS-Education portion of the Democratic budget proposal. These amendments would have added \$7.4 billion to the bill, paid for by 30 percent reduction in the 2005 tax cuts for people with incomes over \$1 million. Instead of tax cuts averaging about \$127,000, this top-income group would have their tax cuts reduced to an average of \$89,000. Regrettably, these amendments were defeated on party line votes. Had they been adopted, we could:

- Invest \$1.5 billion more in Title I instruction to help an additional 500,000 low-income and minority children in the poorest communities succeed in school;
- Invest \$200 million more in after school centers so that an additional 267,000 children, who are responsible for taking care

of themselves after school each day, have a safe and nurturing place to go after school;
Invest \$1.2 billion more to subsidize the high costs of educating 6.9 million children with disabilities;
Provide a \$450 increase in the maximum Pell Grant for students with the greatest financial need, and begin to restore its purchasing power for more than 5 million low-income students;
Assist an additional 51,000 teachers improve their instructional skills to become highly qualified under NCLB; and
Ensure that 2,500 low-performing schools receive the assistance they were promised to implement effective, comprehensive reforms to raise their academic performance.

In the area of workforce training, the Democratic amendment would have provided an additional \$200 million to support training and job placement services for more jobless Americans. And, it would have fully restored funding to combat child labor and promote workers' rights around the world, which in turn would have helped workers here at home.

On the health and human services side, the Democratic amendment would have allowed us to provide more help to the 45 million people without health care, maintain momentum in biomedical research, and restore some of the lost purchasing power in key human services programs. For example, the amendment would do the following:

Maintain the Healthy Communities Access Program, rather than terminating it as under the Committee bill, and add some funds to make up for lost ground in programs like the Maternal and Child Health Block Grant, Family Planning, and Community Mental Health Block Grant.

Avoid any cuts in health professions training programs, add \$20 million to the National Health Service Corps to get more doctors and dentists into underserved rural and inner city areas, and add \$35 million to Nurse Reinvestment Act programs to help stem the nursing shortage by providing more scholarships for nursing students and more support for nursing schools.

Eliminate the proposed cuts in rural health programs, and add an additional \$19 million to better support rural health clinics, hospitals and emergency services.

Provide \$50 million to help meet some of the most urgent unmet needs for dental care, through grants for rural dental clinics, scholarships and student loan repayment arrangements for dentists who locate in underserved areas, and grants and low-interest loans to help dentists who agree to participate in Medicaid establish and expand practices in areas with dental shortages.

Add \$500 million to the budget of the National Institutes of Health--enough to provide a full inflation adjustment, renew all ongoing research grants, and

restore the number of new grants to the FY 2003 level. This would help maintain momentum in research to

find better treatments for diseases like cancer, Parkinson's disease, and Alzheimer's.

Provide \$50 million more for child immunization, to help catch up with rising vaccine costs, and also add \$50 million to other infectious disease control efforts at CDC (including those aimed at HIV/AIDS, tuberculosis, and sexually transmitted diseases).

Add \$200 million to the Low-Income Home Energy Assistance Program to help keep up with rising needs. Between the 2002 and 2004 winter heating seasons, average home heating costs rose 50 percent for natural gas users and 54 percent for users of fuel oil. As energy prices rise and the economy remains weak, the number of households seeking assistance is rising, but the program still serves only about 14 percent of the eligible population.

Provide an additional \$70 million for senior citizens' programs of the Administration on Aging, including Meals on Wheels and other nutrition programs.

Budgets are as much about America's values as they are about dollars and cents. By prioritizing massive tax cuts for the wealthiest among us, House Republicans have once again rejected traditional American values of shared sacrifice in difficult times and equal opportunity for all Americans. The Majority's priorities will mean less opportunity through education and job training, decreased access to health care in rural and other underserved areas, and a nation that is less caring toward its most vulnerable children, families, and senior citizens.

The decisions that have led to this unhappy situation have, in fact, already been made by the Republican majority members who have voted for the Republican budget resolution and against our efforts to modify it. This bill is the inevitable unhappy result of those decisions. The only way to achieve a more favorable final outcome is for this bill to move to conference with the Senate and be greatly altered to produce a more responsible result.

David Obey.

Steny Hoyer.

Nita Lowey.

Rosa L. DeLauro.

Jesse L. Jackson, Jr.

Patrick J. Kennedy.

Lucille Roybal-Allard.

**MINORITY VIEWS OF THE HONORABLE DAVID OBEY,
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JACKSON, JR., PATRICK KENNEDY, AND LUCILLE ROYBAL-ALLARD ON THE ADMINISTRATION'S OVERTIME REGULATION

The Administration is poised--in a few short weeks--to implement the most sweeping, anti-worker revision of the Fair Labor Standards Act (FLSA) since its inception in 1938. The overtime pay requirements of the FLSA, which guarantee for most workers `time and a half' pay for hours worked beyond a standard 40-hour work week, are one of the nation's bedrock worker protections. The FLSA's overtime provisions cover approximately 115 million workers--about 85 percent of the nation's workforce.

