Chairman Mendelson, members of Council, I am Dr. John C. Cavanaugh, President and CEO of the Consortium of Universities of the Washington Metropolitan Area. Thank you for giving me this opportunity to appear before the Committee.

Our membership includes ten (10) universities inside the District, two (2) universities in Maryland, and two (2) universities in Virginia. Included in these totals are three (3) federal universities. Thus, we are both a truly regional and diverse organization that includes institutions falling into every arena of employer discussed in the proposed bill. In addition, in combination with our affiliated hospitals, universities are among the District’s largest private employers. This puts the Consortium in a position to consider the full implications of the proposed bill.

In this testimony, I will focus on several core aspects of the proposed legislation: (1) the principle of paid leave; (2) cost and funding; (3) existing paid leave benefits programs and their articulation with the proposed bill; (4) the fairness of certain provisions of the bill; (5) presumed oversight and enforcement mechanisms; (6) the potential for unintended consequences; and (7) concluding points.

The Principle of Paid Leave

The Consortium believes strongly in the concept of paid leave. Employees of our institutions experience a reasonably broad menu of paid leave programs. Across our
membership, these paid leave programs include, but are not limited to, vacation and personal days, safe and sick leave, faculty sabbaticals, leave pools, and so forth. This array of programs makes our universities quite competitive for recruitment and retention of faculty and staff. Moreover, these various paid leave programs have been developed with the needs of employees at universities in mind: for instance, faculty sabbatical leave is intended as a way for faculty to focus on renewal and updating so that they bring the most current and advanced knowledge to the classroom in their courses. Such programs have been developed over long periods of time in order to respond to specific employee needs. As will be argued in more detail later, such focus is not a part of the proposed bill; rather, it is a one-size-fits-all approach. Nevertheless, the universities in the Consortium believe in paid leave, and practice that belief through the various programs they have implemented.

**Cost and Funding**

The cost of the proposed paid leave program are quite high, as the proposed program would be the highest level benefit program in the country. Unlike other existing programs, the funding mechanisms in the proposed bill are not spread equitably across all affected/eligible parties. For this reason, the Consortium is opposed to the funding mechanism described in the bill. The following provides more detailed reasoning for our opposition.

The proposed legislation promulgates two main funding mechanisms affecting employers and employees. For employees residing and working in the District, the employer is responsible for making the payments into the pool of roughly 1% of salaries. For employees residing in the District but working either at federal agencies (i.e., federal universities in the Consortium’s case), the employee is subject to a tax on income based on a sliding scale. Because the only estimate that can easily be made regarding cost is in the case of employees working in private District organizations, the estimates contained here consist only of the costs incurred by these employers.

The projected costs to the seven (7) universities in the District that would be subject to the payments (i.e., American University, The Catholic University of America, Gallaudet University, The George Washington University, Georgetown University, Howard University, and Trinity Washington University) is at least $15 million per year. Of the remaining three (3) universities in the Consortium in the District, two (2) (National Defense University and National Intelligence University) are federal
universities under the auspices of the Department of defense, and one (1) (University of the District of Columbia) is an entity of the District government.

The proposed program would constitute an unfunded mandate by the District government on the universities. It is important to point out that unlike most other business sectors, Consortium universities in the District cannot simply increase their enrollments to generate the necessary revenues to pay for the program. That is because District universities are subject to enrollment (as well as employment) caps. Consequently, other sources would need to be identified. Based on typical university budgeting processes, these funds would most likely come from one or more of three sources: tuition increases, reduced hiring, and/or reductions in other programs to offset new expenses. As difficult as tuition increases would be given national concerns regarding student debt, it would of necessity be a source that would need to be strongly considered. Also likely are reductions in hiring through position elimination and/or a reduction in existing programs, such as other paid leave programs, with the funds then reallocated to the proposed program payments.

We presume that the authors of the proposed legislation did not intend to create a net reduction in either jobs or benefits for current and future employees. Given the inability of several Consortium universities to increase enrollment, however, that would be a likely outcome. We believe this is a bad approach, and reflects insufficient analysis and understanding of the unique limits imposed on universities in the District.

Later in this testimony I will raise additional concerns regarding funding based on the issue of fairness.

**Articulation of the Proposed Paid Leave Program with Existing Paid Leave Benefits Programs**

One of the most glaring problems with the proposed bill is the omission of any attempt to articulate the proposed paid leave program with existing paid leave programs already offered by employers to employees. As I summarized earlier, Consortium universities already provide several types of paid leave. Because of the terms of the proposed program, it is likely that employers will reduce or eliminate existing programs that may be more responsive to employee needs in order to pay for and comply with this new unfunded mandate.
The proposed bill reflects no recognition that many employers already offer paid leave programs that are flexible and designed to meet the needs of their employees. The failure to seek and incorporate such information means that the proposed legislation fails to recognize employers and employees who have worked closely together to design these existing programs. These efforts and their resulting programs typically reflect responsiveness to specific prevailing conditions within an organization that are key to both meeting employees’ needs and increasing morale.

