

THE
**CONSERVATIVE
PLAYBOOK**

FOR A REPUBLICAN
LED CONGRESS



REPUBLICAN STUDY COMMITTEE
CHAIRMAN MIKE JOHNSON



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INTRODUCTION TO THE PLAYBOOK



Dear Republican colleagues:

When I was elected chairman of the Republican Study Committee for the 116th Congress one of my primary commitments was to reaffirm our reputation as “the intellectual arsenal of conservatism” by focusing our collective efforts on the production of substantive policy ideas that can solve the greatest challenges facing our country.

To fulfill that commitment, we reorganized the structure of RSC and established five policy task forces which invested countless hours of concentrated research, collaboration, and thoughtful discussion over more than eighteen months to develop a series of published reports setting forth our proposals. The ultimate goal was to combine all the individual task force reports and prepare by the end of this Congress one comprehensive volume—a playbook of our specific ideas—that House Republicans can use to govern when we reclaim the majority.

Last fall, our Health Care Task Force, chaired by Rep. Roger Marshall, released *The RSC Health Care Plan: A Framework for Personalized, Affordable Care* with strong support from across the conservative movement and outside health care experts. As one expert summarized it in an interview, RSC produced “the best health care plan I have ever read.” In it, we presented a comprehensive strategy that would protect all Americans—even those with pre-existing conditions and chronic health issues—and at the same time enhance affordability and access to quality care for everyone.

In January, our Government Efficiency, Accountability & Reform (GEAR) Task Force, chaired by Rep. Greg Gianforte, debuted *Power, Practices, Personnel: 100+ Commonsense Solutions to a Better Government*. Known by some as the “Drain the Swamp” report, it laid out a comprehensive plan to: 1) reclaim power from unelected bureaucrats; 2) reform government practices to curb inefficiency and waste; and 3) reemphasize and reward innovation among our government personnel.

This summer, our National Security & Foreign Affairs Task Force, chaired by Rep. Joe Wilson, made headlines with *The RSC National Security Strategy: Strengthening America & Countering Global Threats*. That report included nearly 140 recommendations focused primarily on our top national security threats in China, Russia, Iran, and the Salafi-Jihadi terrorist movement, and called for the toughest sanctions on those nations that have ever been proposed by Congress. The report also offered proposals to maintain an international order based on American values and to enhance a results-oriented approach to foreign aid and international diplomacy.

This month, our American Worker Task Force, chaired by Rep. Andy Barr, released *Reclaiming the American Dream: Proposals to Empower Workers of Today and Tomorrow*. In this report, we set forth nearly 120 policy recommendations to help empower all people to prosper and live productive lives through dignified work so they can turn their own American dreams into a reality. To do so, we focused on three key objectives: 1) refine our education system to better equip the American worker; 2) refocus labor policy to unleash the

American worker; and 3) reimagine welfare to empower individuals and families. These reforms are even more important today as our nation and our economy recover and rebuild after the COVID-19 pandemic.

As conservatives, we know that the best way to ensure the immediate and long-term health of our economy is to practice fiscal discipline, and we began the 116th Congress with our 194-page roadmap for responsibility entitled *Preserving American Freedom*. That volume, which was produced by the RSC Budget & Spending Task Force, chaired by Rep. Jim Banks, remains still today the only long-term federal budget proposal proposed by any members of this Congress. For the sake of efficiency, we have not included it as part of this publication.


The playbook in your hand combines the above-described work of our four other RSC policy task forces and includes here more than 400 carefully-considered policy recommendations that will help solve our nation's biggest problems and preserve and expand liberty, opportunity and security for all Americans.

Our aim is to provide for you, our Republican colleagues—whether or not you are currently listed among the 148 members of RSC—with a key resource to support your own legislative goals, initiatives, and messaging. Working together, we can execute a game plan that will advance the ball and the core conservative principles that have made our country the freest, most powerful, and most successful in the history of the world.

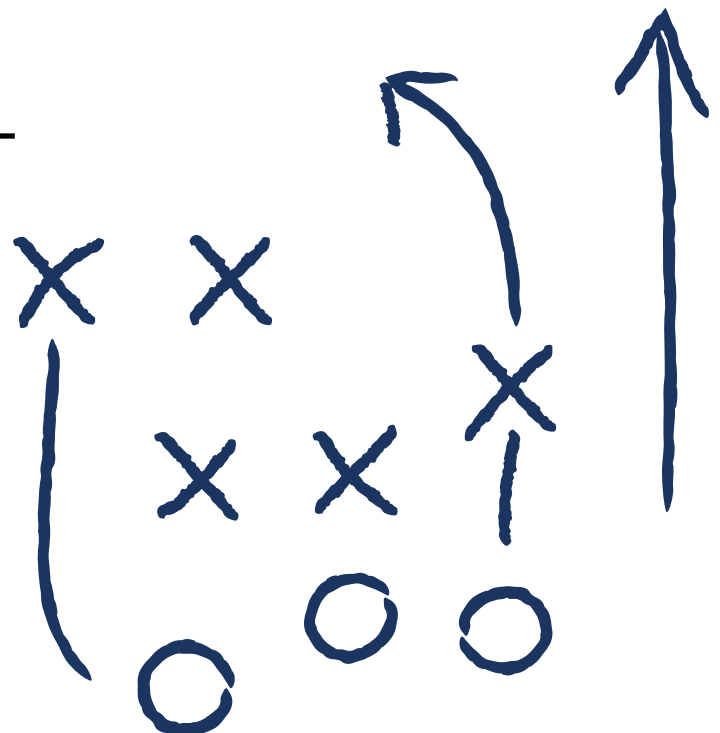
I want to thank each of our task force chairmen for their steady leadership, and the countless members who participated to help make this vision a reality. And of course, none of this would have been possible without the tireless efforts of the dedicated RSC staff who worked behind the scenes for months to produce each of these reports. They deserve our gratitude for their professionalism and full commitment to the cause.


Exciting days are ahead of us, and it is an honor to be a member of this extraordinary team.

For freedom,



Mike Johnson
Chairman, Republican Study Committee





A FRAMEWORK FOR **PERSONALIZED, AFFORDABLE CARE**

The Health Care Task Force Policy Recommendations List

★ A FRESH START ★

Undoing Onerous ACA regulations

1. Undo the Affordable Care Act's (ACA) one-size-fits all regulatory structure that restricts the variety of insurance plans available to Americans
2. Protect insured individuals from rate increases and cancellations based on new medical conditions
3. Eliminate the ACA's job-killing employer mandate

★ HEALTH INSURANCE PORTABILITY ★

Enhanced Portability Protections

4. Maintain pre-existing condition protections for employer sponsored insurance
 5. Implement pre-ACA HIPAA guaranteed issue and coverage exclusion protections in the individual marketplace, with modifications
 6. Extend guaranteed issue protections to the individual marketplace
 7. Implement optional exclusion period of up to 12 months in the individual marketplace, reduced for periods of prior continuous coverage
 8. Maintain HIPAA's 63-day grace period for gaps in continuous coverage
 9. Eliminate the need to exhaust COBRA continuation coverage before entering the individual market with pre-ACA HIPAA protections
 10. Allow states to fulfill modified HIPAA protections in the individual marketplace with qualifying Guaranteed Coverage Pools
 11. Provide states with flexibility to implement more stringent coverage protections
- #### Guaranteed Coverage Pools
12. Repurpose ACA subsidies and Medicaid expansion funds for establishing state-run Guaranteed Coverage Pools (GCP)
 13. Allow states the flexibility to design and operate the GCPs
 14. Require GCPs to provide immediate access to a plan
 15. Require GCPs to cap any condition exclusion period at twelve months
 16. Require GCPs to reduce any exclusions month-for-month for prior periods of continuous coverage
 17. Ensure GCPs are pro-life

Health Savings Accounts

18. Allow health savings accounts (HSAs) to pay for premiums in the individual marketplace
19. Codify Trump administration's rule on Health Reimbursement Arrangements
20. Eliminate the requirement that HSAs be tied to a high-deductible plan

21. Increase HSA maximum contributions to \$9,000 per individual and \$18,000 per family
22. Allow Medicare recipients and beneficiaries of other public insurance programs to maintain a HSA
23. Allow married individuals to contribute to an HSA even if their spouse has a health Flexible Savings Account (FSA)
24. Allow FSA and HRA balances to be converted into a HSA
25. Allow FSAs to be rolled over year-to-year at the employer's discretion
26. Allow HSA holders to access to retail or onsite medical clinics, chronic disease management services, and telemedicine that has been provided at no cost
27. Allow spouses who are HSA-eligible and age 55 or older to deposit catch-up contributions into one HSA
28. Allow HSAs, HRAs, and FSAs to pay for FDA-approved over-the-counter medicines without a prescription
29. Protect HSA funds in bankruptcy proceedings
30. Ensure HSAs are pro-life

★ PROTECTING MEDICAID'S VULNERABLE POPULATIONS ★

Creating a Sustainable Safety Net

31. Institute a moratorium on future Medicaid expansions
32. Phase-out of the Medicaid expansion's enhanced FMAP rate
33. Replace Medicaid's open-ended entitlement with per-capita grants for each of Medicaid's traditional populations
34. Combine the federal Children's Health Insurance Program (CHIP) with the Medicaid grant for children
35. Create an additional "flex-grant", derived from repurposed Medicaid expansion and ACA subsidy funding, to be used for providing coverage to low-income individuals
36. Ensure half of flex-grant funding is used toward supporting the purchase of private plans
37. Ensure flex-grants are pro-life

★ EXPANDING ACCESS TO INNOVATIVE CARE ★

Expanding Direct Primary Care

38. Make Direct Primary Care (DPC) payments eligible health savings account expenditures
39. Allow states to use flex-grants to give beneficiaries access to DPC

Health Care Sharing Ministries and Association Health Plans

40. Ensure Health Care Sharing Ministry (HSM) fees are an eligible HSA expense
41. Ensure HSMs count toward continuous coverage requirements
42. Codify Department of Labor reforms expanding access to Association Health Plans

Health Status Insurance

43. Repeal ACA regulations to allow for a natural health status insurance market to flourish
44. Allow HSA funds to be used to pay for health status insurance

Short-Term, Limited-Duration Plans

45. Codify HHS rule expanding short-term, limited-duration plan coverage for up to one year
46. Allow HSA funds to be used to pay for STLD premiums
47. Allow short-term, limited-duration plans to count towards continuous coverage

Telemedicine

48. Allow Medicare to pay for telehealth services delivered in a senior's home
49. Ensure the provision of telemedicine services does not disqualify someone from using a health savings account

Certificate of Need Laws

50. Urge states to reform or repeal their certificate of need laws

THE G.E.A.R. TASK FORCE PRESENTS
POWER. PRACTICES. PERSONNEL.
**100+ COMMONSENSE SOLUTIONS TO
A BETTER GOVERNMENT**

The Government Efficiency Affordability and Reform Task Force
Policy Recommendations List

★ **REFORM GOVERNMENT POWER STRUCTURES** ★

Restrain Executive Rulemaking Authority

1. Enact the REINS Act
2. Expand Usage of the Congressional Review Act (CRA)
3. Codify CRA Coverage of Regulatory Dark Matter
4. Enact the Article I Restoration Act
5. Cap National Emergencies Act Authority

Contain the Costs of Federal Regulations

6. Enact the Article I Regulatory Budget Act
7. Enact the Regulatory Accountability Act
8. Enact the Unfunded Mandates Information and Transparency Act

Increase Regulatory Transparency

9. Create Regulatory Report Cards for Agencies
10. Require Agency Data Disclosure in Support of New Proposed Rules
11. Require all Regulatory Submissions to be Made through OMB's Office of Information on Regulatory Affairs
12. Enact the ALERT Act
13. Enact the Providing Accountability Through Transparency Act
14. Require Independent Agencies to Comply with Existing Rulemaking Requirements
15. Enact the Guidance Out of Darkness (GOOD) Act
16. Reform the National Emergencies Act

Regulatory Reform through Litigation and the Judiciary

17. Subject Regulatory Impact Analysis to Judicial Review
18. Enact the Separation of Powers Restoration Act
19. Enact the REVIEW Act
20. Prevent Sue and Settle
21. Enact the Sunshine for Regulatory Decrees and Settlements Act

★ **REFORM GOVERNMENT PRACTICES** ★

Governmentwide Practices

22. Create a Best Practices Study on Metrics
23. Require Agencies to Harmonize Data Collection Terminology
24. Utilize Excess Federal Office Space

25. Extend NASA Enhanced Leasing Authority
26. Enact the Transparency in Federal Buildings Projects Act
27. Leverage Common Contracts
28. Enact the Stopping Improper Payments to Deceased People Act
29. Enact the Federal Permitting Reform and Jobs Act
30. Enact the Endangered Species Transparency and Reasonableness Act
31. Enact the Critical Habitat Improvement Act

Overhaul Federal Technology Practices

32. Push Agencies to Fully Implement FITARA
33. Require Reporting on Data Center Consolidation to OMB
34. Incentivize Data Center Consolidation
35. Increase Use of Software Asset Management
36. Require Agencies to Eliminate Redundant Software Purchases
37. Codify Administration Push to Convert Paper Records to Electronic

Efficient Practices for National Security

38. Reduce Security Clearance Delays by Codifying GAO Recommendations
39. Require Interagency Development of Cybersecurity Plan to Implement GAO Recommendations
40. Require Agencies to Report on Cybersecurity and Data Privacy to Congress
41. Safeguard State Secrets through Security Clearance Reform

Enact Fundamental Reform to Federal Judicial Practices

42. Enact the Judicial Administration and Improvement Act
43. Enact Rep. Lesko's Legislation to Hire More Immigration Judges
44. Enact the Judgment Fund Transparency Act
45. Enact the Nationwide Injunction Abuse Prevention Act

Consolidate and Restructure of Government

46. Merge the Department of Education into the Department of Labor
47. Move Non-Commodity Nutrition Programs into Department of Health and Human Services
48. Merge National Marine Fisheries Service and Fish & Wildlife Service
49. Move the Policy Function of Office of Personnel Management to the Executive Office of the President
50. Consolidate Department of Energy Applied Energy Programs to a consolidated Office of Energy Innovation

Provide Accountability for Programs

51. Enact the Taxpayers Right to Know Act
52. National Capital Arts and Cultural Affairs Grant Program
53. D.C. Streetcar Funding
54. National Endowment for the Humanities (NEH) and for the Arts (NEA)
55. Save America's Treasures Grants Program
56. Stennis Center for Public Service
57. National Science Foundation Research of Social Sciences
58. Aquatic Plant Control Research Program
59. Brown Tree Snake Eradication Program
60. The Maritime Guaranteed Loan Program
61. The Conservation Technical Assistance Program
62. National Estuarine Research Reserve System
63. Sea Grant Program

64. Pacific Coast Salmon Recovery Fund
65. Advanced Technology Vehicle Manufacturing Loan Program
66. ENERGY STAR Program
67. Domestic Energy Subsidies
68. Neighborhood Reinvestment Corporation
69. Susan Harwood Training Grants
70. Trade Adjustment Assistance
71. DOL Office of Federal Contract Compliance
72. National Technical Information Service
73. Student Support and Academic Enrichment Grants
74. Supporting Effective Instruction State Grants
75. Federal Supplemental Educational Opportunity Grants
76. 21st Century Community Learning Centers
77. Public Housing Capital Fund
78. Public Housing Operating Fund
79. Home Investment Partnership Program
80. McGovern-Dole International Food for Education Program
81. Cultural Exchange Programs
82. Clean Technology Fund
83. Strategic Climate Fund
84. Green Climate Fund
85. Global Environment Facility
86. United States Emergency Refugee and Migration Assistance Fund
87. Department of Labor International Labor Affairs Bureau
88. Contributions to the International Development Association
89. Contributions to the International Bank for Reconstruction and Development
90. Complex Crises Funds
91. U.S. Trade and Development Agency
92. Inter-American Foundation
93. Asia Foundation and Development Bank
94. African Development Foundation and Bank

★ REFORM GOVERNMENT PERSONNEL POLICIES ★

Reform Hiring and Removal

95. Require Agencies to Include Hiring Managers and Subject Matter Experts in Federal Hiring
96. Investigate Automated Tools to Assist in Civil Service Hiring
97. Build an Applicant Vetting Pipeline to “Hire to Attrition”
98. Enact the MERIT Act
99. Remove Federal Employees Who Commit Crimes
100. Modernize the Evidentiary Threshold Necessary for Removal
101. Enact the Anti-Deficiency Reform and Enforcement Act
102. Ban Taxpayer-Funded Union Work
103. Enact the Official Time Reform Act
104. Enact the Official Time Reporting Act
105. Limit Basis for Adverse Employment Action Appeals
106. Limit Venue for Outside Appeals

Pay and Benefits

107. Reduce the Federal Government's Reliance on Automatic Pay Increases
108. Require a Higher Standard of Performance to Receive a Bonus
109. Reform the GS Pay Scale to Attract Higher Performing Employees
110. Allow for Competitive Bonuses
111. Reform Federal Retirement Plans for Future Hires
112. Optimize Paid Leave Benefits by Creating Parity with the Private Sector
113. Provide a Fixed Federal Employee Health Benefit Contribution



The National Security Task Force
Policy Recommendations List

★ **COMMUNIST CHINA: A NEW STRATEGY FOR COUNTERING AMERICA'S TOP THREAT** ★

Countering China's Industrial Espionage and Intellectual Property Theft

1. Enhance the ability to bring cases for IP theft by ensuring the Defend Trade Secrets Act applies extraterritorially
2. Require Chinese businesses to assign an agent for service of process in the U.S.
3. Address sovereign immunity abuses to better enable private sector litigants to seek legal redress against Chinese companies for IP theft.
4. Amend the Foreign Sovereign Immunities Act to allow suits against foreign states' corporate affiliates under the law's commercial activity exception
5. Require Chinese firms to waive any potential claim of sovereign immunity doing business in the U.S.
6. Reform the evidentiary requirements of Section 337 of the Tariff Act to facilitate cases for cyber theft of trade secrets
7. Congress should sanction companies that steal American IP and require a report identifying such companies
8. Require the Department of the Treasury to produce an annual report identifying companies that have stolen or benefited from stolen IP from U.S. companies
9. Codify the Department of Commerce's Denied Persons List as option to punish for foreign companies with a pattern of breaking U.S. laws

Counter China's IP Theft at American Research Institutions and Academia

10. Enact a visa disclosure requirement for foreign students receiving funding directly or indirectly from the Chinese government
11. Require a report on the efficacy of the Department of State's visa screening mechanism to mitigate Chinese IP theft and creation of a list of research institutions associated with China's People's Liberation Army and Ministry of State Security
12. Require student visa holders to report to the Department of Homeland Security if they change majors and require periodic re-vetting upon reentering the U.S.

13. End visas for Chinese government officials, active duty members of the Chinese military, and senior officials in the CCP, and their immediate family members until China ends IP theft from American universities and research institutions
14. Enact the Protect our Universities Act
15. Congress should require Department of Defense research grant applicants to certify that no recipients have ever participated in a Chinese talent recruitment program
16. Require a report detailing the extent China has benefited from U.S. taxpayer funded research and from Chinese funding of U.S. research institutions
17. Enact the Safe Career Transitions for Intelligence and National Security Professionals Act

Exposing CCP-linked Corporate Subterfuge

18. Establish an Office of Critical Technologies and Security to help prevent the transfer of critical emerging, foundational, and dual-use technologies to countries of concern
19. Require Chinese companies to disclose internal CCP committees and financial support provided by the Chinese government
20. Enact the Holding Foreign Companies Accountable Act
21. Enact the Promoting Secure 5G Act

Stopping China's Malign Political Influence and Disinformation Campaigns

22. Create new authority to sanction state-backed disinformation networks and mandate placing such sanctions on the CCP's United Front Work Department
23. Enact legislation to protect our universities from CCP propaganda
24. Require think tanks and non-profits to disclose contributions from certain foreign entities over \$50,000 annually
25. Enhance FARA to strengthen penalties for state-backed violators, require disclaimers on direct foreign government propaganda, improve its public database, and repeal exceptions for certain foreign private sector entities

Human Rights and International Institutions

26. Enact the Countering the Chinese Government and Communist Party's Political Influence Operations Act
27. Mandate sanctions on Chen Quanguo, other senior CCP members, and other Chinese officials responsible for human rights abuses in Xinjiang, Tibet, and Hong Kong
28. Enact a statement of policy that responding to the human rights abuses in Xinjiang is a central aspect of U.S.-China relations
29. Create a rebuttable presumption that goods originating in Xinjiang are products of forced labor for purposes of prohibiting their import under Section 307 of the Tariff Act
30. Require GAO to produce a report on the effectiveness of current pro-democracy and human rights funding going to China through the Department of State and the National Endowment for Democracy
31. Statutorily support the President's effort to withdraw from the WHO and redirect support to other global health initiatives.
32. Require the Congressional-Executive Commission on China (CECC) to report on China's coercive influence over international bodies and its efforts to redefine human rights based on Communist Party philosophy
33. Cut funding to international bodies compromised by the CCP.
34. Require the Department of State to issue a strategy to counter Chinese efforts to control key international standard setting bodies and other multilateral organizations
35. Direct the Secretary of State to develop a strategy to regain observer status for Taiwan in the WHO

Countering China's Global Military Modernization

36. Require the Department of Defense to publish a list of Communist Chinese military companies operating in the U.S.
37. Direct the Department of Defense to examine the feasibility of public-private partnerships for the secure development of hypersonics technology

Strengthening our Alliances and Partnerships in the Indo-Pacific and Beyond

38. Enact the South China Sea and East China Sea Sanctions Act
39. Encourage the Trump administration to pursue expanded trade with India and elicit human rights improvements
40. Enact the United States-India Enhanced Cooperation Act
41. Encourage the Trump administration to begin negotiations for a free trade agreement with Taiwan
42. Encourage the Trump administration to prioritize free trade agreements with the Philippines and Indonesia and conditionally with Vietnam
43. Enact the Mongolia Third Neighbor Trade Act
44. Encourage the Trump administration to complete a free trade agreement with Kenya to counter China's growing influence in Africa
45. Encourage the Trump administration to begin negotiations for a free trade agreement with Brazil

★ RUSSIA: ROLLING BACK AGGRESSION THROUGH A STRATEGY OF DETERRENCE ★

Enhancing Sanctions on Russia

46. Designate Russia as a State Sponsor of Terrorism
47. Impose new secondary sanctions against companies supporting special Russian petroleum and natural gas projects, including the Nord Stream 2 project
48. Expand sanctions on the purchase of new Russian sovereign debt
49. Enact the Defending American Security from Kremlin Aggression (DASKAA) Act
50. Require the Department of the Treasury to place Vnesheconombank (VEB) on the Specially Designated Nationals and Blocked Persons (SDN) list
51. Sanction Russian propaganda chiefs and those undermining U.S. partners from the former Soviet Union
52. Direct the Department of State to produce a report on Kremlin-connected oligarchs who finance Russian military aggression
53. Require an interagency report on Russian influence in key domestic sectors
54. Mandate sanctions on the Society for Worldwide Interbank Financial Telecommunications (SWIFT) until it expels Russia from the international SWIFT code system
55. Mandate regular public "financial exercises" that demonstrate how the U.S. and our allies would seize and freeze assets in the event of Russian aggression

Improving Russian Containment by Supporting NATO and Our Allies

56. Require the Secretary of State and Secretary of Defense to make deterring Russian aggression a top agenda item at all NATO summits
57. Enact the Crimea Annexation Non-Recognition Act
58. Enact the Georgia Support Act
59. Renew the Ukraine Security Assistance Initiative and expand it to include anti-ship weapons
60. Continue to support the European Deterrence Initiative

Countering Disinformation and Supporting Democracy Activists within Russia

61. Direct the Department of State to assemble a strategy to communicate information directly to the Russian people

★ ADVANCING AMERICAN INTERESTS IN THE MIDDLE EAST: ★ CONFRONTING IRAN & THE JIHADI TERRORIST MOVEMENT

Enhancing President Trump's Maximum Pressure Campaign on Iran

62. Limit executive waivers that lift sanctions on Iran
63. Urge the Trump administration to trigger snapback sanctions against Iran
64. Support Trump administration efforts to extend U.N. arms embargo on Iran

65. Direct the Department of the Treasury to sanction the commander of the IRGC's Aerospace Force
66. Impose sanctions on Iran's petrochemical, financial, automotive, & construction sectors
67. Impose sanctions on the Instrument in Support of Trade Exchanges (INSTEX) and its Iranian counterpart, the Special Trade and Financial Institute (STFI)
68. Require the Office of Foreign Assets Control (OFAC) to broaden the scope of activities constituting 'significant support' to Iran's shipping sector
69. Codify and expand current human rights sanctions on Iran
70. Impose sanctions targeting Iranian individuals and entities involved in human rights abuses
71. Require the Trump administration to sanction the Iranian heads of foundations and holding groups constituting the Iranian Supreme Leader's financial empire
72. Impose sanctions on the Islamic Republic of Iran Broadcasting (IRIB)
73. Enact the Iran Human Rights and Hostage-Taking Accountability Act
74. Enact the Stop Corrupt Iranian Oligarchs and Entities Act
75. Enact a statement of policy supporting and expanding Secretary of State Pompeo's twelve points for the removal of sanctions on Iran

Protecting America by Solidifying the President's War Authorizations

76. Congress should enact a new AUMF to ensure the President has clear authority to keep the country safe from Foreign Terrorist Organizations.