On August 23rd, 2004, the Department of Labor's final overtime regulations (redefining who is considered a professional, administrative, or executive employee and thereby exempt from overtime pay) are slated to go into effect, giving employers a huge windfall taken right out of employees' paychecks. On the eve of Labor Day, more than 6 million Americans soon will be getting less pay for their labors courtesy of the Bush Administration.

This anti-worker regulation is just the latest attack on America's workers by this Administration. Since President Bush entered office, 1.8 million private sector jobs have been lost. Despite modest job creation in the last few months, some 8.2 million Americans remain unemployed--2.3 million (38 percent) more than when President Bush entered office. Further, more unemployed individuals are out of work for longer periods of time. In June 2004, 1.7 million individuals had been unemployed for over 6 months--nearly triple the number of long-term unemployed at the start of the Administration.

For families who received overtime pay in 2000, overtime earnings accounted for about 25 percent of their income or about \$8,400 a year. Overtime compensation is essential to their ability to pay mortgages, medical bills, and make ends meet. Yet, despite the urgent need to halt the Administration's assault on these workers, the House Appropriations Committee rejected, by a party line vote of 29 to 31, a Democratic amendment that would have prevented the Administration from rolling back the 40-hour workweek.

Last year, both the House and the Senate voted to stop the Administration from taking away workers' rights to overtime when the

Department of Labor issued its initial proposal to strip overtime protections away from 8 million workers. The Senate twice adopted amendments offered by Senator Tom Harkin to prohibit the Administration from taking away overtime pay. Last October, the House voted to adopt the Obey-Miller Motion to Instruct by a vote of 221 to 203.

Both the Harkin Amendment and the Obey-Miller Motion to Instruct would have restricted the Administration's ability to disqualify anyone from

overtime protection, while retaining virtually the only positive change in the initial regulation--a long overdue and non-controversial increase in the protective salary threshold to guarantee overtime rights for low-income workers. Democrats support extending overtime protections to more low-income workers, even though the Administration's proposal fails to provide a true inflationary adjustment to the salary threshold. (Moreover, we now know that that far fewer workers would actually benefit from this change than claimed by the Department of Labor.)

Yet, despite passage of these measures in the Senate and the House--in opposition to all the traditions of the Congress--the Republican leadership stripped the Harkin language from the final fiscal year 2004 omnibus appropriations bill, allowing the Department of Labor to proceed with its anti-worker regulation.

On July 14, the Committee on Appropriations had an opportunity to preserve the hard-earned overtime rights for working Americans by adopting the Democratic amendment. The Democratic amendment was identical, in effect, to the earlier measures approved by both the House and the Senate. It would have prohibited the Department of Labor from implementing the final rule to disqualify workers from overtime coverage. At the same time, it would have allowed the expansion of overtime rights for low-income workers earning up to \$23,660 a year, precisely as proposed by the Department of Labor in its final regulation.

The Democratic amendment would protect more than 6 million workers in a broad range of occupations now at risk of losing their overtime rights according to estimates made by the Economic Policy Institute (EPI). ¹

[Footnote] Indeed, an even larger number of workers are likely to be harmed by the Administration rule because EPI examined only 10 of the hundreds of occupational categories covered by the Bush anti-worker regulation.

[Footnote 1: Ross Eisenbrey, Economic Policy Institute, 'Longer Hours, Less Pay', July 14, 2004.]

The Democratic amendment would protect:

2.3 million workers who lead teams of other employees assigned to major projects--even if these team leaders have no direct supervisory responsibilities for other employees on the team. About 40 percent of employers with 50 or more employees routinely use work teams. Under the Department of Labor's final regulation, however, we can expect even more employers to take advantage of this new exemption with enormous negative consequences for employees;
Nearly 2 million low-level working supervisors in fast food restaurants, lodging and retail stores. Under the Department of

Labor's final regulation, these employees could lose 100 percent of their overtime eligibility even though only a small percentage of their time is spent on managerial work. For example, low-paid Burger King assistant manager who spends nearly all of his or her time cooking hamburgers and serving customers, with no authority to hire or fire subordinates, could lose all of his or her overtime pay. Moreover, it will not be easier for employers to evade the rules by converting hourly employees to exempt salaried employees;

More than 1 million employees without a college or graduate degree. These employees will now be exempt from overtime pay as professional employees because employers will be able to substitute work experience for a degree under the Department of Labor's final regulation.

Moreover, the Department of Labor has not resolved the question of whether training in the military can be considered substitute work experience. Thus, despite Labor Department denials, many veterans employed in engineering, accounting, and technical occupations could lose overtime pay. For example, the Boeing corporation observed, " * * * many of its most skilled technical workers received a significant portion of their knowledge and training outside of the university classroom, typically in a branch of the military service * * *"
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[Footnote] ;

[Footnote 2: Cheryl A. Russell, Boeing's director of federal affairs as quoted in The Washington Post, January 29, 2004.]