If such a responsive approach is not taken, neither employees’ nor employers’ goals can be met. On the employer’s side of the equation, leave policies are also designed to promote its goals such as employee recruitment and retention. For this reason, virtually all university leave policies are calibrated to length of service and/or hours of work per week. By contrast, Bill 21·415 proposes a one-size-fits-all program that ignores the specific needs of a particular employer. In the higher education sector, for example, the academic calendar reflects a cycle different from most businesses, a calendar not reflected in Bill 21·415. Many universities have nine-month (academic year) positions, allowing these employees to pursue alternative employment elsewhere during semester breaks. By standardizing leave policies between full-, partial-, and part-time positions as this bill does, it makes full-time employment instantly less attractive. And, although the proposal does not prohibit employers from rewarding service with additional leave, it establishes such a high floor that leave differential based on length of service would probably be eliminated.

Moreover, the bill does not easily permit university employers to craft a position, through a combination of weekly hours and paid leave, to attract individuals with the special skills required for many positions. Other positions require leave proposals that vary between positions (e.g., workload adjustments for teaching)—another feature made difficult by the bill.

Any well-designed program for paid leave must recognize and take into account existing paid leave programs, and be sufficiently flexible to meet the needs of employees in that organization. The proposed legislation does neither.

**Fairness of Certain Provisions of the Bill**

The underlying premise of the proposed bill appears to be an attempt to address a perceived lack of fairness in the provision of and ability to access paid leave so that employees can address personal family and medical challenges. As noted above, the actual nature and extent of this presumed situation in the District is unclear. Still,
for the sake of argument, let us set aside the lack of such data and consider only this central question: Does the proposed bill provide a fair and equitable solution to the problem of paid family leave?

The question of fairness in this case has two major components. First, one must ask whether all members of the target group would have equal access to the benefits created by the proposed legislation. As proposed, the beneficiaries would be employees of non-District government organizations in the District of Columbia, irrespective of where the employee is domiciled, as long as the employee conducts at least 50% of their work inside the District. District government employees have an alternative program available to them. Given that this would result in a situation in which all District employees in all organizations would have access to at least some form of paid family leave program, the answer to this part of the fairness analysis would be “yes.”

However, this equal access does not mean that the programs to which employees have access are, in fact, equitable. Specifically, the program to which District government employees have access may not be equivalent in benefits to the program to which employees of other District organizations have, particularly if the fiscal impact to the government delays implementation of enhanced benefits for District of Columbia government employees. From this perspective, then, employees of District government would be treated unfairly relative to employees of other District organizations. The proposed legislation provides no rationale for this differential adverse impact on employees of District government. Arguably, they have the same needs as employees of other District organizations. Thus, in this sense the proposed family leave program is unfair.

Second, the fairness principle must also be assessed by examining whether all employees and employers are treated identically from the perspective of the financing of the proposed family leave program. As noted earlier, there are two main sources of funding specified in the bill: a fee levied on non-governmental District employers (i.e., those employers other than the District and the federal governments) and a tax on District residents who are employed outside the District. To see clearly the implications of this crucial distinction, consider the following

1 Of note, researchers have found that wage cuts endured by workers whose peers do not have their wages cut are more painful and detrimental to morale than wage cuts that are experienced by everyone on a team. A 1% tax, even for a good cause, is still a wage cut when compared to a similarly employed worker whose benefit is being paid by his or her employer. See NPR, “Morning Edition,” Hidden Brain: There’s More to Wage Cuts than Just Loss of Pay,” Shankar Vedantam and Steve Inskeep, November 20, 2015.
reasonably common scenario. Two members of a household are employed, one at a private university in the District and the other at a university outside the District. Because the first person is employed in the District, that individual pays nothing into the pool that would be established under the bill. However, simply because the second person is employed outside the District, that individual would now be subject to an additional income tax. In fact, the proposed legislation creates a program in which some employees would be eligible for a benefit paid for by their employer, and other employees would be eligible for the exact same benefit through their own personal mandatory contribution. This distinction is critical to understanding how the proposed program would impact its intended beneficiaries. Because of this distinction, the bill and its stipulations are inherently unfair.

In sum, in two critical ways, equity of benefits and equity of funding in terms of personal impact, the bill creates unfairness that would have significant negative consequences for the intended beneficiaries.

**Presumed Oversight and Enforcement Mechanisms**

The proposed legislation is deeply flawed in two other critical areas. First, because the bill would create a complicated and expansive new governmental program that would require a level of oversight at least equivalent to the District’s Workers’ Compensation Program, it is critical to have a detailed proposal for the processes by which such an oversight process would work. Unfortunately, the bill does not provide that information at the level necessary to understand the processes envisioned by its authors. Without these details, it is impossible for the Consortium to determine whether these oversight processes would violate the governance of the private universities in the District. That is, all of the private universities in the District are congressionally chartered entities. As such, there are limits on the extent to which other outside entities can infringe on the decision-making processes inside these universities. For instance, certain decisions about whether to grant paid leave, such as sabbaticals, is the purview of the universities. Additionally, should a need for common oversight be necessary, such as in the recent situation involving state authorization of distance education, then the universities must enter into a memorandum of understanding with the appropriate agency in order to ensure that breaches of independence do not occur. The Consortium is very concerned about this issue with respect to the proposed legislation.