Countering Iran's Regional Role

77. Congress should require the Department of State to designate a number of Iranian-backed proxy militias in Iraq and Syria as FTOs and maintain a watchlist of future Iranian-backed proxy militias.
78. Require a report on the long-term threats posed by backing the Iraqi Popular Mobilization Forces (PMF) and other Iranian backed militias in the war on ISIS
79. Block funding for the Iraqi Minister Ministry of Interior and Federal Police until certain safeguards are met
80. Enact the Iraq Human Rights and Accountability Act
81. Enact legislation to require Iraq to comply with sanctions on Iran
82. Cut all funding for U.S. security assistance to the Lebanese Armed Forces (LAF)
83. Prohibit sending taxpayer money to the International Monetary Fund (IMF) to bail out Lebanon
84. Expand sanctions on Hezbollah and its allies in Lebanon
85. Enact a statement of policy supporting the Trump administration policy of political transition in Syria and withdrawal of all Iranian forces from Syria
86. Require the Department of Defense to produce a feasibility assessment of a no-fly zone over Idlib, Syria
87. Sanction the Houthis in Yemen as a FTO and codify sanctions on those supporting the Houthis and destabilizing Yemen
88. Refrain from cutting arms sales to Saudi Arabia and the UAE
89. Direct the Department of Defense to provide a comprehensive assessment of U.S. capabilities to defend against Iranian ballistic missile, cruise missile, and unmanned combat aerial vehicles

Countering Salafi-Jihadi Ideology

90. Enact a statement of policy to more accurately define the goals of countering ISIS and Al Qaeda as countering the global Salafi-jihadi movement
91. Enact the Saudi Educational Transparency and Reform Act

Eliminating Safe Havens and Breeding Grounds of the Salafi-jihadi Movement

92. Create a strategic office designed specifically to defeat the Salafi-jihadi movement
93. Develop an expeditionary civilian capacity with coordination between USAID, State, and Defense Departments to support Chiefs of Missions and Combatant Commands

94. Require a report assessing the risks of a premature U.S. withdrawal from the Sahel region of Africa
95. Enact the Trans-Sahara Counterterrorism Partnership Act
96. Enact the Libya Stabilization Act
97. Support the ceasefire in Yemen and a resolution to the Yemeni civil war to help defeat Al-Qaeda in the Arabian Peninsula
98. Enact a statement of policy supporting human rights in Iraq and rejecting partnering with the Assad regime in Syria or Iranian militias in Iraq
99. Enact a statement of policy to ensure we continue to sustain the victory over ISIS, prevent the rise of other Salafi-jihadist terror groups, and protect oil resources from Iranian capture
100. Enact the Ensuring a Secure Afghanistan Act

Blocking Funding and State Support of Salafi-jihadi Movement

101. Codify Executive Order 13224 with enhancements made by President Trump to ensure the president has adequate statutory authority to target and designate terrorist organizations
102. Condition aid to Pakistan on actions and commitments to stop supporting the Haqqani group and the Taliban
103. Consider sanctions on senior officials in Pakistani defense and intelligence apparatus if they continue to support terrorism and destabilization of Afghanistan
104. Examine whether Pakistan meets the definition to be a State Sponsor of Terrorism
105. Increase resources to the OFAC and grant it direct-hire authority to increase the speed and effectiveness of sanctions implementation

★ MAINTAINING AN INTERNATIONAL ORDER BASED ON AMERICAN VALUES ★

Protecting an American Vision of Human Rights

106. Enact a statement of policy that standing for democracy and human rights is in the U.S. national security interest
107. Hold legislative hearings on the recommendations of the Commission on Inalienable Rights
108. Hold annual hearings on the state of democracy and human rights in the world
109. Lower the threshold under the Global Magnitsky Act from “gross” violations of human rights to “serious” violations of human rights
110. Remove references in U.S. law that rely upon the U.N. or other international organizations for human rights determinations
111. Prohibit the Department of State from using federal funding to report on violations of “social and economic rights”
112. Prohibit federal funding for promoting international guidelines and standards obligating businesses to protect and fulfill social and economic rights
113. Direct the Department of State to report on human rights inflation, including efforts of the U.N. bureaucracy to bypass normal procedures for recognizing universal human rights
114. Codify the Ministerial to Advance Religious Freedom as an annually held, U.S.-led forum

Promoting Accountability and Reform at the U.N.

115. Direct to the President to pressure the U.N. to shift member contributions toward a voluntary basis
116. Direct the Department of State Inspector General to inspect and audit the use of U.S. funds by international organizations
117. Direct the Department of State to rank U.N. organizations in terms of how valuable they are to U.S. interests
118. Continue to enforce the 25 percent cap on funding for U.N. peacekeeping
119. Require the State Department’s annual Voting Practices in the United Nations report to include information on foreign assistance awarded to each nation
120. Require U.N. voting practices to be a mandatory consideration in U.S. foreign assistance allocations
121. Require certification that U.S. Ambassadors discuss the annual report on “Voting Practices in the United Nations” with the Minister of Foreign Affairs in the country where they are assigned

- 122. Restrict a portion of U.S. voluntary contributions to the U.N. on it increasing its employment of U.S. nationals
- 123. End U.S. funding for the U.N. Development Program, U.N. Office of Disarmament Affairs, the U.N. Human Settlements Program, the U.N. High Commissioner for Human Rights, the U.N. Intergovernmental Panel on Climate Change, and the U.N. Framework Convention on Climate Change
- 124. Statutorily block funding for the U.N. Population Fund Agency
- 125. Codify President Trump's enhanced Mexico City Policy
- 126. Enact the Stop UN Aid for Assad Act
- 127. Enact a statement of policy promoting the Community of Democracies as an alternative multilateral organization to the U.N.

★ A RESULTS-ORIENTED APPROACH TO FOREIGN AID AND INTERNATIONAL DIPLOMACY ★

Foreign Aid Reform

- 128. Reduce legislative directives in foreign assistance
- 129. Consolidate foreign assistance programs into four assistance accounts with clear purposes and well-defined lines of authority
- 130. Move USAID functions under the Department of State
- 131. Test transitioning USAID's development assistance mission to the Millennium Challenge Corporation (MCC)
- 132. Direct the MCC to require countries receiving assistance to adopt policies to strengthen the rule of law, economic freedom, and attract private investment

State Department Reform

- 133. Empower U.S. Ambassadors with more control regarding foreign assistance in their host country
- 134. Replace the Foreign and Civil Service with a modern hiring structure based on merit
- 135. Eliminate the Undersecretary of State for Economic Growth, Energy, and the Environment
- 136. Eliminate the Bureau of Conflict and Stabilization Operations
- 137. Reform current Under Secretary positions within the Department of State to elevate its work on human rights and the oversight of multilateral affairs and international organizations
- 138. Reconstitute the U.S. Information Agency and eliminate the Under Secretary of State for Public Diplomacy and Public Affairs and most of its bureaus, including the Global Engagement Center
- 139. Eliminate redundant, outdated, irrelevant, and duplicative reports at the Department of State



The American Worker Task Force
Policy Recommendations List

★ REFINE OUR EDUCATION SYSTEM TO BETTER EQUIP THE AMERICAN WORKER ★

- 1. Enact the Academic Partnerships Lead Us to Success (A PLUS) Act
- 2. Repurposing Federal Education Funding into Vouchers or Education Savings Accounts

3. Transform the Head Start Program into an Early Childhood Education Voucher Program for Low-Income Families
4. Codify Trump Administration Executive Order to Focus Federal Hiring on Skills over Degrees
5. Reallocate Existing Funding from College Promotion Programs to Boost Career and Technical Education (CTE)
6. Eliminate Parent PLUS and Grad PLUS Loan Programs
7. Recalibrate Borrowing Caps on Undergraduate Student Loans
8. Eliminate student loan forgiveness and tuition tax credits
9. Eliminate Marriage Penalty in Student Loan Tax Deduction in Budget-Neutral Manner
10. Reduce the Student Loan Borrowing Cap to Account for Remote Instruction
11. Prioritize Future Higher Education Pandemic Funding to Institutions Offering On-Campus Classes
12. Codify the Department of Education's Distance Education Waiver
13. Embrace Private Education Lending through Reduced Federal Loans
14. Provide Regulatory Clarity for Income Sharing Agreements (ISAs)
15. Clarify Fair Lending Requirements to Promote Forward-Looking Education Financing
16. Require Student Loan Repayment Rates to be Calculated at the Program Level
17. Allow Colleges to Limit Federal Loans Based on Field of Study
18. Require Institutions to Repay a Percentage of Graduate's Debt If Defaults Are Too High
19. Link Performance-based Funding to Student Employment Outcomes
20. Require Employer Representation on Accreditation Boards
21. Allow Skills-focused Organizations to Teach up to 100% of a Program
22. Remove Federal Cap on Private Sector Federal Work Study (FWS) Opportunities
23. Require All Types of Employers to Meet the Same FWS Match Requirement
24. Remove FWS Community Service Requirement
25. Enact the Empowering Students Through Enhanced Financial Counseling Act
26. Provide Secure Access to Post-Graduation Employment Outcome Information
27. Integrate Outcome-Based Data into Accreditation Process
28. Require Colleges to Report on Course Credit Transferability
29. Require Fair Value Accounting for Federal Student Loan Budgeting
30. Enact the Pell Flexibility Act
31. Expand Financial Aid Eligibility for Short-Term and Other Innovative Programs in Budget Neutral Way
32. Expand 529 Accounts to become Lifelong Learning Education Savings Accounts
33. Adjust WIOA Requirements to Boost Provider Participation
34. Expand Opportunities for Skilled Workers by Clarifying Allowable Hiring Assessments

★ REFOCUS LABOR POLICY TO UNLEASH THE AMERICAN WORKER ★

35. Codify and Enhance Trump's Industry Recognized Apprenticeship Program Rule
36. Codify DOL Guidance on DOD SkillBridge Program for Veterans
37. Open Interstate Trucking to Drivers Under 21-Year-Old With Apprenticeships
38. Support Trump Administration Executive Order Requiring Agencies to Provide Regulatory Relief
39. Enact the New GIG Act
40. Allow "Household Workers" to be Treated as Independent Contractors for Tax Purposes
41. Enact the Portable Certification for Spouses Act
42. Establish State Reporting Requirements on Occupational Licensing for Receipt of WIOA Funds
43. Establish an Occupational Freedom Metric to Award WIOA Funding
44. Enact the Restoring Board Immunity Act
45. Repeal the Davis-Bacon Act
46. Codify Trump's Joint-Employer Rule
47. Amend the Child Care Development Fund to Require States to Provide Vouchers Directly to Families

48. Amend the Child Care Development Fund to Prevent States from Setting Lower Reimbursement Rates for Home Based Child Care
49. Require HHS to Produce a Report on the Cost of State Child Care Regulations
50. Promote Worker Upskilling Opportunities through Tax Deductibility
51. Insulate Remote Work from Undue Tax Burdens During the Pandemic
52. Enact the Employee Bonus Protection Act
53. Enact the Working Families Flexibility Act
54. Adopt Universal Savings Accounts
55. Codify the Trump Administration's Guidance to Expand Investment Options for 401(k) & IRA Holders
56. Enact the Rewarding Achievement & Incentivizing Successful Employees (RAISE) Act
57. Enact the National Right-to-Work Act
58. Enact the Employee Rights Act
59. Enact the Federal Employee Rights Act
60. Codify 2020 NLRB Rule on Ambush Elections
61. Enact the Union Integrity Act
62. Enact the Union Transparency and Accountability Act
63. Exempt Small Businesses from NLRB Overreach
64. Amend the National Labor Relations Act to Allow Alternative Labor-Management Cooperation
65. Provide Workforce Training Opportunities for Sufferers of Opioid Addiction

★ REIMAGINE WELFARE TO EMPOWER INDIVIDUALS & FAMILIES ★

66. Eliminate Work Requirement Waivers Based on Unemployment Relative to the National Average
67. Codify the Trump Administration's ABAWD Rule
68. Reduce Size of Waivable Population Per State Under SNAP
69. Codify the Trump Administration's Broad-Based Categorical Eligibility Rule
70. Close SNAP's Heat and Eat Loophole
71. Require States to Restrict SNAP Food Eligibility to Only Healthy Foods
72. Require States Integrate Home Visits into SNAP Programs to Reduce Fraud
73. Enact the No Welfare for Weed Act
74. Enact an Enhanced Version of The JOBS for Success Act
75. End Obama-era Housing First Policy
76. Codify the Trump's Continuum of Care (CoC) Rule
77. Codify the Trump's Housing Proposal to Institute Work Expectations for Non-Elderly & Non-Disabled
78. Codify the Trump's Plan to Implement Minor Increases in Rent Paid by Able-Bodied Tenants
79. Expand and Codify HUD's Moving to Work (MTW) Program
80. Make Housing Assistance Vouchers More Portable
81. Allow a Portion of Housing Vouchers to Pay Moving Expenses
82. Allow Private and Public-Private Partnerships to Administer Federal Housing Programs
83. Subject Housing Grants to Outcome-Based Competitive Bidding
84. Encourage Private Investment in Public Housing
85. Expand the Rental Assistance Demonstration (RAD) Program
86. Enact the Public Housing Accountability Act
87. Remove Marriage Penalty in Public Housing Benefits
88. Allocate Existing Federal Housing Funding to Assisting Recovering Drug & Alcohol Abusers
89. Address Public Housing Waitlist Backlog by Implementing Roommate Assignments
90. Establish a Single Flat SSDI Benefit Level
91. End Double-Dipping of Disability Insurance & Unemployment Insurance

92. Match Retroactive SSDI Benefits to the Period of Retroactivity
93. Include Unearned Income in the Definition of Income under SSDI Program
94. Update the Official List of Available Jobs under SSDI
95. Eliminate SSDI's Non-Medical "GRID" Qualifications of Age, Education & Work Experience
96. Strengthen Continuing-Disability Reviews (CDRs) under SSDI
97. Allow use of Social Media in Eligibility Determinations to Reduce SSDI Fraud
98. Apply Judicial Code of Conduct to Administrative Law Judges (ALJ) under SSDI
99. Conduct Reviews of Outlier Judges under SSDI
100. Reduce Target Caseloads for ALJs under SSDI
101. Eliminate SSDI's the Reconsideration Review Stage
102. End SSDI Payments to Representatives out of Personal Benefits
103. Eliminate the Medical Improvement Review Standard (MIRS) under SSDI
104. Give Employers a Stake in Reducing SSDI Costs
105. Require SSDI Applicants to have Worked in Recent Years
106. Expand Utilization of Private Disability Insurance
107. Enact the Help Americans in Need Develop Their Ultimate Potential (HAND UP) Act
108. Codify DHS Public Charge Rule
109. Limit Welfare Benefits to American Citizens
110. Amend Welfare Benefits Formulas to Exclude Illegal Alien Populations
111. Implement E-Verify Within Federal Jobs Training Programs
112. Incentivize States to Identify and Reduce Welfare Fraud and Abuse
113. Enact the Drug Testing for Welfare Recipients Act
114. Eliminate Performance Bonuses in Welfare Programs to Incentivize Enrollment
115. Implement Stronger Verification to Prevent Fraud in the EITC & CTC
116. Enact the No Free Rides Act
117. Enact the Preventing Illegal Immigrants from Abusing Tax Welfare Act
118. Test the Viability of Social Impact Bonds

A FRAMEWORK FOR

PERSONALIZED,

AFFORDABLE

CARE

REPUBLICAN STUDY COMMITTEE
HEALTH CARE PLAN
PART ONE



RSC

**A FRAMEWORK FOR
PERSONALIZED,
AFFORDABLE
CARE**

REPUBLICAN STUDY COMMITTEE
HEALTH CARE PLAN
PART ONE



THE REPUBLICAN STUDY COMMITTEE

"THE REPUBLICAN PARTY WILL SOON BE THE PARTY OF HEALTH CARE. YOU WATCH."

President Donald J. Trump, March 23, 2019

Fellow Americans,

The birth of our great nation was inspired by the bold declaration that our individual, God-given liberties should be protected from government overreach and intrusion. As conservatives, that same conviction still informs our actions and policy proposals in every area. Health care is no exception, and the current system is in urgent need of reform.

We approach this challenge today with a review of the sobering facts. The first half of this report shows that millions of Americans have experienced substantially increased costs and a reduced quality of care as a result of the Affordable Care Act. Sadly, too many people with pre-existing conditions, chronic health issues and other challenges are suffering and need real relief.


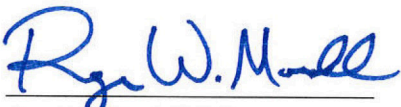

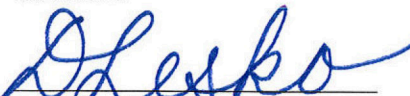
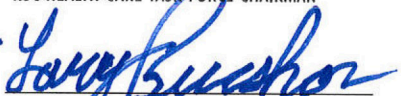




Beyond the raw statistics are countless personal stories. We share some of those here to acknowledge the fear and uncertainty that can accompany an unexpected diagnosis, irregular test result, childhood illness, or a frantic visit to an emergency room. Every family has its own stories, and health care is an intensely personal issue.

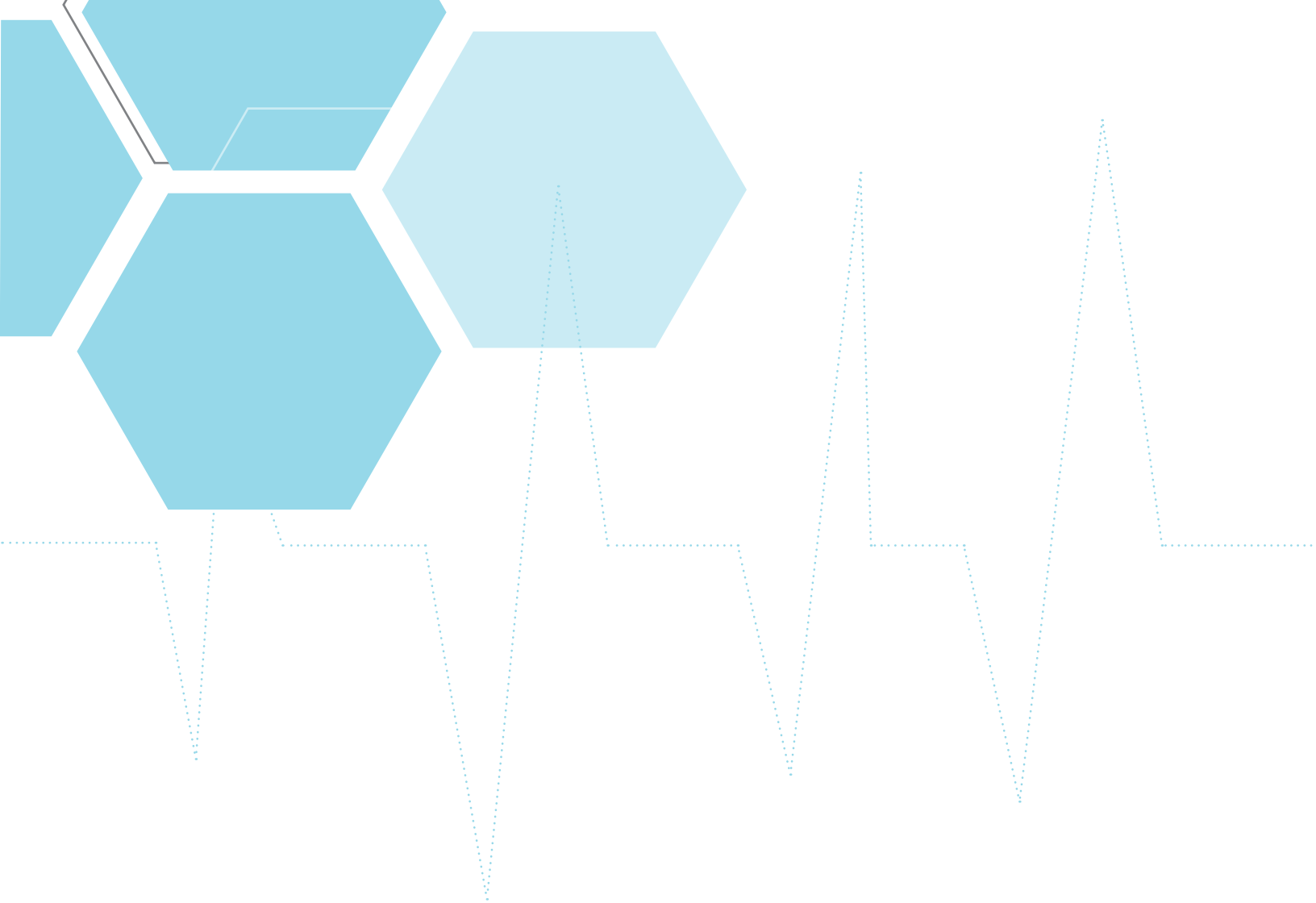
In response to this dilemma, the Left insists that Congress should double-down on the failed current system, or shift to a government run, one-size-fits-all system. Because Americans deserve better, the second half of this report presents a carefully designed framework—based on nearly a year of intensive research and discussions with experts and stakeholders—that can dramatically improve access to quality, affordability, and choice in the American health care system.