30,000 nursery school and Head Start teachers. These already low-paid employees, who currently receive overtime pay because their jobs do not require them to exercise sufficient discretion and judgment to be considered professional employees, will lose the right to extra pay under the Department of Labor's final regulation;

160,000 mortgage loan officers and hundreds of thousands of additional workers in the financial services industry. These employees will lose their overtime rights because of a blanket industry exemption in the Department of Labor final regulation for financial service employees who work at such duties as collecting customer financial information, providing information and advice about financial products, or marketing financial products;

Nearly 90,000 computer employees, funeral directors and licensed embalmers. These employees will become exempt and lose their right to pay under the Department of Labor's final regulation; and

Nearly 400,000 workers earning more than \$100,000 annually. Under the Department of Labor final regulation, these highly compensated employees will lose overtime pay under a new blanket exemption if they perform only a single exempt task 'customarily or regularly', such as suggesting discipline, promotion or assignment of other employees perhaps as infrequently as twice a year. Over time, as incomes grow, the number of employees bumped into this new exclusion from overtime pay will increase.

The Department of Labor failed to hold a single public hearing on one of the most controversial regulations in the history of the Department, despite receiving 75,280 comments on its proposals. Indeed, the Department of Labor even provided information to employers in its initial regulation on how to escape overtime pay requirements as part of a concerted campaign to give employers dozens of new ways--both obvious and subtle--to reclassify workers to cut costs.

Affected employers would have four choices concerning potential payroll costs: (1) Adhering to a 40 hour work week; (2) paying statutory overtime premiums for affected workers' hours worked beyond 40 per week; (3) raising employees' salaries to levels required for exempt status by the proposed rule; or (4) converting salaried employees' basis of pay to an hourly rate (no less than the federal minimum wage) that results in virtually no (or only a minimal) changes to the total compensation paid to those workers. Employers could also change the duties of currently exempt and nonexempt workers to comply with the proposed rule. 3

[Footnote]

[Footnote 3: Federal Register, Vol. 68, No. 61, March 31, 2003, page 15576.]

The Administration claims that its overtime regulation will strengthen and expand overtime protections. The facts say different. Even the Republican-led Senate voted 99 to 0 in favor of the amendment

offered by Senator Judd Gregg to protect overtime rights in 55 job classifications--including blue-collar workers, registered nurses, police officers, and firefighters--because they had no confidence in the Administration's claims.

The Administration claims that its overtime regulation will reduce costly and lengthy litigation. However, three experts who formerly administered the FLSA in the Department of Labor during both Republican and Democratic administration reached exactly the opposite conclusion,

Further, in our view, the Department has written rules that are vague and internally inconsistent, and that will likely result in a profusion of confusion and court litigation--outcomes that the Department explicitly sought to avoid.

4

[Footnote]

[*Footnote 4: John Fraser, Monica Gallagher, and Gail Coleman, 'Observations on the Department of Labor's Final Regulations Defining and Delimiting the [Minimum Wage and Overtime] Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees', July 2004.*]

For example, the former Department of Labor officials observed that,

The team leader provision in new Sec. 541.203(3) is an entirely new regulatory concept that is also fraught with ambiguity. This provision is not based on case law, but is purportedly an attempt to reflect modern workplace practices. . . . Furthermore, the regulations do not address the very real possibility that team leaders may be working on a number of different short- or long-term projects, simultaneously or in succession, some of which would be major and directly related to the performance of management or general business operations and some of which would not. Evaluating the team leader's primary duty in that instance will be very difficult at best. Would the employee, for example, move in and out of exempt status from one week to the next? How this provision will operate in practice can only be imagined, but one can surmise that employers will seek to apply this provision to large numbers of employees to whom the exemption was never intended to apply.

5

[Footnote]

[*Footnote 5: Ibid.*]

Rather than providing more clarity to protect more workers, the Administration's overtime regulation constitutes an open invitation to dispute. The Department of Labor deliberately has replaced longstanding, objective criteria by which employers and employees could clearly understand who qualifies for overtime pay and who does not with ambiguous concepts and criteria. These changes will require subjective judgments by employers that no doubt will be made based on the employers' economic interests to the detriment of workers. Practically the only instances in which the Labor Department 'clarified' the rules are by declaring virtually entire classes of workers--for example, financial services workers, insurance claims adjusters, athletic trainers, funeral directors and embalmers, and employees earning more than \$100,000--ineligible for overtime pay.

At a time when millions of families feel lucky just to have a job, this Committee should have rejected the Administration's proposed pay cut for 6 million American families. By failing to adopt the Democratic amendment, the Committee failed to uphold the values of working and middle class Americans who simply want a fair day's pay for a hard day's work.

David Obey.

Steny Hoyer.

Nita Lowey.

Rosa L. DeLauro.

Jesse L. Jackson, Jr.

Patrick J. Kennedy.

Lucille Roybal-Allard.