Second, it is also unclear to the Consortium how the District government plans to absorb what is likely to be the extremely high oversight workload. There is evidence
that the Department of Employment Services (DOES) is already overburdened, and we do not see any specific provision for additional staff or operational resources for DOES in the bill. The Consortium is very concerned about the ability of DOES to absorb this increased workload and provide the level of oversight and stewardship of public funds necessary to prevent fraud and abuse, as well as provide the support necessary for all of the employers in the District.

Third, the proposed legislation is crafted in such a way as to presume legal authority outside the District. Given the lack of explanation of how this can (or will) occur legally, the Consortium is at a loss in understanding how the District government can promise a paid family leave program benefit to District residents employed outside the District or in federal agencies, and mandate a human resources program to employers outside the District and to federal agencies. The Consortium is unaware of any law or court decision that gives legal authority to a state or state-equivalent to extend their statutes across state lines with the force of law. If the lack of legal basis is true, then making such promises to District residents is, at best, disingenuous, especially given that those residents would be subject to a mandatory income tax to partially fund the proposed program.

Potential for Unintended Consequences

Throughout this testimony, several unintended consequences of the proposed legislation have been noted. Among those inherent in the bill are the creation of unfairness, reduction or elimination of existing paid leave programs, reduced hiring, and potential oversight overreach. However, there is a significant potential for unintended consequences of other sorts.

The most obvious unintended consequence should the proposed legislation become law would be the migration of employers to locations outside the District due to the differential climate regarding mandatory paid family leave programs. As is well known, neither Maryland nor Virginia currently have one-size-fits-all mandatory paid family leave programs. This could clearly provide an incentive for current District employers to move either their location or the work employees perform, or both, outside the District to take advantage of the situation. Such migration is not necessarily because employers do not want to provide paid family leave. Rather, the ability to design such programs specifically to meet the needs of that organizations employees can be incentive enough. This would be especially tempting to employers who may be forced to reduce or eliminate current benefits programs in order to comply with new District mandates. Given that some Consortium universities have
operations in numerous locations globally, and can deliver courses and programs from anywhere, this consideration is not specious or speculative. To the extent that any employer makes such a shift, the District itself would experience a decrease in employment opportunities and a decrease in revenue.

Related to this point is the decision of companies either starting or considering relocating to the metropolitan Washington area. The computations noted above would also be germane in these situations, which may result in companies deciding to locate in Virginia or Maryland. When viewed from a regional perspective, such decisions would still be positive, as the region as a whole would benefit. However, when viewed through the lens of the District, such decisions would have a negative impact. Clearly, the District does not operate in a vacuum in terms of business climate and opportunities.

**Concluding Points**

In summary, the Consortium draws the following conclusions with respect to the Universal Paid Leave Act of 2015:

- The Consortium strongly supports the concept of paid leave, and has several types of paid leave programs already in effect for the employees of District universities.

- The Consortium opposes an unfunded mandate of at least $15 million per year to implement a one-size-fits-all program that may not address the specific needs of our employees. Moreover, the Consortium objects to its inability to generate the necessary resources to pay for the expanded benefit through increased enrollments, for instance, due to District-imposed enrollment caps. These caps would likely force universities to adopt strategies involving a combination of tuition increases, reduced hiring, and reduced existing benefits programs.

- The Consortium opposes the approach taken in the bill that ignores existing paid leave programs and the bill’s failure to articulate the perceived need for the proposed program with existing programs aimed at meeting specialized needs of employees.

- The Consortium opposes the possible creation of unfairness through differential access to equal paid family leave programs as promulgated in the bill to employees of private organizations and federal agencies versus District government employees, and unfairness of the financial impact on employers and employees depending on the domicile-employer location relation.
The Consortium is extremely concerned over the lack of details regarding oversight processes that could overreach and violate the Congressional charters of District universities. Additionally, the Consortium opposes the tendering of an offer of a benefit to individuals whose employers may be beyond the legal reach of the District in the absence of clear and incontrovertible evidence that such authority exists.

The Consortium raises concerns over several important unintended consequences of the proposed legislation, including the potential for reductions in employment opportunities for District residents.

In conclusion, the Consortium is very clear on two points: (a) its strong support for the principle of paid leave, and (b) its belief that this bill cannot be sufficiently modified through amendments to address our concerns. In the Consortium’s view, the only appropriate way to proceed on this and any other bill that involves numerous varying constituency groups would be to: (a) establish the need for legislation through systematic, objective research that focuses specifically on District residents and data; (b) convene all of the interested/affected parties to digest the results of the research and reach consensus on the need for legislation, and (c) draft a bill jointly that reflects the research outcomes as well as the interests and concerns of all of these groups. Only through such collaboration will we be able to fully understand and address the core issues and meet the laudable goals that we all support.