It is a plan that: **PROTECTS** the vulnerable – especially those with pre-existing conditions; **EMPOWERS** individuals with greater control over their health care choices and dollars; and **PERSONALIZES** health care to meet individual needs and reduce premiums, deductibles, and the overall cost of health care.

While we anticipate thoughtful debate, even amongst ourselves, about some of the specific details that will emerge from this framework, we find it to be a strong step toward a health care system that can refocus on care. We present this conservative framework as an alternative to more, destructive government interference. We present these solutions to put Americans back in control of their health care decisions. And we submit this as the roadmap that can ensure the Republican Party is the party of health care. **PROTECT, EMPOWER, AND PERSONALIZE.** This is what we support, and this is what we aim to do.

Sincerely,

 _____ Rep. Mike Johnson RSC CHAIRMAN	 _____ Rep. Roger Marshall, M.D. RSC HEALTH CARE TASK FORCE CHAIRMAN	 _____ Rep. Phil Roe, M.D. RSC HEALTH CARE TASK FORCE VICE CHAIRMAN
 _____ Rep. Debbie Lesko	 _____ Rep. Larry Buchshon, M.D.	 _____ Rep. Mike Kelly
 _____ Rep. Mark Green, M.D.	 _____ Rep. John Joyce, M.D.	 _____ Rep. David Rouzer



INTRODUCTION

America's health care system has suffered from serious problems for decades. The antiquated laws that predated the Patient Protection and Affordable Care Act of 2010 (also known as "Obamacare" or the "ACA") needed revision, but the ACA has made the situation worse by dramatically increasing costs and reducing both the quality of care and the number of available choices in the health care market. This is a crisis for many Americans that grows with each passing day as more and more patients lose their preferred doctors, or are forced to forgo coverage entirely due to its enormous costs. The current trajectory is simply unsustainable.

Congress has an obligation to fix this mess. The Republican Study Committee (RSC), as the largest caucus of conservatives and the group known as the "intellectual arsenal" of conservatism in the House, aims to meet this obligation by offering bold, thoughtful solutions to ensure Americans have access to the personalized, quality care they deserve. We believe cost-effective health insurance can and should be available to all Americans, including those with pre-existing conditions. Our goal is a thriving health care market that promotes individual choice, quality care and affordable options.

Many of our Democrat colleagues, meanwhile, are moving in the opposite direction. They offer the American people only two bleak options: double-down on the status quo or mandate government-run, one-size-fits-all health care. Their idea of “Medicare for All” would ensure an unprecedented expansion of the federal government instead of personalized, affordable options. It would also cost American taxpayers an estimated \$32 trillion in new taxes to artificially control premium increases, and would inevitably lead to long wait times and a reduced quality of care.

If government-run health care were the answer, the Veteran’s Health Administration (VHA) would serve as the gold standard. Of course, it does not. Because of its flaws, many veterans have suffered and some have even lost their lives waiting on care they desperately needed. Does anyone really believe Washington bureaucrats could be trusted to manage the individual care of hundreds of millions of Americans? The people of this country deserve so much better.

RSC MEMBERS
REFUSE
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Our RSC Health Care Plan introduces reforms that can: achieve a vibrant market with protections for all, including those with pre-existing conditions; encourage continuous coverage through true insurance portability; and ensure an appropriate and sustainable safety net for our most vulnerable citizens. A second report detailing additional policy recommendations will follow at a future date, and include additional recommendations to further reduce the costs of health care and increase transparency, competition and innovation technologies. This will include recommendations on policies like transparency, competition, and reducing barriers to technological innovation.

RSC members refuse to ignore the current crisis and will never agree to turn American health care over to big government. Instead, we will advance these practical solutions to repair our broken health care system. If Congress will adopt the reforms outlined in this plan, we can achieve a personalized and sustainable health care system for current and future generations.



THE STATUS QUO UNDER THE ACA

MAIN COMPONENTS OF THE ACA

As it was designed, the inaptly named “Affordable Care Act” has resulted in an unprecedented level of federal intervention in the individual insurance marketplace. Signed into law on March 23, 2010, the legislation itself includes thousands of pages of text and hundreds of complicated provisions. Implementing the law has necessitated tens of thousands of additional pages of rules—and trillions of dollars in new spending and taxes. The law is distinguished by three primary features: 1) its regulatory architecture; 2) subsidies for low-income households; and 3) Medicaid expansion. The supposed goal was to expand, subsidize, and guarantee coverage in the individual health insurance marketplace—a unique and relatively small part of the broader American health care system.

For decades now, the vast majority of Americans (generally, more than 80 percent of the population),¹ have obtained health insurance in one of two ways: approximately half of the insured have received their insurance through their employer, and the rest have relied on one of several federally-financed programs, such as Medicare, Medicaid and the VA. In the private market, employer-sponsored health insurance plans have outnumbered individual plans by around eight to one over the past decade.² This imbalance is primarily due to decades of misguided federal laws and regulations that have stunted the development of a viable individual marketplace.

Prior to the enactment of the ACA, it is true that an important but relatively small number of Americans faced great challenges in the individual health care market because, for various reasons, they waited to purchase insurance until after developing a health condition. This group included approximately two to four million people under the age of 65.³ While the plight of these Americans needed to be addressed, the Obama administration’s short-sighted approach to the dilemma has upended the nation’s entire health insurance system and now jeopardizes care and access for everyone.

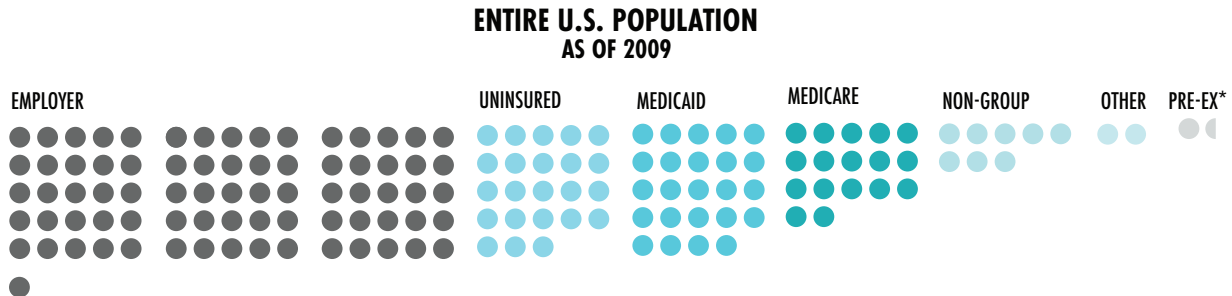
¹ “Health Insurance Coverage of the Total Population.” *The Henry J. Kaiser Family Foundation*, 2 Jan. 2019, <https://www.kff.org/other/state-indicator/total-population/?-dataView=0&fTimeframe&sortModel={%22colld%22:%22Location%22,%22sort%22:%22asc%22}>.

² *Id.*

³ Capretta, Jim and Tom Miller. “How to Cover Pre-Existing Conditions.” *National Affairs*, Summer 2010. <https://www.nationalaffairs.com/publications/detail/how-to-cover-pre-existing-conditions>.

HEALTH INSURANCE COVERAGE OF THE TOTAL POPULATION IN 2009⁺

EACH DOT REPRESENTS 2 MILLION PEOPLE



*The number of individuals in the individual market that, leading up to Obamacare’s enactment, may have faced difficulty purchasing insurance due to an existing health condition was around 2 – 4 million individuals. See, James Capretta and Tom Miller “How to Cover Pre-Existing Conditions.” National Affairs, Summer 2010. <https://www.nationalaffairs.com/publications/detail/how-to-cover-pre-existing-conditions>.

*Non-Pre-Ex groups information derived from:

“Health Insurance Coverage of the Total Population.” The Henry J. Kaiser Family Foundation, 2 Jan. 2019, <https://www.kff.org/other/state-indicator/total-population>

Regulatory Architecture

While some of its regulatory provisions apply to the employer-sponsored marketplace, the ACA’s flawed regulatory framework focuses mainly on restricting the features and mandating the availability of individual market plans—regardless of whether a person had insurance prior to developing a medical condition.⁴ To that end, its core provisions require individual market plans to have: 1) guaranteed issue; 2) community rating; 3) minimum actuarial value; and 4) so-called “essential health benefits.”^{5, 6}

Generally, the ACA’s guaranteed issue requirement mandates insurance carriers offer their health insurance plans to any individual without limitation or exclusion for any pre-existing condition. Its community rating restriction bars insurers from adjusting insurance premiums based on the health risks presented by the applicant. Actuarial value requirements mandate carriers pay a heightened percentage of benefit costs that are tied to four levels (or, metal tiers) of coverage.⁷ The ACA’s essential health benefits requirement prohibits carriers from offering individual marketplace plans that do not contain ten codified categories of services, even when the consumer needs and prefers less.^{8, 9}

These regulations were intended to work in tandem with the ACA’s “individual mandate,” which required all Americans to hold insurance policies or face a limited monetary penalty each year.

⁴ 42 U.S. Code § 18001

⁵ Fernandez, Bernadette. “Federal Requirements on Private Health.” *Congressional Research Service*. 28 Aug. 2018. <https://fas.org/sgp/crs/misc/R45146.pdf>

⁶ 42 U.S. Code § 18022

⁷ “Understanding Marketplace Health Insurance Categories.” *Healthcare.gov*, <https://www.health care.gov/choose-a-plan/plans-categories/>.

⁸ “Essential Health Benefits - Health care.gov Glossary.” *Health care.gov*, <https://www.health care.gov/glossary/essential-health-benefits/>; Fernandez, Bernadette. “Federal Requirements on Private Health.” 2018. <https://fas.org/sgp/crs/misc/R45146>.

⁹ The Affordable Care Act also mandates plans to include two additional benefits: 1) birth control coverage; and 2) breastfeeding coverage. See, “Find out What Marketplace Health Insurance Plans Cover.” *Healthcare.gov*, <https://www.health care.gov/coverage/what-marketplace-plans-cover/>.

The individual mandate was intended to keep healthy individuals who are typically low-utilizers of insurance in the market to offset the costs of high-utilizers of insurance.¹⁰ Unfortunately, because the ACA created a perverse incentive for people to forgo insurance until they developed an illness, costs across the board rose dramatically, which required higher premiums on the existing plans in the individual market exchanges. Not surprisingly, the premium spikes further repelled healthy individuals.

The ACA's essential health benefits requirements and actuarial value provisions have further contributed to premium inflation. The essential health benefits requirement stripped states of the ability to decide the minimum features of plans within their borders and eliminated the ability for consumers to choose plans personalized to their needs without unnecessary expense.¹¹ Indeed, before the ACA, thousands of state-level laws existed setting forth minimum benefits.¹² The ACA's actuarial value provision prohibits access to plans with an actuarial value of less than 60 percent and set up tiers of plans on the ACA exchanges at 60, 70, 80, and 90 percent.¹³ Other related ACA regulations included out-of-pocket maximums and prohibitions on annual and lifetime limits.

Furthermore, the ACA imposes a "medical loss ratio" requirement on insurance carriers which prevents them from spending more than 20 percent of their revenue generated by premiums from the exchange plans (15 percent in the employer market) to cover their overhead costs (e.g., marketing, salaries, agent commissions, administrative expenses) or profits. The ACA also prohibits insurers from allowing profits from one market to offset losses in another.

While those regulations provide the core of the ACA individual market restrictions, ACA regulations in the employer market have also been significantly disruptive. For example, similar to the individual mandate, the ACA also created an employer mandate, which requires businesses with more than 50 full-time employees to provide health insurance to at least 95 percent of employees and their dependents up to the age of 26. Full-time employees are defined as those who work over 30 hours per week. Furthermore, the coverage provided to each employee must be "affordable," such that the employee's share of the monthly premiums for the lowest-cost, self-only coverage option is less than 9.86 percent of household income.¹⁴ Employer plans must also meet the minimum actuarial value threshold of 60 percent, as well as out-of-pocket maximums and prohibitions on annual and lifetime limits. If employers do not provide coverage that meets these conditions, they can be fined thousands of dollars per employee.

¹⁰ The individual mandates' penalty was reduced to zero, effectively nullifying it, in H.R.1 - An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, more commonly known as the "Tax Cuts and Jobs Act."

¹¹ Uberoi, Namrata. "The Patient Protection and Affordable Care Act's Essential Health Benefits (EHB)." *Congressional Research Service*. 2015. <https://fas.org/sgp/crs/misc/R44163.pdf>

¹² According to the National Conference of State Legislatures, "Adding up these laws, there are more than 1,900 such statutes among all 50 states; another analysis tallies more than 2,200 individual statute provisions, adopted over a 30+ year period."

"State Insurance Mandates and the ACA Essential Benefits Provisions." *National Conference of State Legislatures*, 12 Apr. 2018, <http://www.ncsl.org/research/health/state-ins-mandates-and-aca-essential-benefits.aspx>.

¹³ According to the U.S. Centers for Medicare & Medicaid Services, "actuarial value" refers to "the percentage of total average costs for covered benefits that a plan will cover. For example, if a plan has an actuarial value of 70%, on average, one would be responsible for 30% of the costs of all covered benefits. However, you could be responsible for a higher or lower percentage of the total costs of covered services for the year, depending on your actual health care needs and the terms of your insurance policy." See, "Actuarial Value - Health care.gov Glossary." *Healthcare.gov*, <https://www.healthcare.gov/glossary/actuarial-value/>.

¹⁴ "If You'd like to Change to a Marketplace Plan." *Healthcare.gov*, <https://www.healthcare.gov/have-job-based-coverage/change-to-marketplace-plan/>.

Low-Income Subsidies

The ACA provides premium assistance subsidies in the form of advanceable tax credits to help pay for the health insurance premiums of low-income individuals on the ACA exchanges. Almost nine out of ten enrollees in the ACA exchange markets are eligible for premium subsidies.¹⁵ The federal government is expected to provide nearly \$700 billion in these premium assistance subsidies over the next ten years.

Generally, to qualify for the ACA exchange subsidies, individuals must have a household income between 100 to 400 percent of the federal poverty level (FPL) and cannot be eligible for certain other health insurance coverage.¹⁶ The subsidies are structured so that an individual does not have to pay more than a certain percentage of their income toward their premiums, with the federal government paying the remainder of the premium price. The percentage of their income a person must contribute increases the closer their income gets to 400 percent FPL. While the subsidy is technically a tax credit, it is advanceable so the individual can receive it monthly to offset their premiums. Because this premium structure lacks a consumer-driven incentive to contain premiums, steep increases in premium costs have resulted since the ACA's enactment.

The premium subsidies for low-income individuals were an expensive consequence of the ACA's regulatory framework and the individual mandate. This was simple math from the beginning. Since the ACA required every American without public or employer-based coverage to obtain and maintain health insurance regardless of their income level or desire to purchase a plan, and the ACA's regulations would inevitably result in increased premiums in the individual marketplace, the ACA had to provide for premium subsidies.

Further, in its attempt to make the services provided by an insurance plan less expensive for lower-income individuals, the ACA also created cost-sharing subsidies for individuals whose income falls between 100 and 250 percent FPL. The cost-sharing subsidies are only for people enrolled in a "silver" tier health plan. Initially, insurers were required to front the costs of reducing out-of-pocket expenses, and the federal government promised to later reimburse those cost-sharing reduction (CSR) payments to the insurers. However, in October 2017, a federal court ruled those reimbursement payments unconstitutional and canceled them because Congress never appropriated the necessary funding.

Despite the lack of federal reimbursement payments, the ACA still requires insurers to reduce the cost-sharing expenses for eligible silver plan holders. To cover their losses, insurers simply raised the premiums of their silver plans knowing that the federal government would be forced to pay for the premium increases through the provision of premium tax credit subsidies.

THE PREMIUM
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THIS WAS SIMPLE MATH
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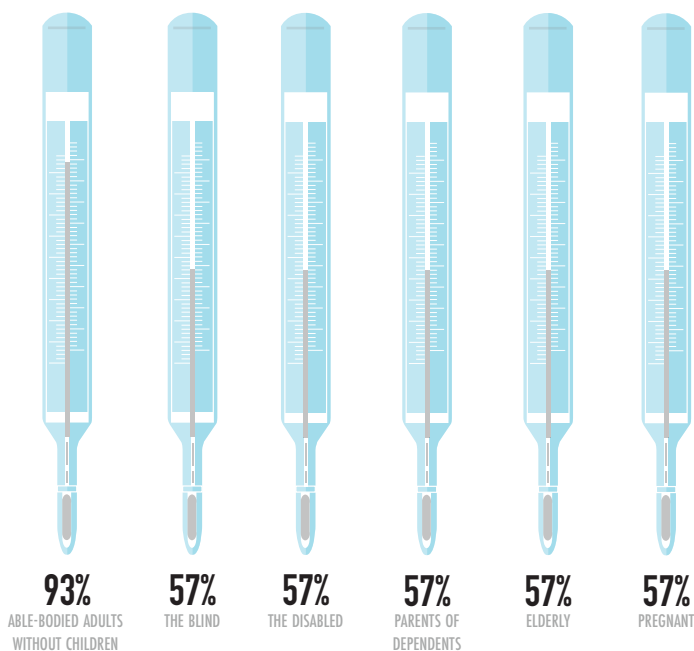
¹⁵ Moffit, Robert E. "Why Obamacare Must Be Dismantled." *The Heritage Foundation*, 26 Oct. 2017 <https://www.heritage.org/health-care-reform/commentary/why-obamacare-must-be-dismantled>.

¹⁶ Fernandez, Bernadette. "Health Insurance Premium Tax Credits and Cost-Sharing Subsidies." *Congressional Research Service*, 24 Apr. 2018, <https://www.crs.gov/Reports/R44425?source=search&guid=74bd753bd4874e15b473230977e4cddb&index=0>.

Medicaid Expansion

Created by law in 1965, the original intent of Medicaid was to provide a safety net for the poorest and sickest Americans. Medicaid functions through a federal-state framework where each state administers its own Medicaid program, and the federal government provides the majority of funding. States are required to finance a portion of their Medicaid program pursuant to a match rate determined by the statutory Federal Medical Assistance Percentage (FMAP) formula. While a state's FMAP reimbursement

MATCH RATE FOR ABLE-BODY ADULTS VS. THE BLIND, THE DISABLED, ELDERLY, PREGNANT, PARENTS OF DEPENDENTS



"OPTIONS FOR REDUCING THE DEFICIT: 2019 TO 2028." *Congressional Budget Office*, Dec. 2018, p. 58, <https://www.cbo.gov/system/files/2019-06/54667-budgetoptions-2.pdf#page=54>.

rate is based on that state's per capita income relative to U.S. per capita income, the law requires the federal government to reimburse at least 50 percent of state Medicaid expenses to a maximum of 83 percent. The remaining percentage is not reimbursed and thus borne by the state.¹⁷ The 50 percent floor results in a number of wealthy states receiving more than their fair share of federal funding.¹⁸ The Congressional Budget Office estimates that if there was no floor to the FMAP calculation, mandatory spending would be reduced by \$394 billion between 2021 and 2028.¹⁹

Medicaid was originally designed to finance the health care needs of poor children, pregnant women, persons with disabilities, adults with dependent

children, and the elderly. Before the ACA expansion of Medicaid, eligibility was contingent upon meeting both income and categorical (i.e., pregnant, disabled, elderly, etc.) standards, the details of which are largely controlled at the state level.²⁰ Accordingly, for half a century after its creation, Medicaid was a program reserved for those vulnerable populations.²¹

The ACA changed this model when it allowed states to expand Medicaid eligibility to cover healthy, able-bodied adults without dependents with incomes up to 138 percent of FPL.^{22 23} The ACA's Medicaid

¹⁷ "Matching Rates." *MACPAC*, <https://www.macpac.gov/subtopic/matching-rates/>.

¹⁸ Fourteen states are projected to have an FMAP that would fall below the 50 percent statutory floor. See, "FY 2020 FMAP Projections." FY 2020 FMAP Projections | Federal Funds Information for States, <https://www.ffis.org/node/4765>.

¹⁹ "Options for Reducing the Federal Deficit: 2019-2028." *Congressional Budget Office*, Dec. 2018, p. 55, <https://www.cbo.gov/system/files/2019-06/54667-budgetoptions-2.pdf#page=65>.

²⁰ "Medicaid: An Overview." *CRS.gov*, *Congressional Research Service*, 24 June 2019, p2., <https://fas.org/sgp/crs/misc/R43357.pdf#page=6>.

²¹ Antos, Joseph. "The Structure of Medicaid. The Economics of Medicaid: Assessing the Costs and Consequences." *Mercatus Center at George Mason University*, 2014, p. 11-12.

²² Originally, Obamacare mandated states to expand their Medicaid programs, but this was held to be unconstitutional by the United States Supreme Court. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).

²³ Blahous, Charles P. "Medicaid under the Affordable Care Act. The Economics of Medicaid: Assessing the Costs and Consequences." *Mercatus Center at George Mason University*, 2014, pp. 83.

expansion was initially financed entirely by federal taxpayers at a 100 percent FMAP. The federal share phased down to 95 percent beginning in 2017 and will decrease to 90 percent by 2020, where it will remain indefinitely.²⁴

Medicaid's overall FMAP reimbursement structure incentivizes states to utilize a financing gimmick known as "provider taxes" to draw more federal funds without increasing net state expenditures. As a report by the Mercatus Center has explained, "Under provider tax schemes, health care providers are given increased Medicaid payments in exchange for paying higher taxes. Such arrangements increase states' Medicaid expenditures—but only on paper. They do not require additional funding from the states' tax base. They do, however, spur the federal government to reimburse its statutorily required share of the artificial spending increase."²⁵ Republicans are not the only ones to point out the issue with provider taxes. As the report notes, "Provider taxes were discussed as part of the high-profile deficit reduction negotiations between the Obama administration and congressional Republicans and Democrats in 2011, with Vice President Joe Biden reportedly referring to them as a 'scam' that should be eliminated."²⁶

THE ACA: FAILING THE PEOPLE IT WAS DESIGNED TO PROTECT

When the ACA was being proposed, its sponsors made big promises. "If you like your plan, you can keep your plan, and if you like your doctor, you can keep your doctor," they assured the American people. "You will even see a reduction in premiums by an average of \$2,500 or more!"²⁷ Of course, this is not what has happened, and PolitiFact even named that first promise 2013's "Lie of the Year."²⁸ These broken promises became apparent and infamous soon after the ACA was signed into law. Such broken promises illustrate how the ACA has failed to improve—and in many ways harmed—America's health care system. Moreover, these broken promises have caused even greater struggles for millions of Americans, including those with pre-existing conditions. While Democrats argue that keeping the ACA will guarantee that no one is denied health insurance because of their medical history, that guarantee is illusory. As history has proven, the ACA has not fulfilled its promise to guarantee plan retention, affordability, quality of care or availability of doctors. Indeed, its result has been quite the contrary.

Perhaps the most glaring failure of the "Affordable Care Act" is that it has not made health care more affordable. Under the ACA, average premiums for health insurance in the individual market more than doubled nationwide between 2013 and 2017, and even tripled in some states.²⁹ For many working-class Americans, this drove the price of health insurance premiums to prohibitively high levels. Many other Americans simply had their plans stripped away. In fact, in the wake of the ACA's enactment, approximately 4.7 million Americans received notices that their health insurance plan was being canceled.³⁰

²⁴ "Overview of the ACA Medicaid Expansion." *Congressional Research Service*, 3 Dec. 2018, <https://fas.org/sgp/crs/misc/IF10399.pdf>.

²⁵ Blase, Brian. "Medicaid Provider Taxes: The Gimmick That Exposes Flaws with Medicaid's Financing." *Mercatus Center, George Mason University*, 16 Feb. 2016, https://www.mercatus.org/publications/health_care/medicaid-provider-taxes-gimmick-exposes-flaws-medicaid's-financing.

²⁶ *Id.* Pg. 4

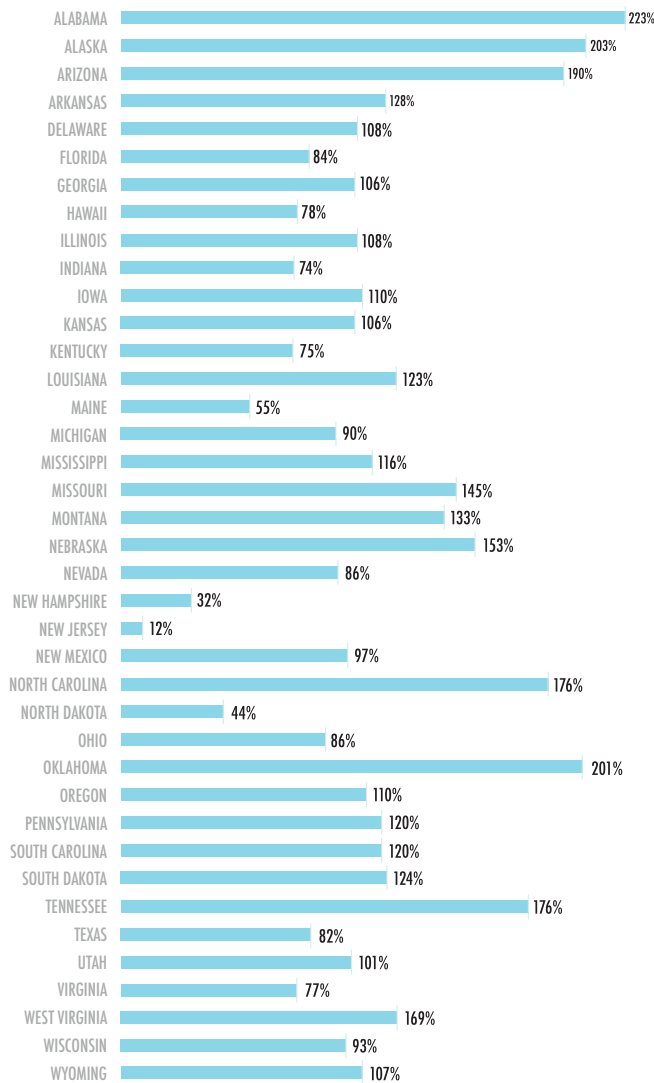
²⁷ "Obama: 20 Promises for \$2,500." \$2,500, 22 Mar. 2010, <http://freedomeden.blogspot.com/2010/03/obama-20-promises-for-2500.html>.

²⁸ Holan, Angie D. "Lie of the Year: 'If You like Your Health Care Plan, You Can Keep It'." *PolitiFact*, 12 Dec. 2013, <https://www.politifact.com/truth-o-meter/article/2013/dec/12/lie-year-if-you-like-your-health-care-plan-keep-it/>.

²⁹ Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 23 May 2017, <https://aspe.hhs.gov/system/files/pdf/256751/IndividualMarketPremiumChanges.pdf>.

³⁰ "Policy Notifications and Current Status, by State." *Yahoo! Finance, The Associated Press*, 26 Dec. 2013, <https://finance.yahoo.com/news/policy-notifications-current-status-state-204701379.html>.

INDIVIDUAL MARKET PREMIUMS 2013 VS 2017 PERCENT INCREASE



Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 23 May 2017, <https://aspe.hhs.gov/system/files/pdf/256751/IndividualMarketPremiumChanges.pdf>.

The ACA’s major flaw, in this respect, is a systemic one rising from the interaction of its regulatory provisions. Preceding the implementation of the ACA, carriers in the individual market could deny and upcharge applicants to reflect any increased health risks presented by the applicant. This process, known as underwriting, is a core tenet of any functioning insurance market. As a result, preceding the ACA, people had an incentive to purchase insurance before developing a health condition that would increase the costs of their coverage.

Conversely, the ACA’s regulatory framework—namely its inflexible guaranteed issue and community rating provisions—incites people in the individual market to act irresponsibly and to delay purchasing health insurance until after they develop a disease or illness. In other words, there is neither a carrot nor a stick for proactively and responsibly purchasing and maintaining insurance under the ACA. Applicants cannot later be turned down or required to wait, and they cannot later be required to pay a higher premium. Not surprisingly, under the ACA, a high percentage of individual market participants consists of those people who simply waited until they got sick to seek coverage. This unsustainable model has driven costs to exorbitant levels.

Health insurance premiums for individual coverage on the ACA exchanges more than doubled between 2013 and 2017, and continued to rise in 2018.³¹ As pointed out by Michael Tanner of the Cato Institute, “A study by McKinsey and Company for the Department of Health and Human Services found that as much as 76 percent of premium increases since 2010 can be traced to the ACA’s regulations.”³² While overall premiums did not increase for 2019, this was not a result of the ACA working, but rather is attributable to the handful of states that received permission to deviate from certain ACA regulations and thus experienced premium decreases significant enough to lower the average nationwide.³³

³¹ Haislmaier, Edmund, and Doug Badger. “How Obamacare Raised Premiums.” *The Heritage Foundation*, 5 Mar. 2018, <https://www.heritage.org/health-care-reform/report/how-obamacare-raised-premiums>.

³² Tanner, Michael. “Obamacare Is Still with Us, and Getting Worse.” *Cato Institute*, 9 May 2018, <https://www.cato.org/publications/commentary/obamacare-still-us-getting-worse>.

³³ Badger, Doug. “Obamacare Caused Premiums to Spike. Here’s How States Are Lowering Them Again.” *The Heritage Foundation*, 10 Sept. 2019, <https://www.heritage.org/health-care-reform/commentary/obamacare-caused-premiums-spike-heres-how-states-are-lowering-them>.

While policy experts often discuss the failures of the ACA from an empirical standpoint, it is more important to understand the dire effects the law has had upon the lives of individuals and families. The stories are common and often heartbreaking. One example is what happened to Coach Jim White, a high school coach from Alabama. His canceled plan and skyrocketing costs under the ACA threatened his survival and pushed his family to the brink. Coach White tells his own story in [Figure 1](#).

PERSONAL STORY OF COACH WHITE

Like many Americans in 2013, my wife and I received a letter from our insurance company telling us our plan had been canceled due to Obamacare. Our plan had a premium of around \$400 per month with a \$3,500 per person deductible before Obamacare. We were then offered an Obamacare compliant plan with a premium of \$1,381 per month (nearly a 250% increase), with a \$5,500 per person deductible.

If we paid a years' worth of premiums and our full deductible, this plan would have required us to pay over \$20,000 before insurance kicked in. It effectively was not insurance. We looked at the Obamacare exchange plans but none of them included our doctors and they were all similarly expensive.

We were fortunate enough to find a non-Obamacare option called a health sharing ministry plan that had a similar cost to the coverage we had before Obamacare. For several years this met our needs, but then I was diagnosed, with life threatening colon cancer. To make matters worse, a few days before my diagnoses I lost my job at a private Christian school.

We discovered that the best hospital for my cancer was in Houston and they agreed to accept me as a patient, but they would not accept our health sharing ministry plan because it was not insurance. The treatment was going to cost ten of thousands of dollars, money we just did not have. My son set up a GoFundMe page and we were able to raise the funds I needed for my treatment due to the generosity of our family, friends, and community.

Thankfully, the treatment was successful, and I am still cancer free today. However, Obamacare created a health care crisis for me. It stripped away my coverage before I developed a pre-existing condition and then made getting coverage unaffordable after I developed one. I know I am very fortunate and others in a similar situation may have had a different outcome.

People like me got left behind by Obamacare. We deserve better.

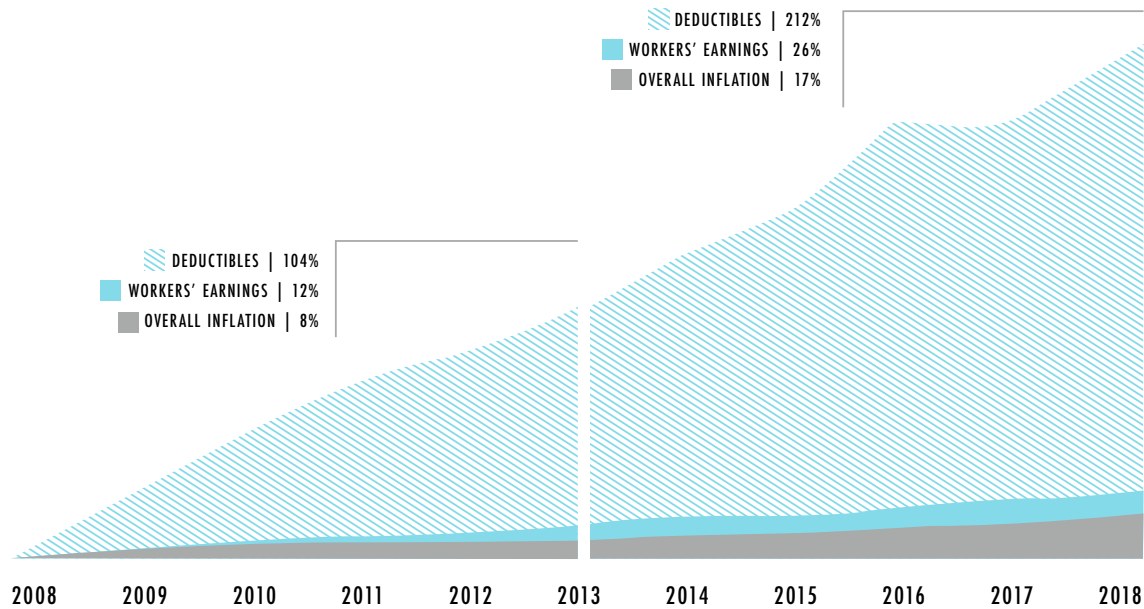
Figure 1.
Coach Jim White,
Alabama

While the ACA's effects on the individual marketplace typically garner the lion's share of attention, the employer marketplace—where half of all Americans get their health insurance—has suffered greatly as well. For instance, employer-sponsored family plans have experienced a 49 percent increase in premiums between 2010 and 2019.³⁴ In fact, according to the 2019 Kaiser Family Foundation annual survey, average family premiums in the employer market eclipsed \$20,000 this year for the first time in

³⁴ "2019 Employer Health Benefits Survey." *The Henry J. Kaiser Family Foundation*, 25 Sept. 2019, <https://www.kff.org/report-section/ehbs-2019-summary-of-findings/>.

American history.³⁵ Also disheartening for American families is the growth rate at which premiums have far outpaced wage growth and inflation. Since 2008, average family premiums for employer-sponsored coverage have increased 55 percent, twice as fast as wage growth (26 percent) and three times as fast as inflation growth (17 percent).³⁶

SINCE 2008, GENERAL ANNUAL DEDUCTIBLES FOR COVERED WORKERS HAVE INCREASED EIGHT TIMES AS FAST AS WAGES



NOTE: Average general annual deductibles are among all covered workers. Workers in plans without a general annual deductible for in-network services are assigned a value of zero.
 SOURCE: KFF and KFF/HERT Employer Health Benefits Surveys. Consumer Price Index, U.S. City Average of Annual Inflation (April to April); Seasonally Adjusted Data from the Current Employment Statistics Survey (April to April).

The other major cost-related impediment to accessing care under the ACA has been the dramatic increase in deductibles. While often attracting less attention than the law's impact on premiums, this failure of the ACA is perhaps just as dangerous for individuals with health conditions. Though a person with a health condition technically can get access to a plan and may even receive federal subsidies to help pay for it, they may be faced with an insurmountable deductible that forces them to forgo seeking medical care. In 2019, the average medical deductible for an individual bronze plan is \$5,977.³⁷ Moreover, the portion of Americans under 65 who carry a high deductible plan has increased from 33.9 percent in 2013 to 43.7 percent in 2017.³⁸

³⁵ Id.

³⁶ Palosky, Craig. "Premiums for Employer-Sponsored Family Health Coverage Rise 5% to Average \$19,616; Single Premiums Rise 3% to \$6,896." *The Henry J. Kaiser Family Foundation*, 3 Oct. 2018, <https://www.kff.org/health-costs/press-release/employer-sponsored-family-coverage-premiums-rise-5-percent-in-2018/>.

³⁷ This deductible amount is for bronze plans with separate medical and prescription drug deductibles. Average deductibles for bronze plans with combined medical and prescription drug deductibles is \$6,258 for 2019. "Cost-Sharing for Plans Offered in the Federal Marketplace, 2014-2019." *The Henry J. Kaiser Family Foundation*, 7 Oct. 2019, <https://www.kff.org/health-reform/fact-sheet/cost-sharing-for-plans-offered-in-the-federal-marketplace-for-2019/>.

³⁸ Tozzi, John and Zachary Tracer. "Sky-High Deductibles Broke the U.S. Health Insurance System." *Bloomberg*, 26 June 2018, <https://www.bloomberg.com/news/features/2018-06-26/sky-high-deductibles-broke-the-u-s-health-insurance-system>.

The ACA has resulted in many families feeling like they have been painted into a corner. Such was the case with the Daverts, a family of a mother with brittle bone disease, a father with cerebral palsy, and twins with brittle bone disease. The mother, Melissa Davert, tells their story in [Figure 2](#).

What makes the increase in deductibles even more significant, particularly for working-class individuals and families, is how little financial maneuverability most American families have to absorb increased and unexpected costs. In 2016, only half of single person households had \$2,000 in savings available for such costs. Family households fair only slightly better, with just six in ten possessing such savings. Among millennials, the picture is even more bleak, with six out of ten reporting they do not have enough savings to absorb a \$1,000 emergency expense.³⁹

Therefore, it should come as no surprise that according to a National Public Radio survey, one in five Americans have postponed, delayed, or canceled some kind of health care services in the preceding three months, such as a doctor's appointment or medical procedure because of cost.⁴⁰ Again, among millennials, the effects are more pronounced. About one-third of people under age 35 reported that they had been deterred by costs from obtaining needed health care, compared with only 8 percent of people 65 and older.⁴¹

The increases in deductibles under the ACA are not limited to the individual marketplace and are actually more extreme in the employer marketplace. Given the fact that employer-sponsored coverage is by far the most common type of insurance in America (the ratio of employer-sponsored coverage to the individual marketplace is currently nine to one), the relative significance is greatly expanded. Between 2008 and 2018, the average annual deductible for single employer-sponsored coverage more than quadrupled.⁴² Since 2013, the increase is 53 percent. Over the same period, this increase in deductibles grew eight times as fast as the growth of wages.⁴³

The ACA's regulatory structure has not only caused insurers to raise their costs, it has also perpetuated a reduction in the quality of the health coverage provided by exchange plans. Because they are forced to charge all individuals the same premium regardless of their health risks, the ACA has created a system that punishes insurers for offering high-quality care to the sick, which economists find results in inadequate coverage for all Exchange enrollees. Michael Cannon of the Cato Institute has explained this perverse effect as follows:

³⁹ Leonhardt, Megan. "60 Percent of Millennials Don't Have Enough Money to Cover a \$1,000 Emergency." *CNBC*, 20 Dec. 2018, <https://www.cnbc.com/2018/12/19/60-percent-of-millennials-cant-cover-a-1000-dollar-emergency.html>.

⁴⁰ Hensley, Scott. "Poll: Young People More Likely to Defer Health Care Because Of Cost." *NPR*, 7 Dec. 2018, <https://www.npr.org/sections/health-shots/2018/12/07/674567886/poll-young-people-most-likely-to-defer-health-care-because-of-cost>.

⁴¹ *Id.*

⁴² Levey, Noam N. "Health Insurance Deductibles Soar, Leaving Americans with Unaffordable Bills." *Los Angeles Times*, 2 May 2019, <https://www.latimes.com/politics/la-na-pol-health-insurance-medical-bills-20190502-story.html>; Hamel, Liz, et al. "Kaiser Family Foundation / LA Times Survey Of Adults With Employer-Sponsored Health Insurance." Kaiser Family Foundation, Kaiser Family Foundation, May 2019, <http://files.kff.org/attachment/Report-KFF-LA-Times-Survey-of-Adults-with-Employer-Sponsored-Health-Insurance>.

⁴³ Palosky, Craig. "Premiums for Employer-Sponsored Family Health Coverage Rise 5% to Average \$19,616; Single Premiums Rise 3% to \$6,896." *The Henry J. Kaiser Family Foundation*, 3 Oct. 2018, <https://www.kff.org/health-costs/press-release/employer-sponsored-family-coverage-premiums-rise-5-percent-in-2018/>.

I live with my husband and twin children, in Michigan. We have unique health challenges. My children and I have brittle bone disease and my husband has cerebral palsy. For a time, we received health insurance through my employer, but I had to take disability leave due to my condition. We received insurance through COBRA for two years, until I was eligible for coverage on Medicare. However, since Medicare did not provide coverage for our children, we were required to purchase a private health insurance plan for them. The plan had an expensive premium, but it covered my children's specific health care needs, and it had a relatively low out of pocket family maximum of \$2,500 per year.

We were doing well with little complaint until Obamacare. In the Fall of 2013, we learned that the private plan we'd purchased for our children was going to be canceled, because it didn't meet Obamacare's requirements. The Obama Administration promised to protect people like us with pre-existing conditions and assured us we could keep our plan if we liked it, but that was not the case.

We immediately started looking for a new plan through the federal exchange. The least expensive plan that was accepted by our children's doctors included a \$5,100 out of pocket maximum for each child. Suddenly, because our children's health care needs are significant, we were looking at out-of-pocket medical bills of up to \$10,200 per year. Even worse, it mandated we pay for things we did not want or need, like abortion coverage. Often ignored is the fact that under Obamacare people with disabilities were (and are) the ones who absorb the costs through higher out of pocket maximum limits. Thankfully at the time our children remained fairly healthy and had supplemental insurance through the state of Michigan, which covered out-of-pocket costs relating only to their disability and their monthly insurance premiums, or this would've been financially catastrophic for us.

Two years ago, our children were forced to accept Medicare, because premiums for all the private plans they were eligible for skyrocketed and were totally unaffordable. To summarize, they were stripped of their original private plan due to Obamacare, then they lost those plans because they were eventually cancelled or the premiums were unaffordable, and now they are forced to take government-sponsored insurance with a huge out-of-pocket medical cost liability and awful prescription coverage.

With our children about to finish college, we have a new obstacle. They recently turned 21 years old and aged out of their state-funded supplemental insurance plan. My children don't want to sign up for Medicaid, because they'll be forced to stay at home and not work, or risk losing coverage if they do work. Our kids, just like any other 21-year-old, want to get a job and go to work to save up for a car and a home someday.

Since our income is limited to disability and my husband's part-time job, it's difficult to pay our medical bills. We sit down as a family every year to re-analyze the insurance plan we purchase. We must guess which kind of catastrophic problem we think the kids might have that year and pick a plan that might cover what we might need.

We feel people like us with disabilities and pre-existing conditions have been forgotten and left behind by the current system. We need a system that prioritizes our personal health care needs and provides everyone with affordable options, while enabling those who can to work.

To illustrate, suppose insurers expect the average Multiple Sclerosis (MS) patient to file \$61,000 in claims and Obamacare requires insurers to charge those patients a premium far below that amount—say, \$10,000. If each MS patient brings an insurer \$10,000 in premiums but costs them \$61,000 in claims, then each MS patient an insurer attracts represents a \$51,000 loss. Since MS patients care a lot about the quality of their coverage, they will find and enroll in whichever health plans offer the best MS coverage. The better the MS coverage an insurer offers, the more money the insurer loses.⁴⁴

As a consequence, insurers have routinely implemented reductions in the quality of coverage to avoid attracting too many chronic illness patients—which ultimately require premium increases that repel others without immediate health care needs. As a consequence, the ACA has resulted in substantial reductions in the quality of care and access to medical tests and treatments, and better hospitals, doctors and treatment facilities.

For instance, the ACA exchange plans have increasingly excluded top-tier hospitals and doctors from their networks. Since 2015, nearly three-quarters of all exchange insurance plans suffered from reduced networks.⁴⁵ Individuals with chronic illnesses have been increasingly deprived of the choice to seek out the best doctors available to treat their conditions. Instead of paying for better quality physicians, insurers have narrowed their networks of doctors to certain providers who will accept lower payments and potentially provide a lower quality of care. Additionally, because networks are narrowed and patients are funneled only to specific doctors, the overall quality of service also goes down because many doctors become overwhelmed with their patient volumes. This so-called “race-to-the-bottom” and the narrowing of networks is a growing crisis. Although the sponsors of the ACA promised to reduce the cost of health care and improve its quality—the result has been exactly the opposite of what was promised.

Narrowed networks force real families to make difficult choices. A recent volume of the *Minnesota Journal of Law, Science & Technology* highlighted the struggles the Blanker family faced while seeking care for their daughter in the Seattle, Washington area. At five-months-old, Gabriella was diagnosed with a rare genetic defect that caused her skull bones to fuse. Without proper treatment, it would be life-threatening. Her family had purchased an insurance plan off the Washington State exchange, only to find out later that the Seattle Children’s Hospital, which was the best place for her to seek care, was out-of-network with their plan. They had two options: either seek care at in-network hospitals that offered lower quality care, or purchase a more expensive individual plan for Gabriella that had Seattle Children’s Hospital in-network. Thankfully, the Blanker family had the means to afford the more expensive plan so Gabriella could get the best care available. However, that is not an option everyone would be able to take. As the *Journal* summarized, “For the unlucky few with a serious illness, narrow networks may challenge their ability to access medically necessary, and even life-saving care.”⁴⁶

⁴⁴ Cannon, Michael F. “Is Obamacare Harming Quality? (Part 1).” *Cato Institute*, 4 Jan. 2018, <https://www.cato.org/publications/commentary/obamacare-harming-quality-part-1>.

⁴⁵ Haislmaier, Edmund. “2018 Obamacare Health Insurance Exchanges: Competition and Choice Continue to Shrink.” *The Heritage Foundation*, 25 Jan. 2018, <https://www.heritage.org/health-care-reform/report/2018-obamacare-health-insurance-exchanges-competition-and-choice-continue>.

⁴⁶ Blake, Valarie “Narrow Networks, the Very Sick, and the Patient Protection and Affordable Care Act: Recalling the Purpose of Health Insurance and Reform”, 16 *Minn. J.L. Sci. & Tech.* 63 (2015).

The ACA has also contributed to the infamous problem of “surprise billing,” when a hospital sends a bill to a patient following their care and demands payment for the difference between what the provider charged and what the insurer paid. This often occurs when a provider, such as an anesthesiologist, is not in the patient’s network and the patient unknowingly receives care from the provider. Because the ACA has narrowed networks to as little as one or two facilities per region, patients have little option in their choice of where they receive their care. The greater the migration of providers from in-network to out-of-network, the more likely it is that patients unknowingly receive costly care from an out-of-network provider.

Additionally, due to health care provider shortages, hospitals are often forced to resort to staffing services to fill positions that have not yet been hired – such as anesthesiologists, physicians or radiologists.^{47,48} By narrowing networks and causing a lack of choice and competition, the ACA has created a perfect storm for the incidences of surprise billing.^{49,50,51}

The stark rise in premiums and deductibles is not just due to the overregulation of the insurance market itself. Rather, the ACA structurally altered the entire health care marketplace. Through perverse incentives, including various market-distorting subsidies and the promotion of accountable care organizations with enhanced reimbursements, the ACA has led to a resurgence in hospital consolidations not seen since the late 1990s.⁵² This increased hospital market concentration has led to increases in the price of hospital services,⁵³ as larger systems have greater leverage. As one would expect, these artificially incentivized costs “are passed on to health care consumers in the form of higher premiums, lower benefits, and lower wages.”⁵⁴

The ACA’s heavy-handed approach has directly fueled the precipitous decline in independent physician practices, with a majority of physicians now becoming employees, typically of large hospital systems.⁵⁵ The push towards vertical integration was intentional. In a letter published by the *Annals of Internal Medicine* in 2010, three Obama administration health care advisers boasted, “The economic forces put in motion by the Act are likely to lead to the vertical organization of providers and accelerate physician employment by hospitals and aggregation into larger physician groups.”⁵⁶ While this letter

⁴⁷ Haeder, Simon F, et al. “Surprise Billing: No Surprise in View Of Network Complexity.” *Health Affairs*, 5 June 2019, <https://www.healthaffairs.org/doi/10.1377/hblog20190603.704918/full/>.

⁴⁸ Feder, Shira. “Disgusting’: Study Shows Hospitals Sending More and More Surprise Bills.” *The Daily Beast*, 12 Aug. 2019, <https://www.thedailybeast.com/surprise-medical-bills-new-study-says-40-percent-of-patients-socked-with-unexpected-bills>.

⁴⁹ Id.

⁵⁰ Emergency services reached an all-time high due to the implementation of Obamacare. See, Rui P, Kang K. “National Hospital Ambulatory Medical Care Survey: 2014 Emergency Department Summary Tables.”

⁵¹ Johnson, Steven Ross. “ACA Has Not Reduced ED Visits, Study Finds.” *Modern Health care*, Modern Health care, 19 Apr. 2019, <https://www.modernhealthcare.com/safety-quality/aca-has-not-reduced-ed-visits-study-finds>.

⁵² Fuchs, Victor R. “Managed Care and Merger Mania.” *The Journal of the American Medical Association*, 19 Mar. 1997, <https://jamanetwork.com/journals/jama/article-abstract/414706>.

⁵³ “The Impact of Hospital Consolidation on Medical Costs.” *NCCI Holdings Inc.*, 11 July 2018, https://www.ncci.com/Articles/Pages/II_Insights_QEB_Impact-of-Hospital-Consolidation-on-Medical-Costs.aspx.

⁵⁴ “The Impact of Hospital Consolidation.” *Robert Wood Johnson Foundation*, 1 June 2012, <https://www.rwjf.org/en/library/research/2012/06/the-impact-of-hospital-consolidation.html>.

⁵⁵ Kacik, Alex. “For the First Time Ever, Less than Half of Physicians Are Independent.” *Modern Healthcare*, 31 May 2017, <https://www.modernhealthcare.com/article/20170531/NEWS/170539971/for-the-first-time-ever-less-than-half-of-physicians-are-independent>.

⁵⁶ Tuccille, J.D. “How Formerly Independent Doctors Were Pushed Out of Business.” *Reason Foundation*, 28 Aug. 2018, <https://reason.com/2018/08/28/your-formerly-independent-doctors-didnt/>.

was revised after a public outcry, there is little doubt that vertical and horizontal integration was a core tenet of the ACA.⁵⁷ This push may make sense if these larger systems provided better, more cost-effective care. Yet, not only are prices higher in these larger, integrated systems, but quality suffers too.^{58 59}

The ACA has also pushed major insurers to flee the market, leaving many Americans over the years with a Hobson's choice to "shop" for insurance in a market with only one available option. In some locations, insurers have completely abandoned ship, leaving entire communities without a single available exchange plan.⁶⁰ While there have been no new instances of this zero-option dilemma in 2019, more than two-thirds of communities in the United States currently have just two insurance carriers or less, and more than one-third have just one carrier from which to "choose."⁶¹ The story of Pamela in Nebraska is a perfect example of how average Americans are stripped of affordable options under the ACA. Since 2014, she has had six plans stripped from her, and now faces exorbitant premiums. Today, only one insurance carrier operates in Nebraska's 93 counties.⁶² Pamela tells her story in [Figure 3](#).

The ACA has also hurt Americans, particularly those earning lower incomes, by reducing their job prospects. The culprit is the ACA's employer mandate, which has drawn criticism from liberal and conservative groups alike.⁶³ As one would expect, the mandate's requirement that employers with at least 50 full-time employees (FTE) provide all of those employees health insurance has compelled many small businesses to undertake negative hiring and employment decisions to avoid breaching the 50 FTE threshold. The left-leaning Urban Institute has even admitted that "[e]liminating it will remove labor market distortions that have troubled employer groups, and which would harm some workers."⁶⁴

The extent to which the employer mandate has inhibited job creation in the United States is well documented. According to a paper published by the Becker Friedman Institute for Research in Economics at the University of Chicago, "roughly 250,000 positions...are absent from [small] businesses because of the ACA..."⁶⁵ From a broader perspective, the Congressional Budget Office estimated that the ACA generally would cause a reduction in full-time-equivalent employment of about 2.3 million by 2021.⁶⁶ Even during the post-Great Recession economic recovery, "[t]he implementation of the employer

⁵⁷ Kocher, Robert, MD and Nancy-Ann M. JD, DeParle Ezekiel J. Emanuel. "The Affordable Care Act and the Future of Clinical Medicine: The Opportunities and Challenges." *Annals of Internal Medicine*, American College of Physicians, 19 Oct. 2010, <https://annals.org/aim/fullarticle/746295/affordable-care-act-future-clinical-medicine-opportunities-challenges>.

⁵⁸ Short, Marah Noel, and James A. Baker III. "Weighing the Effects of Vertical Integration Versus Market Concentration on Hospital Quality." *Institute for Public Policy*, Rice University, 2019, <https://journals.sagepub.com/doi/pdf/10.1177/1077558719828938>.

⁵⁹ M, Gaynor and Town R. The Impact of Hospital Consolidation. *Robert Wood Johnson Foundation*, 1 June 2012, <https://www.rwjf.org/en/library/research/2012/06/the-impact-of-hospital-consolidation.html>.

⁶⁰ Centers for Medicare & Medicaid Services, "County by County Analysis of Current Projected Insurer Participation in Health Insurance Exchanges", June 13, 2017. <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-06-13.html>.

⁶¹ U.S. Center for Medicare & Medicaid Services, "County by County Plan Year 2019 Insurer Participation in Health Insurance Exchanges," October 26, 2018. <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Final-2019-County-Coverage-Map.pdf>.

⁶² Id.

⁶³ Levey, Noem. "Almost No One Wants the Obamacare Employer Mandate Now: Here's Why." *Los Angeles Times*, Los Angeles Times, 29 July 2014, <https://www.latimes.com/business/la-fi-obamacare-employer-mandate-20140729-story.html>.

⁶⁴ "Why Not Just Eliminate the Employer Mandate?" *Urban Institute*, 1 Feb. 2019, <https://www.rwjf.org/en/library/research/2014/05/why-not-just-eliminate-the-employer-mandate-.html>.

⁶⁵ Mulligan, Casey. "The Employer Penalty, Voluntary Compliance, and the Size Distribution of Firms: Evidence from a Survey of Small Businesses*." *University of Chicago*. Becker Friedman Institute, Nov. 2017, https://bfi.uchicago.edu/wp-content/uploads/WP_2017-07.pdf.

⁶⁶ "Labor Market Effects of the Affordable Care Act: Updated Estimates." *Congressional Budget Office*, Feb. 2014, <http://www.cbo.gov/sites/default/files/cbofiles/attachments/45010-breakout-AppendixC.pdf#page=11>.

penalty in January 2015 coincides with a sudden slowdown in the...recovery in aggregate work hours per capita, with 2016 national employment about 800,000 below the trend before the implementation of the employer penalty."⁶⁷

PERSONAL STORY OF PAMELA

On the surface, I should be an ardent Obamacare supporter. Before it became the law of the land, I was denied coverage because of a pre-existing condition. I have regularly purchased my insurance through the exchange, and I received government subsidies to help pay my premiums, keeping my costs relatively in check compared to many others.

However, my situation has been far from rosy. I have been forced to find new insurance nearly every year as Obamacare wreaked havoc on the health care market in Nebraska. Since 2014, I have had six different insurance plans.

Additionally, it has been a struggle finding a plan that would allow me to keep my doctors, especially my doctor I have regularly used across the state border in Colorado.

Unfortunately, none of that compares to the situation I have been faced with this last year. My husband and I sold a rental property we had used for years as a second income and it caused me to no longer qualify for the government subsidies. While I always knew Obamacare was expensive, I was forced to fully confront exactly how outrageously expensive plans had become.

Instead of paying several hundred a month in premiums, my plan was now going to cost \$4,300 per month in premiums without the subsidy. How could anyone possibly afford this?

Nebraska is down to one insurance carrier, so I had very few options. Thankfully, the Trump administration made changes to short-term health insurance plans, which allowed me to purchase a one-year plan for roughly \$4,500 for the year.

While it does not include preventative care or anything out of network, meaning I will no longer be able to see my doctor in Colorado, it does provide an affordable short-term safety net. For the time being I will have to delay much of my preventative care until a better option comes forward.

People like me need a system that is affordable- that allows us to see our doctors- and fits our own unique personal needs.

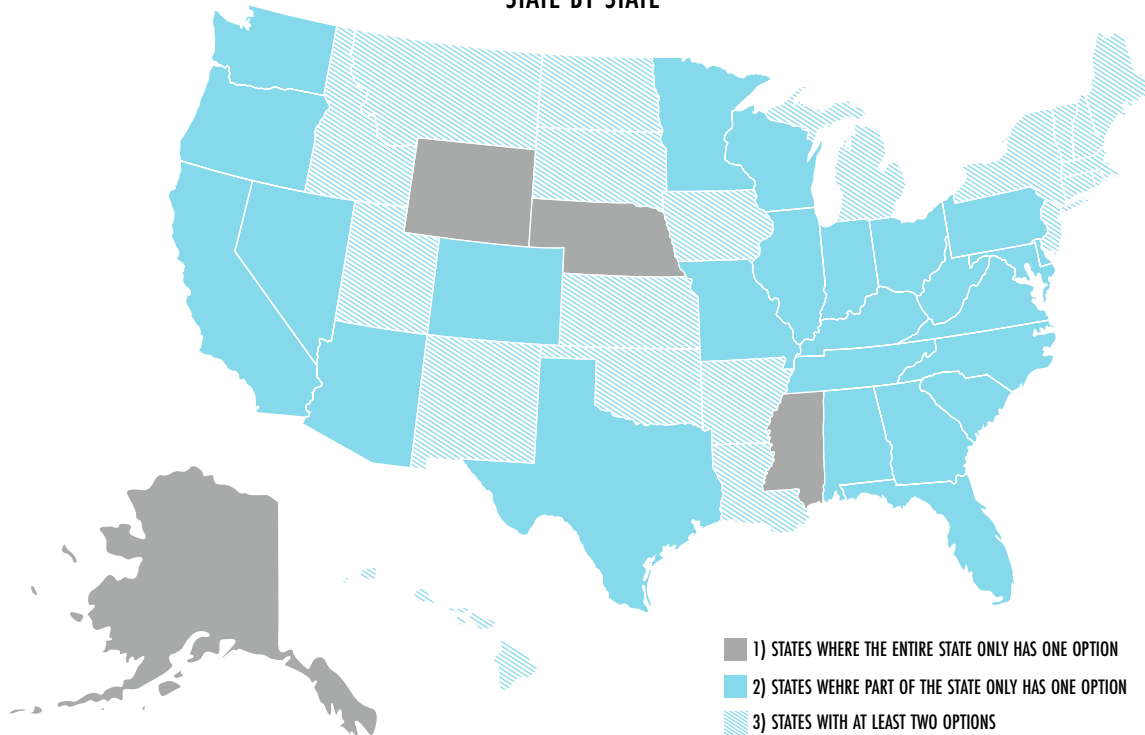
Figure 3.
Pamela
Nesbraska

Furthermore, hundreds of thousands more Americans saw reductions in their hours as a consequence of the employer mandate. A June 2016 paper sponsored by the Upjohn Institute concluded that half a million retail, hospitality, and food service workers were pushed into part-time employment after employers were forced to

⁶⁷ Id.

2019 INSURER PARTICIPATION IN HEALTH INSURANCE EXCHANGES

STATE-BY-STATE



All state-based Exchange data is self-reported from the Exchanges to CMS
Federally-facilitated Exchange data reflected on this map is point in time as of 09/28/18

cut the hours of their employees.⁶⁸ Goldman Sachs also determined that “a few hundred thousand workers might be working part-time involuntarily as a result of the Affordable Care Act.”⁶⁹

Overall, “businesses... reported that, because of the ACA, they hire fewer workers or at least fewer full-time workers...Employers with 30-49 FTEs are also disproportionately likely to report that they hire less or have shorter work schedules because of the ACA.”⁷⁰ The most common small-employer employment practice change (25 percent of the full sample) was that weekly hours were being reduced. This should come as no surprise because, and as the University of Chicago paper points out, “[b]usinesses not offering ESI that would otherwise be large can sharply reduce their costs by cutting their employment below the threshold.”⁷¹

⁶⁸ Dillender, Marcus. “Early Evidence on the Effects of the Affordable Care Act on Part-Time Employment.” *Upjohn Institute*, Sept. 2019, <https://research.upjohn.org/projects/251/>.

⁶⁹ Robb, Greg. “Obamacare Has Led to Rise in Involuntary Part-Time Employment, Goldman Sachs Finds.” *MarketWatch.com*, MarketWatch, 8 June 2016, <https://www.marketwatch.com/story/obamacare-has-led-to-rise-in-involuntary-part-time-employment-goldman-sachs-finds-2016-06-08>.

⁷⁰ Mulligan, Casey. “The Employer Penalty, Voluntary Compliance, and the Size Distribution of Firms: Evidence from a Survey of Small Businesses*.” *University of Chicago, Becker Friedman Institute*, Nov. 2017, https://bfi.uchicago.edu/wp-content/uploads/WP_2017-07.pdf.

⁷¹ *Id.*

Some employers even made the difficult decision to drop their employer-sponsored coverage entirely and cut their FTEs below 50. Indeed, the University of Chicago paper’s findings are consistent “with the hypothesis that a number of businesses that would have been close to, but above 50 FTEs are induced by the ACA to both (a) drop ESI – doing so permits their employees to receive exchange subsidies – and (b) reduce their employment in order to avoid the employer penalty.”⁷² This left workers forced to navigate the ACA exchanges to find coverage, which was often more expensive and of lower quality than the health care they had previously received or would have received from their employer.

THE ACA’S FAILED MEDICAID EXPANSION

In 2009, Edward Miller, Johns Hopkins Medicine’s then-dean and CEO, cautioned against the immense strain that the ACA’s expansion could place on existing Medicaid providers.⁷³ His prophetic and nonpartisan comments echoed the concerns many analysts had then and now. He stated, “We... endorse efforts to improve the quality and reduce the cost of health care. But we also understand all too well the impact a dramatic expansion of Medicaid will have on us and our state—and likely the country as a whole. A flood of new patients will be seeking health services, many of whom have never seen a doctor on more than a sporadic basis. Some will also have multiple and costly chronic conditions. And almost all of them will come from poor or disadvantaged backgrounds.”

Ten years and over \$300 billion later,⁷⁴ it is clear that the continued existence of the ACA’s Medicaid expansion is unsustainable and unwarranted.^{75,76} In addition to costing the federal government nearly another trillion dollars over the next ten years,⁷⁷ the expansion has been shown to inflict a host of negative consequences related to care, including for Medicaid’s most vulnerable populations, and numerous harmful private market distortions.⁷⁸ By expanding Medicaid to able-bodied individuals without dependents, it has forced pre-expansion Medicaid groups—such as poor pregnant women, blind and disabled people, children, and the elderly—to compete for care with the expansion population. Despite the program’s exorbitant costs, expansion is not improving health outcomes for new enrollees. Research also indicates that a majority of coverage gains under the expansion come from a corresponding reduction in private market insurance and that the expansion is causing increases in private health care costs.

As a result of the ACA’s Medicaid expansion, provider availability has suffered among Medicaid’s traditional, vulnerable populations. As pointed out by the Kaiser Family Foundation, studies draw a connection between longer wait times for appointments and greater difficulty in booking appointments with specialists. Overall, they demonstrate that expansion states had an increase in reports of medical

⁷² Id.

⁷³ Miller, Edward. “Health Reform Could Harm Medicaid Patients.” *The Wall Street Journal*. 5 Dec. 2009, <https://www.wsj.com/articles/SB10001424052748703939404574567981549184844>.

⁷⁴ “Expenditure Reports From MBES/CBES.” *Medicaid.gov*, <https://www.medicaid.gov/medicaid/finance/state-expenditure-reporting/expenditure-reports/index.html>.

⁷⁵ Rudowitz, Robin, et al. “Medicaid Financing: The Basics.” *The Henry J. Kaiser Family Foundation*, 21 Mar. 2019, <https://www.kff.org/medicaid/issue-brief/medicaid-financing-the-basics/view/print/>.

⁷⁶ According to CMS, data for the expansion adult population is still limited. Thus, there is still uncertainty about the health care costs of expansion adult.

⁷⁷ Fiscal years 2020-2029.

⁷⁸ “Federal Subsidies for Health Insurance Coverage for People Under Age 65: Tables From CBO’s May 2019 Projections.” *CBO.gov*, The Congressional Budget Office, 2 May 2019, <https://www.cbo.gov/system/files/2019-05/51298-2019-05-healthinsurance.pdf#page=3>.

care being delayed because of wait times for appointments.⁷⁹ Community health centers, hubs for treating millions in medically underserved communities, in particular, reported that they were significantly more likely to have “increased wait times for appointments, possibly reflecting greater increases in demand for services associated with larger gains in coverage among health center patients in these states.” Looking at the availability of pediatric specialty care, one study found that Medicaid patients in expansion states were less successful in obtaining appointments than patients in non-expansion states.

Simultaneously, the ACA failed to address the existing issue of lengthy Medicaid waiting lists pervasive in expansion and non-expansion states. As one March 2018 study explains since the ACA took effect, tragically, at least 21,904 individuals on Medicaid waiting lists have died in expansion states.⁸⁰ According to the Kaiser Foundation data available from 2017, the Waiting List Enrollment for Medicaid Home and Community Based Services Waivers totaled 707,378 individuals,⁸¹ including:

- 472,997 individuals with intellectual or developmental disabilities;
- 189,187 aged, or aged and disabled, individuals;
- 11,409 individuals who are physically disabled;
- 28,952 children with disabilities;
- 1,357 individuals who suffer from mental health-related disabilities; and
- 3,395 individuals with traumatic brain injury/spinal cord injury.

As the 2017 Kaiser report aptly points out, “these are the individuals Medicaid was intended to help.” While waiting lists predated the ACA, they have grown dramatically following the ACA’s expansion.⁸² In fact, since 2010, waiting lists have increased by 38.4 percent.⁸³ These waiting lists are not merely an inconvenience for the vulnerable populations on them, but rather the difference between a life without pain and one of agony. This plight was experienced by Lindsay Overman and her daughter Skylar, as explained in [Figure 4](#).⁸⁴

It is also no secret that Medicaid, despite its destructive impact on federal and states budgets, may in fact result in health outcomes that are demonstrably worse for Medicaid recipients than for people who are completely uninsured. A well-known national study conducted by the University of Virginia examined outcomes for nearly one million people undergoing major surgical operations over a four-year period and determined Medicaid recipients are 13 percent more likely to die in the hospital after surgery than the uninsured, and 97 percent more likely to die than people with private insurance. Scott Gottlieb, the former FDA Administrator, stated bluntly in a Wall Street Journal piece, “Medicaid is worse than no coverage at all.”⁸⁵ He also pointed to a sampling of research finding poor health

⁷⁹ Miller, Sarah, and Laura R Wherry. “Health and Access to Care during the First 2 Years of the ACA Medicaid Expansions: NEJM.” *New England Journal of Medicine*, 9 Mar. 2017, <https://www.nejm.org/doi/full/10.1056/NEJMs1612890>.

⁸⁰ Horton, Nicholas. “WAITING FOR HELP: The Medicaid Waiting List Crisis.” *The Foundation for Government Accountability*, 6 Mar. 2018, <https://thefga.org/wp-content/uploads/2018/03/WAITING-FOR-HELP-The-Medicaid-Waiting-List-Crisis-07302018.pdf#page=2>.

⁸¹ Horton, Nicholas. “WAITING FOR HELP: The Medicaid Waiting List Crisis.” *The Foundation for Government Accountability*, 6 Mar. 2018, <https://thefga.org/wp-content/uploads/2018/03/WAITING-FOR-HELP-The-Medicaid-Waiting-List-Crisis-07302018.pdf#page=2>.

⁸² Jacobs, Christopher. “Since Obamacare, Waiting Lists For Disabled Care Grew 40 Percent.” *The Federalist*, 24 Sept. 2019, <https://thefederalist.com/2019/09/24/since-obamacare-waiting-lists-for-care-for-disabled-people-have-grown-40-percent/>.

⁸³ *Id.*

⁸⁴ “Skylar’s Story: Waiting for Care.” *The Foundation for Government Accountability*, 8 Oct. 2017, <https://thefga.org/success-story/skylars-story-waiting-care/>.

⁸⁵ Gottlieb, Scott. “Medicaid Is Worse Than No Coverage at All.” *The Wall Street Journal*, 10 Mar. 2011, <https://www.wsj.com/articles/SB10001424052748704758904576188280858303612>.

outcomes for patients seeking care for head and neck cancer, heart procedures, and lung transplants. Moreover, while the ACA expansion was supposed to reduce the number of emergency room visits, studies have actually shown such visits have increased under the expansion.^{86 87}

PERSONAL STORY OF LINDSEY OVERMAN

Lindsey Overman and her family live in Arkansas. Her daughter Skylar was diagnosed with a rare condition called Schizencephaly in utero. There is no corrective procedure for Skylar's condition, so the family focuses on treating her symptoms and everything that comes with her diagnosis.

According to Lindsey, "We go to the doctor sometimes 3 or 4 times a month. We try to prolong her life and give her the best life possible. She has a wonderful school and has a one-on-one nurse. But she relies on us for care for everything."

The Medicaid program is supposed to provide health care to the truly needy, but that is not the Overmans' experience. Skylar has been on the Medicaid waiting list for over 10 years. The ACA encouraged states like Arkansas to expand Medicaid to prioritize abled-bodied adults over those with disabilities like Skylar. There are thousands of people on the Medicaid waiting list in Arkansas and over 80 people have died while waiting for services since the expansion.

"What's frustrating on the Medicaid waiting list, is we've always been a number," Lindsey has said. "I've seen people get services because they cheated the system. It's easier for me, as I would receive more services if I quit my job and stayed at home and allowed the state to pay for things. But I work really hard and I am very determined to have a great life. I want to provide for my family more so than what the state is going to provide."

After 10 years on the waiting list, the family finally found out Skylar was accepted, but then learned she would not end up being approved for services. The Overman family and patients like Skylar need a health care system that protects the truly vulnerable, without discouraging people like Lindsey from working to provide for their families.

Figure 4.
Lindsey Overman,
Arkansas

Medicaid is also notorious for high levels of fraud, waste, and abuse. For every federally-funded dollar that Medicaid pays out, nearly 10 percent is done so improperly.⁸⁸ In FY 2018, Medicaid covered about 75 million individuals and cost \$629 billion, of which \$393 billion came from the federal government. This means that in FY 2018, the federal government made approximately \$36 billion in Medicaid payments in error. This mismanagement, exacerbated by the ACA expansion, translates into wasted resources that could be directed to better care for Medicaid's vulnerable populations. Louisiana, which expanded in 2016, is illustrative of the program's failures. "Since Louisiana expanded Medicaid in July

⁸⁶ Sharma, Aabha I., et al. "Emergency Department Visits and Hospitalizations for the Uninsured in Illinois Before and After Affordable Care Act Insurance Expansion." *Springer Link*. 12 Nov. 2016, <https://link.springer.com/article/10.1007/s10900-016-0293-4>.

⁸⁷ Ladhania, Rahul, et al. "The Effect of Medicaid Expansion on the Nature of New Enrollees' Emergency Department Use." *Medical Care Research and Review*, May 2019, doi:10.1177/1077558719848270.

⁸⁸ "HIGH-RISK SERIES Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas." *United States Government Accountability Office*, Mar. 2019, <https://www.gao.gov/assets/700/697245.pdf#page=257>.

2016, at least 5,534 Louisiana residents with disabilities have died—yes, died—while on waiting lists for Medicaid to care for their personal needs,” according to Chris Jacobs of the Juniper Research Group.⁸⁹ Meanwhile, out of “100 Medicaid recipients studied by the [Louisiana Legislative Auditor], 93...did not qualify for benefits for at least one month they received them, [and] had an average—repeat, average—household income of \$67,742. Fourteen of the recipients reported income of over \$100,000.”⁹⁰

Additionally, Medicaid’s expansion has been responsible for several health insurance market distortions, namely “crowding out” of private insurance and increasing costs in the private market. Given the disparity of care between private insurance and Medicaid, pushing individuals out of employer-sponsored care and into Medicaid (i.e., “crowding out”) could have devastating consequences. While proponents of the Medicaid expansion typically rely heavily on how it extended insurance to millions of Americans, a 2018 study published by the Manhattan Institute points out that “57% of the increase in publicly subsidized insurance between 2007 and 2017 was offset by a decline in unsubsidized private insurance.”⁹¹ As the Kaiser Family Foundation points out, these declines occur when “employers alter their offering of coverage in response to the expansion of Medicaid.”⁹²

Moreover, states that expanded Medicaid experienced an average increase of \$177 per person in private-sector health care costs. This is caused by increased “cost-shifting,” where providers offset increased losses from taking on more Medicaid patients post-expansion. Even before the ACA, it was estimated that an average family paid an additional \$1,800 on their private health insurance premiums per year because of the cost-shifting phenomenon.⁹³

THE DISASTER OF SINGLE-PAYER

Clearly, the status quo is not working for the American people. The ACA has failed to make health insurance more affordable and has reduced the quality and accessibility of care. However, rather than focusing on reforms that would provide personalized and affordable care, many Democrats are using the ACA’s failures as a springboard for instituting a mandatory one-size-fits-all, government-run health care system that would eliminate all private forms of health insurance. This proposal is often referred to as a “single-payer” system.

Under such a government-run system, the federal government would act as the sole-financier of health care services for every American. Far from free, Americans would pay for their one-size-fits-all health insurance by paying twice as many taxes and swallowing lower-quality care and long wait times. In other words, the federal government would be the nation’s sole health insurer with thousands of faceless, unaccountable Washington bureaucrats playing gatekeeper between patients and the health

⁸⁹ Jacobs, Chris. “The Inconvenient Truths of Louisiana’s Medicaid Expansion.” *Lafayette Daily Advertiser*, 17 May 2019, <https://www.theadvertiser.com/story/opinion/2019/05/17/inconvenient-truths-louisianas-medicaid-expansion/3693606002/>.

⁹⁰ Pope, Chris. “HOW TO INCREASE HEALTH INSURANCE COVERAGE BY REDUCING ACA CROWD-OUT.” *Manhattan Institute*, Jan. 2018, <https://media4.manhattan-institute.org/sites/default/files/R-CP-0118.pdf>.

⁹¹ Pope, Chris. “HOW TO INCREASE HEALTH INSURANCE COVERAGE BY REDUCING ACA CROWD-OUT.” *Manhattan Institute*, Jan. 2018, <https://media4.manhattan-institute.org/sites/default/files/R-CP-0118.pdf>.

⁹² Antonisse, Larisa, et al. “The Effects of Medicaid Expansion under the ACA: Updated Findings from a Literature Review.” *The Henry J. Kaiser Family Foundation*, 15 Aug. 2019, <https://www.kff.org/medicaid/issue-brief/the-effects-of-medicaid-expansion-under-the-aca-updated-findings-from-a-literature-review-august-2019/>.

⁹³ Roy, Avik. “How Ohio’s Medicaid Expansion Will Increase Health Insurance Premiums for Everyone Else.” *Forbes Magazine*, 10 June 2013, <https://www.forbes.com/sites/theapothecary/2013/02/08/how-ohios-medicaid-expansion-will-increase-health-insurance-premiums-for-everyone-else/#7a8e5c5319d7>.

care services they need. Such a system would be a disaster for the American people, especially for those with chronic health conditions.

We can see the degradation in health care quality that stems from a one-size-fits-all, government-run health care system in the countries all over the world that have adopted it. For instance, in England, there are a record-setting 4.2 million patients on its National Health Service waiting lists.⁹⁴ Moreover, 19 percent of cancer patients will wait over two months after referral for their first urgent cancer treatment.⁹⁵ In Canada, the median waiting period in 2016 for a referral from a general physician appointment to see a specialist was 9.4 weeks.⁹⁶ This is on top of the median wait of 10.6 weeks that elapses between a specialist visit and first treatment.⁹⁷ Together, this means that the median wait after an initial doctor appointment to start treatment is around 4.5 months.⁹⁸

This system could also create an exodus of quality medical professionals from the health care field and a reduction in services offered by providers and hospitals. According to the Journal of the American Medical Association, due to reduced payment rates, a single-payer system could result in 1.5 million job losses in the hospital sector.⁹⁹ ¹⁰⁰Meanwhile, rural health centers, already struggling to keep their doors open, could be forced to close and leave those area residents without care.¹⁰¹ To offset revenue losses, services that had previously yielded smaller profit margins, like mental health, could be abandoned.¹⁰²

We can also see the disfunction of a government-run health care system in our own country with the U.S. Veterans Health Administration (VHA), which provides health care to 9 million military veterans each year.¹⁰³ In 2014, it was revealed that at least 40 veterans seeking treatment with the Phoenix Veterans Affairs Health Care system died while waiting for appointments, and managers attempting to protect their performance bonuses purposefully hid a secret list of 1,400 – 1,600 sick veterans who had been waiting months for a doctor’s appointment.¹⁰⁴ This is the type of care and management that comes from a health care system run by bureaucrats. According to a 2015 VHA report entitled, “Review of Alleged Mismanagement at the Health Eligibility Center,” as of September 2014, enrollment processing had a backlog of 867,000 health care applications, and of this backlog 307,000 applications (35 percent) belonged to applicants determined to be deceased by the Social Security Administration.¹⁰⁵

⁹⁴ Atlas, Scott. “The Conservative Case for Health Care.” *The Washington Times*, 22 May 2019, <https://www.washingtontimes.com/news/2019/may/22/the-conservative-case-for-health-care/>.

⁹⁵ *Id.*

⁹⁶ Barua, Bacchus, and Feixue Ren. “Waiting Your Turn: Wait Times for Health Care in Canada.” *Fraser Institute*, Nov. 2016, <https://www.fraserinstitute.org/sites/default/files/waiting-your-turn-wait-times-for-health-care-in-canada-2016.pdf>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ “The Implications of ‘Medicare for All’ for US Hospitals.” *Bahm Alliance*, 6 Apr. 2019, <https://bahm-alliance.org/publications/5058/>.

¹⁰⁰ Jacobs, Chris. “CASE AGAINST SINGLE PAYER: How Medicare for All Will Wreck Americas Health Care System and Its... Economy.” Republic Book Publisher, 2019, p. 76.

¹⁰¹ Abelson, Reed. “Hospitals Stand to Lose Billions Under ‘Medicare for All.’” *The New York Times*, 21 Apr. 2019, <https://www.nytimes.com/2019/04/21/health/medicare-for-all-hospitals.html>.

¹⁰² *Id.*

¹⁰³ Veterans Health Administration. “VA.gov, Veterans Health Administration, 29 Apr. 2008, <https://www.va.gov/health/#targetText=The%20Veterans%20Health%20Administration%20is,million%20enrolled%20Veterans%20each%20year>.

¹⁰⁴ Bronstein, Scott, and Drew Griffin. “A Fatal Wait: Veterans Languish and Die on a VA Hospital’s Secret List.” *CNN*, Cable News Network, 24 Apr. 2014, <https://www.cnn.com/2014/04/23/health/veterans-dying-health-care-delays/>.

¹⁰⁵ “Review of Alleged Mismanagement at the Health Eligibility Center.” *The Department of Veterans Affairs*, 2 Sept. 2015, <https://www.va.gov/oig/pubs/VAO-IG-14-01792-510.pdf>.

For those who survive the waitlists, the toll of the VHA health care system can still be too much to bear. Former corporal in the 12th Marine Regiment, Jonathan LaForce, has written about the devastating struggles veterans face under the VHA's government-run model, recounting "reports of vets who threw themselves out the upper windows of VA hospitals because of some moronic bureaucrat" and how one veteran "doused himself in gasoline in front of the clinic, lit himself on fire, and died."¹⁰⁶

Not only would Americans be stuck with worse health care under a one-size-fits-all, government-run system, it would come at enormous costs to taxpayers. One "lower bound" estimate conducted by the Mercatus Center concluded that such a plan would cost \$32.6 trillion over the first 10 years.¹⁰⁷ This cost estimate is verified by a nearly identical estimate from the Urban Institute.¹⁰⁸ Even *doubling* federal individual and corporate income taxes would fail to finance the enormous proposal. The Mercatus Center paper warns, "it is likely that the actual cost of [a single-payer system] would be substantially greater than these estimates" because they assume the federal government would reimburse providers at Medicare rates. This assumption, however, is unrealistic, with government-run health care advocates already abandoning Medicare rates and supporting higher provider payments.¹⁰⁹ This exact scenario has already played out in the state of Washington.¹¹⁰ Accordingly, Americans can expect that a one-size-fits-all, government-run system to not only raise federal spending and taxes but total national health care spending. In other words, the promise that Americans would pay less overall is a fallacy— not to mention the accompanying reductions in the quality and timeliness of health care.

If you like your plan, you will definitely not be able to keep it under a one-size-fits-all system of health care. Instead, what would be required is the complete elimination of employer-sponsored health insurance, resulting in roughly 160 million people losing their current health insurance coverage. The ACA has resulted in a few million people losing their coverage, but a complete government-run system would force nearly 200 million people off their employer-coverage as soon as it is implemented.¹¹¹ A one-size-fits-all system would also include the total takeover of thousands of privately-owned health care providers. Additionally, seniors would be required to leave Medicare, a program they have paid into their entire lives, and would be moved into a new program where every American would compete for their benefits¹¹².

The RSC rejects this system, which would threaten the care of hundreds of millions of people, jeopardize the country's economy, and result in Washington bureaucrats taking over the American health care system. Instead, we are proposing real solutions.

A FRESH START

From the beginning, many advocates of the ACA sought to weaponize the issue of "pre-existing conditions" as a means to get their new law passed. The result has been that a vulnerable population of Americans has been used as political pawns. To extend insurance to individuals with pre-existing

¹⁰⁶ LaForce, Jonathan. "We Have A Single-Payer System, And It's Killing Veterans Like Me." *The Federalist*, 21 Aug. 2017, <https://thefederalist.com/2017/08/16/america-already-single-payer-system-killing-veterans-like/>.

¹¹¹ Jacobs, Chris. "CASE AGAINST SINGLE PAYER: How Medicare for All Will Wreck Americas Health Care System and Its... Economy." Republic Book Publisher, 2019, p. 7.

¹¹² *Id* at, p. 27.



THE RSC HEALTH CARE PLAN

conditions, the ACA imposed a new regulatory scheme consisting of onerous mandates and laws that forced all Americans into insurance plans they did not need and could not afford. The RSC has always understood this is the wrong approach, and now a decade of increases in insurance costs and the overall reductions in the quality of available care under the ACA have proven the point.

In stark contrast to the failed ACA experiment and reckless calls for a one-size-fits-all, government-run system, the RSC offers a sustainable solution that would still provide protections for those Americans with pre-existing conditions without sacrificing the quality of care. The RSC plan envisions an individual marketplace in which the government no longer makes health care decisions for each American, but rather each individual is empowered with greater control over their own health care choices and resources. Moreover, while the ACA has disincentivized the purchase of insurance, the RSC plan is designed to reward responsibility, reduce barriers to continuously maintaining insurance, and provide a wider array of affordable options.

To accomplish these goals, it is necessary to transform the individual marketplace's current regulatory structure, unwind the ACA's Washington-centric approach, and largely return regulatory authority to

the individual states.¹¹³ As explained in the following section, protections pertaining to guaranteed issue and the prohibition on coverage exclusions would be retooled under the RSC plan to reward continuous coverage and promote portability in the individual marketplace. Additionally, in order to provide Americans with health insurance options that fit their individualized needs and do not add unnecessary expenses, the RSC plan would undo the ACA's regulations on essential health benefits, annual and lifetime limits, preventive care cost-sharing, dependent coverage, and actuarial value. Each state would again be allowed to dictate the minimum attributes and cost-sharing parameters of plans to best meet the needs of their own citizens. The ACA's medical loss ratio, along with its competition-killing and premium-increasing effects, would be eliminated as well. In no case, however, would carriers be able to rescind, increase rates, or refuse to renew one's health insurance simply because a person developed a condition after enrollment.¹¹⁴

Additionally, states—and not the federal government—would be solely empowered under the RSC plan to establish restraints on the extent to which carriers could incorporate the health risks of individuals into premiums. Thus, the RSC plan would eliminate the ACA's community rating, age banding, and single risk pool requirements. However, under the RSC plan, individuals with high risk medical conditions would have affordable access to state-run Guaranteed Coverage Pools under which their health care costs would be subsidized with federal grants and further contained by any state-enacted premium-setting restrictions.

Separately, the RSC plan would ensure states receive federal grants designed to assist the states in flexibly providing low-income individuals with access to affordable coverage. Funding for these grants would be derived from repackaging the ACA's premium subsidies and Medicaid expansion funding. Details regarding the RSC plan's Guaranteed Coverage Pool funding and low-income grants are provided further below.

The cumulative effect of these changes would result in Americans being provided with more insurance choices that are personalized to their needs and available at affordable rates. In this way, the RSC plan is designed to facilitate the acquisition and continuity of coverage. These two elements are critical to the RSC's holistic approach to neutralizing the issue of pre-existing conditions. People must be able to get and keep coverage before developing an adverse health condition.

HEALTH INSURANCE PORTABILITY

Enhancing portability of coverage is the cornerstone of the RSC's approach to neutralizing the issue of pre-existing conditions. What is portability? The term refers to the ability of an insured individual to carry their insurance coverage protections with them. Enhancing portability is critical for purposes of preventing breaks in coverage, during which time an individual could develop a medical condition posing an impediment to obtaining health insurance. In this way, continuous coverage can be a *de facto*

safeguard against pre-existing conditions, so long as the operative legal backdrop ensures that coverage protections are portable. Indeed, this is precisely the legal framework and peace of mind

¹¹³ Although the ACA regulations enumerated in this section would be eliminated at the federal level under the RSC plan, as has always been the case, states would retain the ability to reinstate them within their borders, and the RSC plan would do nothing to preempt this authority. Indeed, 11 states have preemptively codified Obamacare's individual regulatory scheme or are considering doing so. See, Corlette, Sabrina, and Emily Curran. "Can States Fill the Gap If the Federal Government Overturns Preexisting-Condition Protections?" *Commonwealth Fund*, 7 May 2019, <https://www.commonwealthfund.org/blog/2019/can-states-fill-gap-preexisting-condition-protections>.

¹¹⁴ Short-term, limited duration plans, would continue, as is the case under ACA, to be renewable upon agreement of both the insured individual and carrier.

that the RSC plan provides.

Enhanced Portability Protections

Before the enactment of the ACA, individuals were afforded some degree of portability in the private health insurance arena, but this was primarily focused within the employer-sponsored market. Federal law generally prevented an employer that sponsored health insurance from precluding any employee's participation in the plan because of an existing health condition. This guaranteed coverage requirement was subject to an optional, temporary period during which a pre-existing condition could be excluded from coverage, but that would be reduced month-for-month for periods of prior coverage.¹¹⁵ This rule applied whether the individual was entering the employer marketplace from the individual market or coming from another employer. The ACA later barred the temporary exclusion period.¹¹⁶ It also implemented the employer mandate applicable to employers with 50 or more full-time employees. The RSC plan does not propose reversing the ACA's ban on exclusion periods in the employer market but

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our plan would eliminate the ACA's job-killing employer mandate.

Pre-ACA federal law sought to facilitate the transition from the employer marketplace to the individual marketplace by providing certain portability protections to eligible individuals, such as guaranteed issue and a prohibition on pre-existing condition exclusions.¹¹⁷ These portability protections were dictated by the Health Insurance Portability and Accountability Act (HIPAA). Eligibility was contingent upon the individual: 1) possessing credible health insurance coverage for at least 18 months without a break of 63 days; 2) exhausting any COBRA (or other continuation) coverage;¹¹⁸ and 3) having no eligibility for coverage under any employment-based plan, Medicare or Medicaid. A state could fulfill its duty to provide these portability protections by either requiring individual market carriers to supply them to eligible individuals (this was the federal default), or by instituting an alternative mechanism, such as a high-risk pool for eligible individuals.¹¹⁹

This pre-ACA framework, however, left a gap in portability. While it largely provided portability for coverage going into a job, from job to job, and from a job to the individual marketplace, it did not reward individuals who maintained insurance with any portability protections when they moved within the individual marketplace. In other words, if a person sought to change carriers within the individual marketplace, he or she could be denied coverage based on their health status. The ACA ignored the opportunity to simply bridge that portability gap for individuals who have responsibly maintained insurance, and instead created a system that disincentivized individuals from purchasing insurance. This inevitably resulted in the reduced quality of care and cost-prohibitive premiums and deductibles that Americans are experiencing today.

The RSC plan proposes to bridge the portability gap that was left by HIPAA in the individual marketplace by providing enhanced portability protections for individuals as they move between and within the employer and individual marketplaces. Why would somebody move from an individual

¹¹⁵ Under HIPAA, the exclusion period could be as long as 12 months, reduced for each month of creditable coverage.

¹¹⁶ Under the ACA, employers are still allowed to require new employees to work for up to 90 days prior to becoming eligible to participate in the employer plan.

¹¹⁷ HIPAA's provisions requiring guaranteed issue and prohibiting pre-existing condition exclusions for HIPAA-eligible individuals could alternatively be satisfied by implementation of, among other things, a qualified high-risk pool.

¹¹⁸ COBRA Fact Sheet." *Centers for Medicare & Medicaid Services*, 20 May 2019, https://www.cms.gov/CCIIO/Programs-and-Initiatives/Other-Insurance-Protections/co-bra_fact_sheet.html.

¹¹⁹ *Id.*

plan to individual plan? Perhaps that person has relocated to a new state which offers different plans, or perhaps a carrier no longer offers plans in a particular market. Because changes in individual circumstances can happen unexpectedly, the RSC plan would give individuals the flexibility to move through the private market.

First, under the RSC plan, movement into the individual marketplace from the employer marketplace would be facilitated by ensuring that individuals do not need to exhaust COBRA (or other continuation) coverage before entering the individual market with portability protections. Employer-sponsored plans are often far broader and more expensive than people need or can afford on their own. Consequently, people are routinely forced into having a lapse in continuous coverage because their COBRA plan is not a viable option. While the RSC plan would eliminate the need to exhaust COBRA, individuals would still have access to this coverage pursuant to their own choice, and employers would still have to provide it as an option.

Second, whether a person is moving from an employer plan into the individual marketplace or switching individual plans, they would receive the same coverage protections afforded to a person enrolling in employer-sponsored coverage under pre-ACA HIPAA law. In other words, everyone seeking coverage in the individual marketplace would have guaranteed issue protections and could not be refused a plan based on the enrollee's health status, medical condition, claims experience, receipt of health care, medical history, genetic information, evidence of insurability, or disability.¹²⁰

However, if a person does not have twelve months of continuous coverage,¹²¹ the person could be subject to an exclusion period of up to twelve months for an existing condition. Prior periods of continuous coverage would reduce any exclusion period month-for-month. The 63-day grace period for gaps in coverage would be maintained under the RSC plan. Additionally, as was the case under HIPAA, states would be able to satisfy the RSC plan's portability protections through the implementation of a Guaranteed Coverage Pool providing these same portability protections.

Critically, the parameters of the RSC plan would simply serve as guardrails in the individual marketplace and would not in any way hinder states from shortening continuous coverage requirements, providing limitations on premiums for people with or without prior coverage, or adding any additional protections for people seeking a plan in the individual marketplace.

Lawmakers could also explore ways in which states could be given flexibility in providing these portability protections in the individual marketplace for those with continuous coverage. For instance, prior to the ACA, federal law allowed states to meet group-to-individual market portability protections by requiring carriers to offer eligible individuals access to their two most popular policies or access to a lower-level and higher-level coverage. Some states simply had a designated carrier serve as the guaranteed issue carrier.

To ensure that ample options exist for Americans to possess continuous coverage, short-term, limited-duration plans would count toward periods of continuous coverage under the RSC plan. Additionally, the RSC plan would codify the Department of Health and Human Services' new rule allowing short-

¹²⁰ Haislmaier, Edmund. "Saving the American Dream: The U.S. Needs Commonsense Health Insurance Reforms." *The Heritage Foundation*, 22 June 2012, <https://www.heritage.org/health-care-reform/report/saving-the-american-dream-the-us-needs-commonsense-health-insurance>.

¹²¹ HIPAA required 18 months of continuous coverage for individuals moving from the employer coverage to the individual marketplace before becoming eligible for portability protections (guaranteed issue and a prohibition on condition exclusions).

term, limited-duration plans to last for a term of one year (and renewable for up to 36 months). Health care sharing ministry plans would also count toward continuous coverage. However, in order to combat a potential adverse selection issue where individuals with portability protections attempt to switch to a plan with more substantial benefits, carriers should be given the flexibility to apply the continuous coverage requirements on a benefit-by-benefit basis. Indeed, this concept existed to some extent prior to the ACA.¹²² Without such an option, insurers would be disincentivized from providing quality benefits, a phenomenon that has adversely affected the quality of care under the ACA. Again, this twelve-month period would be reduced month-for-month for periods that the individual possessed a particular benefit. In this way, individuals would be provided with the ability to change plans, but for the sake of a sustainable insurance market, safeguards would be put in place to prevent gaming the system.

Guaranteed Coverage Pools

The RSC plan would provide federal funding for states to supplement the medical costs of eligible high-risk individuals. The RSC plan refers to this mechanism as a Guaranteed Coverage Pool. These federally-funded, state-administered pools would provide premium stability in the individual marketplace, ensure that individuals with high-cost illnesses have access to affordable health coverage, and serve as a means of providing portability protections for individuals who have maintained continuous coverage.

More specifically, under the RSC plan, the federal government would make funding available for states to design and operate their own Guaranteed Coverage Pools. States would not be locked into a particular Guaranteed Coverage Pool mechanism, but rather would be given the freedom to use the federal funds to implement innovative, state-centric designs that would ensure everyone in the state's pool has access to better care than under the ACA. The RSC plan would not require the federal government to operate a Guaranteed Coverage Pool if a state chooses not to do so, but simply would make funding available to states that do.

The RSC plan offers true flexibility to states to operate a Guaranteed Coverage Pool designed by them to best meet their citizens' needs. For instance, states could choose to administer a Guaranteed Coverage Pool resembling a traditional high-risk pool. Prior to the ACA, more than thirty states operated such pools.¹²³ Alternatively, states would have the flexibility to implement other innovative models to stabilize and reduce premiums within their borders. For instance, they could adopt the invisible high-risk pool model developed in Maine prior to the ACA,¹²⁴ or build off of similar reinsurance programs recently implemented in several other states pursuant to ACA waivers.

Under the Maine invisible high-risk pool model, lawmakers designated certain high-risk conditions that would automatically qualify an individual for participation in the invisible high-risk pool. These

¹²² "The Health Insurance Portability and Accountability Act (HIPAA) of 1996." *Congressional Research Service*, 24 Jan. 2005, https://www.everycrsreport.com/files/20050124_RL31634_ea1679709ba7307c9b9ff48e98238723ea72163c.pdf#page=10.

¹²³ "Health Insurance: State High Risk Pools." *Congressional Research Service*, 26 Jan. 2011, https://www.everycrsreport.com/files/20110126_RL31745_fef77533858b8e9826d900b2efc7789381c4604e.pdf.

¹²⁴ Allumbaugh, Joel, et al. "Invisible High-Risk Pools: How Congress Can Lower Premiums And Deal With Pre-Existing Conditions." *Health Affairs*, 2 Mar. 2017, <https://www.healthaffairs.org/doi/10.1377/hblog20170302.059003/full/>.

conditions included congestive heart failure, HIV, COPD, kidney failure, and various cancers.¹²⁵ ¹²⁶ Insurers also were given the discretion to cede individuals on a case-by-case basis after reviewing their medical history. Individuals qualifying for federal financing were still able to enroll in private coverage and were even unaware of the fact that their medical costs were largely being paid by such funding. Insurers were required to relinquish nearly all the premiums collected from high-risk individuals to the pool to assist with its financing. This also negated the opportunity for insurers to make a profit from placing individuals in the pool. Maine's pool paid all medical costs for the individual beyond \$10,000. With insurers bearing the risk up to this threshold, there was not a financial advantage to excessively designate individuals as high-risk.

Even when implemented in the context of the burdensome regulatory scheme in Maine—which was essentially the ACA—their risk-sharing model has been estimated to have reduced premiums 12 to 15 percent.¹²⁷ When coupled with very minor regulatory reforms related to age-banding, mandated benefits, and cost-sharing flexibility, average individual market premiums were cut in half.¹²⁸

More recently, seven states, including Alaska, Maine, Maryland, Minnesota, New Jersey, Oregon and Wisconsin, were awarded waivers under Section 1332 of the ACA to deviate from certain ACA mandates and redirect ACA subsidies toward uniquely designed reinsurance programs. While each of these states' programs share similar designs to bring down premiums, and largely reflect the strategy of Maine's original IHRP, they contain unique attributes reflecting the flexibility needed for effective implementation. As Doug Badger of the Heritage Foundation has explained:

All five have established attachment points (claims thresholds above which the reinsurance fund would begin to pay), ceilings (levels above which the reinsurance fund would no longer defray the claims costs), and coinsurance rates (the percentage of claims the reinsurance fund would pay between the attachment point and the ceiling). North Dakota, for example, proposes a reinsurance fund that would pay 75 percent of claims between \$100,000 and \$1,000,000. Colorado, by contrast, would set the claims range at \$30,000 to \$400,000, and would vary coinsurance by rating area (range of 45 percent to 85 percent). The ability of a state to tailor its waiver program to its market (and to vary the program to reflect market variations within the state) is an essential feature.¹²⁹

¹²⁵ As explained by the Brookings Institution, "High risk" was determined based on having one of eight prior diagnoses (congestive heart failure, HIV, COPD, kidney failure, various cancers), or based on information the insurer collected from applicants through a detailed medical questionnaire. The questionnaire can be found here: <http://www.mgara.org/Health%20Assessment%20Form.pdf>. See, Hall, Mark, and Nicholas Bagley. "Making Sense of 'Invisible Risk Sharing.'" *Brookings Institute*, 5 Mar. 2018, <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2017/04/12/making-sense-of-invisible-risk-sharing/>.

"MAINE GUARANTEED ACCESS REINSURANCE ASSOCIATION HEALTH ASSESSMENT FORM INDIVIDUAL INSURANCE PLAN." *MGARA.org*, Maine Guaranteed Access Reinsurance Association, [http://www.mgara.org/Health Assessment Form.pdf](http://www.mgara.org/Health%20Assessment%20Form.pdf).

¹²⁶ Hall, Mark, and Nicholas Bagley. "Making Sense of 'Invisible Risk Sharing.'" *Brookings Institute*, Brookings Institute, 5 Mar. 2018, <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2017/04/12/making-sense-of-invisible-risk-sharing/>.

¹²⁷ Gorman, Bela, et al. "The Impact of PL90 on Maine's Health Insurance Markets." *Gorman Actuarial, LLC*, Dec. 2011 p.12, https://www.maine.gov/pfr/insurance/publications_reports/archived_reports/pdf/gorman_actuarial_report.pdf#page=12.

¹²⁸ Allumbaugh, Joel, et al. "Invisible High-Risk Pools: How Congress Can Lower Premiums And Deal With Pre-Existing Conditions." *Health Affairs*, 2 Mar. 2017, <https://www.healthaffairs.org/doi/10.1377/hblog20170302.059003/full/>.

¹²⁹ Badger, Doug. "How Health Care Premiums Are Declining in States That Seek Relief from Obamacare's Mandates." *The Heritage Foundation*, Aug. 13, 2019, <https://www.heritage.org/sites/default/files/2019-08/IB4990.pdf>.

Moreover, according to Badger, “Premiums in those waiver states fell by a median of 7.48 percent, while premiums in the other 44 states and the District of Columbia rose by a median of 3.09 percent. An additional five states (Colorado, Delaware, Montana, North Dakota, Rhode Island) project premium declines ranging from -16 percent to -5.9 percent in 2020 due to waivers.” The common lesson learned from these risk-sharing programs is that when states are allowed to innovate, they are able to reduce the cost of insurance without sacrificing the quality of care.

Notably, states were able to accomplish this in spite of the fact that they were all severely restricted in their regulatory flexibility. Maine’s IHRP was coupled only with minor reforms related to age-banding, mandated benefits, and cost-sharing flexibility. States carrying out 1332 waivers only waived the ACA’s single-risk pool requirement. Thus, it can be expected that, when coupled with the RSC plan’s more robust regulatory reforms, premiums would be driven down even further. Consequently, the individual marketplace would become a better, more affordable option for healthier people, including those who were previously uninsured. People would be attracted to and rewarded for obtaining individual marketplace coverage rather than repelled and disincentivized as they are under the ACA.

As noted above, states can satisfy the RSC plan’s individual marketplace portability protections through the implementation of a Guaranteed Coverage Pool that provides such protections. Accordingly, the coverage pool would have to: 1) provide immediate access to a plan and prohibit condition exclusions for individuals who have maintained twelve months of continuous coverage; 2) cap any condition exclusion period at twelve months; and 3) reduce any exclusions month-for-month for individuals with less than twelve months continuous coverage. Consequently, everyone with an existing condition who is seeking coverage in the individual market would be provided a pathway to obtaining complete coverage of all their conditions within just twelve months.

States would be free under the RSC plan to enact shorter exclusion periods. Prior to the ACA, the vast majority of states with high-risk pools capped their exclusion period at six months or shorter. Specifically, out of the states operating high-risk pools, two states had no exclusion period, five states had periods of 2 to 3 months, sixteen states had periods of 6 months, and nine states had periods of 9 to 12 months.¹³⁰

States would be given the flexibility to set other guardrails on the cost and attributes of a pool’s insurance coverage, too. For instance, states could set caps, relative to standard market rates, on the premiums of those high-risk individuals ceded to a Guaranteed Coverage Pool. Notably, the vast majority of states with high risk pools prior to the ACA limited premiums for their high-risk population to a ratio of 1.5:1 of standard market rates.¹³¹ Still, even including states with caps higher than 1.5:1, average premiums for high-risk individuals were 1.38:1 relative to market rates.¹³² Moreover, according to the Kaiser Family Foundation, “most pools offered a choice of plan options with different deductibles; in 29 programs, the plan option with the highest enrollment had a deductible of \$1,000 or higher...” Compare this to plans under the ACA, where the average deductible for a bronze plan in 2019 is nearly \$5,900.¹³³

¹³⁰ Richard Cauchi, “States and High Risk Pools,” *National Conference of State Legislatures (NCSL)*, May 17, 2010, <http://www.ncsl.org/portals/1/documents/health/HighRiskpoolswebinar51710.pdf>.

¹³¹ NASCHIP. “Premium Rate Setting Methodology” Sept. 2012, <http://naschip.org/2012/Quick%20Checks/Premium%20Rate%20Setting%20Methodology.pdf>.

¹³² *Id.*

¹³³ Luhby, Tami. “Fact Check: Are Obamacare’s Deductibles More than \$7,000?” *CNN*, 2 Apr. 2019, <https://www.cnn.com/2019/04/01/politics/fact-check-obamacare-deductibles/index.html>.

Federal funding for Guaranteed Coverage Pools would be delivered to states in the form of a grant derived from repackaging the ACA's individual marketplace subsidies and Medicaid expansion. This reflects the method by which states receive federal funding for their reinsurance pools under 1332 waivers—through repackaging of the ACA subsidy spending. It should be noted that although states would be given maximum flexibility in utilizing Guaranteed Coverage Pool funds to lower costs for high-risk individuals, under the RSC plan, such funding could not be used to subsidize abortion benefits. Lawmakers could funnel funding through the current Children's Health Insurance Program, as proposed in the Graham-Cassidy-Heller-Johnson proposal,¹³⁴ to ensure that CHIP's current pro-life protections attach automatically.

Overall, lawmakers must endeavor to determine the appropriate amount of funding that would be needed to bring stability to the individual marketplace to ensure that premiums for high-risk individuals are affordable, without shifting costs over to non-high-risk individuals to the extent they do not wish to purchase insurance. Though the potential \$17 billion annual price tag¹³⁵ may not seem ideal, it sets up a sustainable path for the individual marketplace and deters our nation from heading toward a government-run, one-size-fits-all health care system that would cost taxpayers more than \$30 trillion over the next decade. The RSC plan's reforms will incentivize continuous coverage and provide the opportunity to purchase affordable, personalized plans, which together will drive individuals to obtain coverage before they become sick. Consequently, the RSC plan will operate to neutralize the issue of pre-existing conditions and build a healthier marketplace.

Tax Benefit Equality

A sustainable health care plan which aims to address long-existing systemic problems must also address problems that predated the ACA.¹³⁶ One such area in need of reform is the inequitable way in which health insurance expenditures are treated under antiquated tax laws. The RSC plan would remedy relevant tax code flaws to further facilitate personalized, portable, and continuous coverage.

The most notable flaw in the tax code as it relates to health care is the inequitable treatment between employer-sponsored and individually purchased health insurance. A person choosing to purchase health insurance with income from their paycheck is at a significant tax disadvantage versus a person receiving employer-sponsored insurance. When an employer spends money to purchase a plan for an employee, the employer does not have to pay payroll taxes on the benefit nor does the employee pay payroll or other federal and state income taxes on the benefit. On the other hand, if an employee seeks to purchase individual coverage, the funds they would use to do so are subject to each of those forms of taxation. This results in a massive financial disincentive for both the employee and the employer to provide wages for the purchase of individual insurance versus providing employer-sponsored coverage.

The tax-exempt status of employer-sponsored insurance has been called the "original sin" of the U.S. health care system.¹³⁷ Though the Internal Revenue Service had generally considered fringe benefits

¹³⁴ "Read About Graham-Cassidy-Heller-Johnson." *U.S. Senator Bill Cassidy of Louisiana*, <https://www.cassidy.senate.gov/read-about-graham-cassidy-heller-johnson>.

¹³⁵ Ely, Kathleen E., et al. "The Federal Invisible High Risk Pool: Effect on Premium Rates, Individual Marketplace Enrollment and Use of Federal Funds. Foundation for Government Accountability," 17 Apr. 2017, <https://thefga.org/wp-content/uploads/2017/04/The-Federal-Invisible-High-Risk-Pool.pdf>.

¹³⁶ Graboyes, Robert, and Charles Blahous. "The Pre-Existing Condition: Innovative Solutions to America's Thorniest Health Care Challenge." *Mercatus Center at George Mason University*, 29 Sept. 2015, <https://www.mercatus.org/publication/pre-existing-condition-innovative-solutions-america-s-thorniest-health-care-challenge>.

¹³⁷ Katebi, Charlie. "With tax reform, Congress missed an opportunity to fix original sin of US health care." *The Hill*, <https://thehill.com/opinion/health-care/368339-with-tax-reform-congress-missed-an-opportunity-to-fix-original-sin-of-us>.

given by employers to be non-taxable, the exclusion of employer-sponsored health insurance premiums was codified by IRS guidance in 1943. Why? It was in response to the Executive Order 9250 issued by Franklin D. Roosevelt three months earlier, which froze wage and salary levels across the United States. This enormous regulation left businesses with only one option to compete for labor, to offer increased fringe benefits. After the IRS reversed its ruling in 1953, Congress then codified this practice into statute in 1954.¹³⁸ Congress had no other choice at that time because the entire U.S. economy had spent a decade with employers funneling money into health insurance plans for their employees instead of wages.

This haphazard and overly invasive government interference is why the U.S. has its unique health care system— one in which the government has artificially made it cheaper for employers and employees to lock people into jobs and have employers handle health care negotiations for individuals, instead of increasing wages and giving people increased freedom over their income and health care choices. In other words, it is a major obstacle to moving towards a system focused on portability and personalized coverage.

This system has also greatly contributed to the high-priced health care market we have today. It decreases market efficiency because individuals who do not pay most of their health care costs directly are encouraged, and sometimes effectively forced, to enroll in needlessly expensive health insurance policies that further exacerbate over-utilization. Additionally, it reduces job flexibility by paying people to stay with their present job and not enabling them to switch to a more productive job. Studies have shown this tax treatment has significantly reduced wages,¹³⁹ and the Congressional Budget Office has concluded that premiums are higher because of the exclusion.¹⁴⁰

The RSC plan proposes a more efficient system that would provide equal tax treatment in the employer and individual health insurance markets. Thus, the RSC plan would give individuals the ability to use health savings accounts (HSAs) to pay for premiums in the individual marketplace. The RSC plan would also preserve the existing above-the-line deduction for self-employed individuals.

By allowing individuals to use health savings accounts funds to pay for their health care premiums, the RSC plan allows individuals to take advantage of the triple-tax advantaged status of health savings accounts. First, funds that are deposited in a health savings account are not subject to income tax or payroll taxes (including individual and employer payroll taxes) when they are earned. Once in the account, funds are not subject to taxation for any interest accrued. Nor are funds taxed when they are removed from the health savings account and spent on qualifying medical costs. An individual who utilized their health savings account in this way would no longer be penalized for choosing to shop for a plan on the individual market.¹⁴¹ This will be akin to the Trump Administration's Health Reimbursement Arrangement (HRA) rule, which the RSC plan supports codification of, except that instead of the funding belonging to the employers, the funds will belong to the individual.¹⁴²

¹³⁸ "Tax Treatment of Employment-Based Health Insurance" *Congressional Budget Office*, March 1994. https://www.cbo.gov/sites/default/files/103rd-congress-1993-1994/reports/1994_03_tax-treatmentofinsurance.pdf.

¹³⁹ Baicker, Katherine and Amitabh Chandra. "The Labor Market Effects of Rising Health Insurance Premiums" Feb. 2005. <https://www.nber.org/papers/w11160.pdf>

¹⁴⁰ "Tax Treatment of Employment-Based Health Insurance" *Congressional Budget Office*, March 1994. https://www.cbo.gov/sites/default/files/103rd-congress-1993-1994/reports/1994_03_tax-treatmentofinsurance.pdf.

¹⁴¹ Cannon, Michael F. "How Expanding Health Savings Accounts Could Cure America's Sick Health Care System." *New York Post*, 21 Sept. 2019, <https://nypost.com/2019/09/21/how-expanding-health-savings-accounts-could-cure-americas-sick-health-care-system/>.

¹⁴² "Health Reimbursement Arrangements and Other Account-Based Group Health Plans." *Federal Register*, A Rule by the Internal Revenue Service, the Employee Benefits Security Administration, and the Health and Human Services Department, 20 June 2019, <https://www.federalregister.gov/documents/2019/06/20/2019-12571/health-reimbursement-arrangements-and-other-account-based-group-health-plans>.

The benefits to the individual and the individual health insurance marketplace from equalizing tax treatment are vast. First, the inequitable tax treatment of employer-sponsored insurance can cause an employee to forgo valuable wages while being pushed into a plan that exceeds or does not match the needs of the individual. Equalizing tax treatment will pave the way for individuals to negotiate higher pay and pursue more affordable, personalized plans on the individual marketplace. Employees could also push for funds that would have gone toward an excessive employer-sponsored plan to be placed in full into their health savings account, purchase their own affordable plan, and save the remainder tax-free for future medical needs. Moreover, Americans would be given greater control over their own money and their health care choices.

It is also notable that greater control and personalization of health insurance will help combat the issue of health care over-utilization in the United States. If individuals are given greater ability to tailor their health insurance to their needs, they will be more likely to reduce not only unnecessary insurance components but also the extent to which they seek services that they would have accepted under an excessive employer-sponsored plan. This stands in contrast to the current employer market where individuals are often over-insured and can be unaware of the costs of the services they are receiving. Indeed, this “third-party payer” issue is a primary reason for the rapidly escalating health care costs in the United States.¹⁴³ Perhaps more importantly, research shows that “reduction in overuse could bend the cost curve while concurrently improving quality.”¹⁴⁴

Health insurance portability would also be enhanced through this approach. Individuals taking advantage of the RSC plan’s tax equality to purchase an individual plan would be able to carry their personalized individual coverage benefits regardless of whether they move jobs or become self-employed. This freedom will further facilitate continuous coverage to lock in those benefits and portability protections under the RSC plan and give the individual a true piece of mind. As the Cato Institute has succinctly stated, “Consumers are likely to appreciate the option of purchasing health insurance that doesn’t disappear when they get sick and lose their jobs.”¹⁴⁵ In this way, tax equality works synergistically with the portability protections of the RSC plan to further neutralize the issue of pre-existing conditions.

Unleashing Health Savings Accounts

Beyond allowing individuals to use health savings accounts to pay health insurance premiums, the RSC plan would enact a significant amount of reforms to expand the accessibility and effectiveness of health savings accounts. In particular, the RSC plan would eliminate the requirement that health savings accounts be tied to a high-deductible plan, increase health savings accounts’ maximum contributions, and expand the scope of eligible health care expenditures.

Under current law, health savings accounts plans cannot be used in conjunction with plans that are not a “qualified high-deductible health plan.” This unnecessarily hampers the ability for millions of Americans to access this important savings tool. Accordingly, the RSC would eliminate this requirement to allow health savings accounts to be utilized even if a person does not have a health insurance plan.

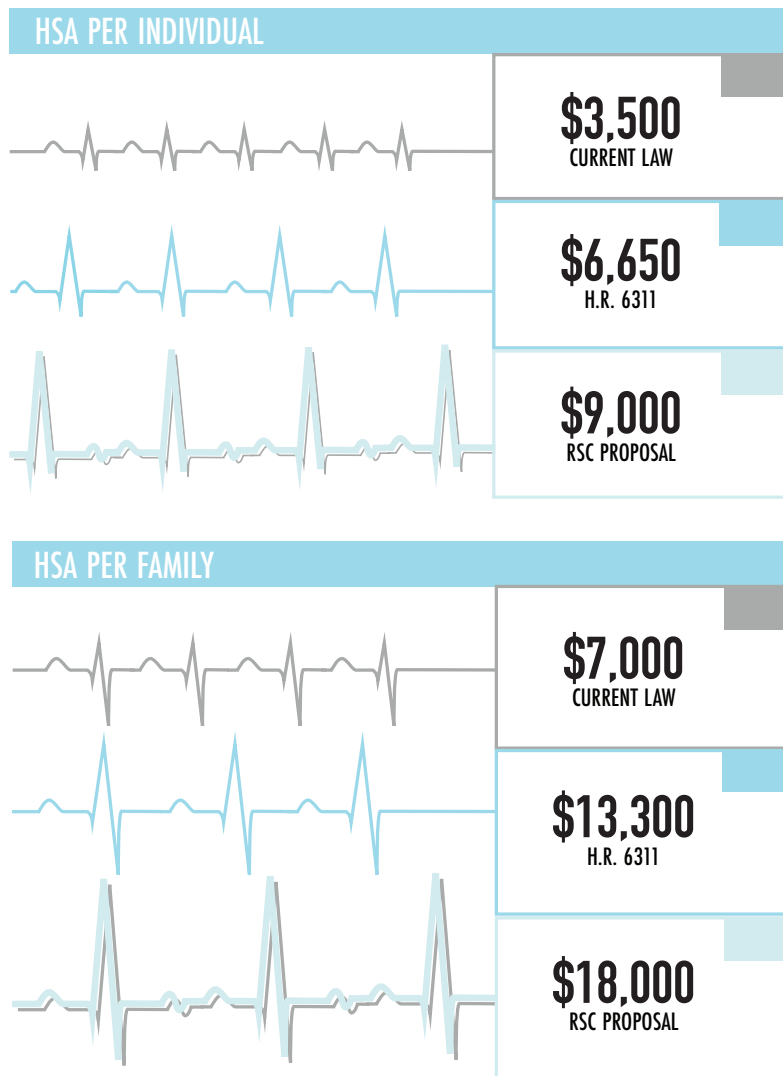
¹⁴³ Emanuel, Ezekiel J., and Victor R. Fuchs. “The Perfect Storm of Overutilization.” *Louisiana State University Health Sciences Center*, 18 June 2018, https://www.medschool.lsuhsu.edu/emergency_medicine/docs/Overutilization.pdf.

¹⁴⁴ Nassery, Najila, et al. “Systematic Overuse of Health care Services: a Conceptual Model.” *U.S. National Library of Medicine*, Feb. 2015, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5511697/>.

¹⁴⁵ Cannon, Michael F. “Cato Handbook for Policymakers.” *The Cato Institute*, 2017, <https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2017/2/cato-handbook-for-policymakers-8th-edition.pdf#page=401>.

The RSC also plan proposes an increase in how much can be contributed to a health savings account. Under current law, for 2019, \$3,500 may be contributed to health savings accounts for an individual, and \$7,000 for families.¹⁴⁶ In 2018, the House of Representatives passed legislation to increase the contribution caps to \$6,650 for an individual and \$13,300 for a family.¹⁴⁷ However, according to the Kaiser Family Foundation, the average annual family premium per enrolled employee for employer-based health insurance in 2017 was \$18,687.¹⁴⁸ Because of this, under the RSC plan, contribution limits would be increased even more to \$9,000 per individual and \$18,000 for families, in line with what the Cato Institute has proposed.¹⁴⁹

UNLEASHING HEALTH SAVINGS ACCOUNTS



"Average Annual Family Premium per Enrolled Employee For Employer-Based Health Insurance." The Henry J. Kaiser Family

The RSC plan would also expand health savings accounts so that they could be used for a number of health services and products that currently must be paid for with after-tax dollars. Similar to allowing health savings accounts to pay for insurance premiums, health savings accounts would be able to pay for direct primary care, health care sharing ministries, and other non-traditional health insurance products, such as health status insurance. The RSC plan would allow working seniors, or anyone on Medicare, to have a health savings accounts and continue to contribute to it. Individuals enrolled in other public health insurance programs, such as those with Tricare, Indian Health Service, or Veterans benefits, would also be able to contribute to a health savings accounts. The RSC plan would allow people to contribute to a health savings account even if they or their spouse has a health Flexible Savings Accounts (FSA).

¹⁴⁶ "2019 HSA Contribution Limits." *HSACenter*, 19 Oct. 2018, <http://www.hsacenter.com/how-does-an-hsa-work/2019-hsa-contribution-limits/>.

¹⁴⁷ "House Passes Two HSA Bills." *National Association of Plan Advisors*, 11 Feb. 2019, <https://www.napa-net.org/news-info/daily-news/house-passes-two-hsa-bills>.

¹⁴⁸ "Average Annual Family Premium per Enrolled Employee For Employer-Based Health Insurance." *The Henry J. Kaiser Family Foundation*, 9 Aug. 2019, [https://www.kff.org/other/state-indicator/family-coverage/?currentTimeframe=0&selectedDistributions=total-annual-premium&sortModel={\"colld\": \"Location\", \"sort\": \"asc\"}](https://www.kff.org/other/state-indicator/family-coverage/?currentTimeframe=0&selectedDistributions=total-annual-premium&sortModel={\).

¹⁴⁹ Cannon, Michael F. "CATO Handbook for Policymakers." *The Cato Institute*, 2017 p. 395, <https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policy-makers/2017/2/cato-handbook-for-policymakers-8th-edition.pdf#page=403>.

Furthermore, FSA and HRA balances could be converted into a health savings account, and FSAs could be rolled over year-to-year at the employer's discretion. The plan would allow individuals to have a health savings account and retain access to retail or onsite medical clinics, chronic disease management services, or telemedicine that have been provided at no cost. Spouses who are health savings account-eligible and age 55 or older could deposit their catch-up contributions into one health savings account. It would allow HSAs, HRAs, and FSAs to pay for FDA-approved over-the-counter medicines without a prescription, but not for homeopathic products, dietary supplements, or fitness equipment. Lastly, health savings account funds would be protected in bankruptcy proceedings.

Critically, while the RSC plan would unleash health savings accounts, it would ensure that these accounts are pro-life and do not inadvertently allow a back-door method of subsidizing abortion procedures. Accordingly, the RSC plan would ensure these accounts cannot be linked to a plan that provides abortions, nor would abortions or abortion drugs be an eligible expense.

PROTECTING MEDICAID'S VULNERABLE POPULATIONS

The RSC plan calls on lawmakers to right-size the Medicaid program so that it can remain a sustainable health care safety net for vulnerable populations for generations to come. Total Medicaid spending has been on a runaway trajectory for decades. Federal spending on the program has ballooned from \$14 billion in 1980, to \$118 billion in 2000, to \$375 billion in 2017, to a projected \$702 billion in 2029.¹⁵⁰ Medicaid expenditures on the Medicaid expansion population alone are projected to amount to nearly \$938 billion over the next ten years.¹⁵¹ Nonetheless, enrollees often experience poor health outcomes, while the expansion has been accompanied by crowding out of the private market and direct competition with low-income vulnerable populations. The primary blame for Medicaid's runaway costs rests with its open-ended entitlement structure and FMAP reimbursement formula which combine to incentivize states to increase their own spending and rely on provider taxes as a means of forcing larger federal assistance expenditures.

The first step to right-sizing Medicaid under the RSC plan is an immediate moratorium on future Medicaid expansions and the institution of a phase-out of the expansion's enhanced FMAP rate. Through incremental reductions, the FMAP rate for the expansion population would eventually match normal FMAP rates. There is no reason why an able-bodied adult without any dependents should be more heavily subsidized than a poor pregnant woman, elderly person, child, disabled individual, or parent.

Second, the RSC plan would replace Medicaid's current open-ended entitlement structure with separate per capita grants to help them address the health care needs of the traditional Medicaid populations—poor pregnant women, children, the elderly, the disabled, and parents. The federal Children's Health Insurance Program (CHIP), currently funded as a block grant, could also simply be combined with the Medicaid grant for children. Another separate block grant, a "flex-grant," would allow states, subject to work requirements, to otherwise supplement the health needs of their low-income population. The flex-grant would be funded through repackaging funding from the ACA expansion and its exchange

¹⁵⁰ "The Budget and Economic Outlook: 2019 to 2029," *Congressional Budget Office*. January 2019. <https://www.cbo.gov/system/files?file=2019-01/54918-Outlook.pdf>.

¹⁵¹ Wolfe, Christian J., et al. "2017 ACTUARIAL REPORT ON THE FINANCIAL OUTLOOK FOR MEDICAID." Centers for Medicare and Medicaid Services, 2017, p. 5, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2017.pdf#page=10>.

subsidies. The flex-grant could be used by states for providing care for low-income individuals through subsidizing the purchase of private health insurance and alternative care delivery mechanisms, increasing overall insurance coverage, and reducing the premiums of Guaranteed Coverage Pool plans. However, under the RSC plan, at least half of a state's flex-grant funding must be dedicated toward supporting low-income individuals' purchase of private plans. Moreover, flex grants would be pro-life such that funding could not be used to provide access to abortion procedures or coverage that provides such procedures.

The amount of flex-grant money allocated to each state should initially reflect the amount of funding historically allocated to each state for Obamacare's premium subsidies and their Medicaid expansion population followed by a gradual phase-out of the disparity between expansion and non-expansion states. Lawmakers may also want to consider allowing states to use a portion of their flex-grant to enhance care provided to their traditional Medicaid populations.

The size of the traditional population grants would be determined by establishing a per capita cap for beneficiaries in each group based on average federal expenditures for a beneficiary in the applicable group. Lawmakers could consider reducing the average federal expenditure calculation for states that but-for the statutory FMAP floor would have historically received a federal reimbursement rate below 50 percent. For a given year, these caps, adjusted annually using chained- Consumer Price Index (CPI), would be multiplied by the number of individuals enrolled in each group to determine the maximum amount of federal funding a state could receive.

This model has a number of benefits over the current flawed approach. The federal government would be allowed to better control the amount of Medicaid funding it provides to states while also providing programmatic flexibility to account for increases (and decreases) in enrollment. The issue of provider taxes would then disappear. Separate grants would also mean that Medicaid's vulnerable populations would not compete with the able-bodied expansion population. States would have greater operational freedom to achieve efficiencies and provide better care. (But, in no instance would grant funding be allowed to pay for an abortion.) Additionally, adjusting the traditional population grants using chained-CPI creates downward pressure on health care costs that have significantly outpaced inflation in recent decades. No longer would states be incentivized to spend more of their state budgets to reap additional federal subsidies.

EXPANDING ACCESS TO INNOVATIVE CARE

Most Americans would agree that the best way to improve access to care is to increase the scope of affordable care options available.¹⁵² Barak Obama himself alluded to this when he was a candidate in the 2008 presidential election when he said, "I believe the problem is not that folks are trying to avoid getting health care. The problem is they cannot afford it."¹⁵³ The RSC plan urges lawmakers to explore and promote innovative ways for delivering care to individuals at affordable prices, the following being a representative selection.

¹⁵² "The Freedom and Empowerment Plan: The Prescription for Conservative Consumer-Focused Health Reform." *American Next*, Apr. 2014 p. 5, <https://www.americanext.org/wp-content/uploads/2014/04/The-Freedom-and-Empowerment-Plan.pdf#page=5>.

¹⁵³ "Part 2 of CNN Democratic Presidential Debate." *CNN*, Jan. 21, 2008, <http://www.cnn.com/2008/POLITICS/01/21/debate.transcript2/index.html>.

Expanding Direct Primary Care

Direct Primary Care is an innovative, affordable, and transparent care delivery system that allows patients to pay a monthly service fee—usually about \$60 - \$70 per month—directly to a health care provider instead of paying a copay or coinsurance for each visit to a doctor. Under this service model, patients would be allowed to see their doctor for as many times as their monthly service allows. This means that patients can regularly see their doctor for better quality care, often at the price of an average cell phone bill, without having to meet an expensive deductible. The monthly fee covers all primary care services, clinical and laboratory services, consultative services, care coordination, and comprehensive care management.¹⁵⁴ Additionally, most states allow direct primary care practices to dispense generic medications directly from their offices at near-wholesale prices. As Avik Roy has said, “It’s like concierge medicine, but for everyone, including the poor.”¹⁵⁵

Often individuals pair their Direct Primary Care with a high-deductible catastrophic plan. This works in a way so that individuals may use their Direct Primary Care services for the small things – such as checkups, preventative care, or small sickness diagnoses, whereas if something serious arises like a surgery, they are still covered by some form of insurance.

Because a patient gains significantly more access to their doctor under a Direct Primary Care model, their doctor is incentivized to ensure patients’ needs are addressed efficiently so as not to result in unnecessary visits. Additionally, this model removes third-party payment and its negative incentives from the equation as patients are paying doctors directly for their care. In other words, the Direct Primary Care model encourages patients to actively engage in their care while the physician focuses on providing the patient value-added primary care. The result is mutual accountability.

To provide for greater access to Direct Primary Care, the RSC plan would make Direct Primary Care payments eligible health savings account expenditures. Additionally, the RSC’s flex block grant, described above, would allow states to use such funds to give beneficiaries access to Direct Primary Care.

Health Care Sharing Ministries

Health care sharing ministries (HSMs) are faith-based nonprofit organizations whose members share a common set of ethical and religious beliefs and share medical expenses among themselves in accordance with those beliefs. Funds come from monthly share amounts paid by members to other members. This model is based on long held faith based traditions of helping others when in need. HSM’s are tailored to those who have specific beliefs, values or faiths, or do not want certain benefits provided. For example, if a group of a particular religious faith does not want something like abortion covered, the group could join an HSM and provide health care dollars to participants without participating in insurance models that cover abortion. Health care sharing ministries are also typically more affordable than traditional health insurance. The RSC plan would ensure that HSM fees are an eligible health

¹⁵⁴ “Direct Primary Care: American Academy of Family Physicians.” *American Academy of Family Physicians*, 21 Mar. 2019, <https://www.aafp.org/practice-management/payment/dpc.html>.

¹⁵⁵ Roy, Avik. “Direct Primary Care: A Big Winner In The Senate GOP Health Care Bill.” *Forbes*, *Forbes Magazine*, 14 July 2017, <https://www.forbes.com/sites/theapothecary/2017/07/09/direct-primary-care-a-big-winner-in-the-senate-gop-health-care-bill/#21c49477e26>.

savings account expense. This is similar to President Trump’s recent Executive Order under which HSM and direct primary care payments would constitute qualifying medical expenses for purposes of the limited deduction under current law.¹⁵⁶ Additionally, as mentioned above, HSMs would count toward continuous coverage requirements under the RSC plan.

Association Health Plans

The RSC plan urges codification of the reforms promulgated by the Department of Labor that ensure Americans have greater access to Association Health Plans (AHP). Association Health Plans currently work by allowing small businesses to band together by geography or industry to obtain health care coverage as if they were a single large employer. Importantly, AHPs offer benefits comparable to employer-sponsored plans and cannot discriminate against patients with pre-existing conditions.¹⁵⁷ They also “strengthen negotiating power with providers from larger risk pools and [provide] greater economies of scale,” according to the Department of Labor.¹⁵⁸ Consequently, these plans are able to offer more affordable, quality health insurance plans.

The Department of Labor rule on AHPs sought to modify how the Department interprets the word “Employer” in ERISA.^{159, 160} According to Brian Blase, former White House health care policy advisor, “this [would have] allowed any employers within a state or common metropolitan area to form an AHP regardless of their line of businesses and allowed these AHPS to include sole proprietors.”¹⁶¹ While this rule has stalled in the courts,¹⁶² the Department of Labor is currently appealing that delay.

Health Status Insurance

Traditional health insurance covers your risk of medical expenses in the current year, whereas health status insurance covers your risk that your insurance premiums may rise due to an unforeseen circumstance that may occur in the future.¹⁶³ Individuals could maintain their employer plan, or individual plan, and have health status insurance as a backup for something catastrophic or disruptive. This essentially allows an individual to pay for the option to purchase more comprehensive insurance at a later date. According to Chris Jacobs, “[health status policies] function as ‘health insurance-insurance,’ guarding against a future pre-existing condition that might make an individual uninsurable.”¹⁶⁴

According to the Cato Institute, if an individual does develop a condition that causes them to lose their job, become uninsurable or causes their premiums to rise, health status insurance would cover the risk

¹⁵⁶ “Executive Order on Improving Price and Quality Transparency in American Health care to Put Patients First.” *The White House*, 24 June 2019, <https://www.whitehouse.gov/presidential-actions/executive-order-improving-price-quality-transparency-american-health-care-put-patients-first/>.

¹⁵⁷ Keith, Katie. “Court Invalidates Rule On Association Health Plans.” *Health Affairs*, 29 Mar. 2019, <https://www.healthaffairs.org/doi/10.1377/hblog20190329.393236/full/>.

¹⁵⁸ “About Association Health Plans.” *U.S. Department of Labor*, June 2018, <https://www.dol.gov/general/topic/association-health-plans>.

¹⁵⁹ “Presidential Executive Order Promoting Health care Choice and Competition Across the United States.” *The White House*, The United States Government, 12 Oct. 2017, <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-promoting-health-care-choice-competition-across-united-states/>.

¹⁶⁰ “Health Plans & Benefits: ERISA.” *U.S. Department of Labor*, <https://www.dol.gov/general/topic/health-plans/erisa>.

¹⁶¹ Blase, Brian. “Health Reform Progress: Beyond Repeal and Replace.” *The Galen Institute*, Sept. 2019, https://galen.org/assets/Health-Reform-Progress-Brian_Blase.pdf#page=7.

¹⁶² Keith, Katie. “Court Invalidates Rule On Association Health Plans.” *Health Affairs*, 29 Mar. 2019, <https://www.healthaffairs.org/doi/10.1377/hblog20190329.393236/full/>.

¹⁶³ Chochrane, John. “Health Status Insurance.” *U.S. Health Policy Gateway*, 3 May 2017, <http://ushealthpolicygateway.com/vii-key-policy-issues-regulation-and-reform/p-health-reform/national-health-reform/models-for-health-reform/health-status-insurance/>.

¹⁶⁴ Jacobs, Chris. “CASE AGAINST SINGLE PAYER: How Medicare for All Will Wreck Americas Health Care System and Its... Economy.” *Republic Book Publishers*, 2019, p. 203.

of premium reclassification, just as medical insurance covers the risk of medical expenses.¹⁶⁵ Before the enactment of the ACA, the United Health group unleashed a “first of its kind” product which allowed for the right to buy an individual health policy at some point in the future, even after one becomes sick.¹⁶⁶ Such health status insurance plans were a cheap and effective way to be certain someone who gets sick with a high-utilizing condition can be insured.

The ACA’s burdensome individual marketplace regulations—that effectively reward individuals for remaining uninsured until after they become sick—have resulted in health status insurance becoming obsolete.¹⁶⁷ The RSC health care plan’s repeal of these cumbersome ACA regulations would allow individuals to access personalized plans that fits their need, making health status insurance again a potentially viable option for individuals to mitigate against the future risk of illness. Additionally, as mentioned above, the RSC plan would allow health savings account funds to be used to pay for health status insurance.

Last year, the Department of Health and Human Services finalized a rule that not only allows short-term, limited-duration plans to last for a period of 12 months (renewable for up to 36 months), but also allows the purchase of health status insurance to ensure the plan could be renewed.¹⁶⁸ An Obama-era rule limited such plans to just three months. The RSC plan supports this new rule and urges its codification.

Short-Term, Limited-Duration Plans

Short-term, limited-duration plans are exactly what they sound like: health insurance plans meant to be used for short periods of time in-between jobs or during other short lapses of health coverage. Under current law, they are exempt from the ACA’s individual marketplace regulations such as guaranteed issue, the prohibition on exclusions, community rating, and guaranteed renewability. However, they are a cost-effective alternative for healthy individuals or individuals who need a plan with minimal coverage for a short period of time.¹⁶⁹

In addition to urging codification of the Trump administration’s rule expanding short-term, limited-duration plans to 12 months, the RSC plan would allow health savings account funds to be used to pay the premiums of these plans. Moreover, as mentioned above, short-term, limited-duration plans would count toward continuous coverage requirements under the RSC plan.

Telemedicine

Access to networks has narrowed under the ACA. However, despite the ACA, access to technology has greatly increased due to sheer technological innovation. Though telemedicine has not yet been universally implemented by the health care provider industry, the RSC believes that regulatory barriers

¹⁶⁵ Cochrane, John H. “Health-Status Insurance: How Markets Can Provide Health Security.” *The Cato Institute*, 18 Feb. 2009, <https://object.cato.org/sites/cato.org/files/pubs/pdf/pa-633.pdf#page=2>.

¹⁶⁶ Abelson, Reed. “UnitedHealth to Insure the Right to Insurance.” *The New York Times*, 3 Dec. 2008, <https://www.nytimes.com/2008/12/03/business/03insure.html>.

¹⁶⁷ Miller, Thomas P. “New STLDP Options: Limited Lifeboats, Not Luxury Liners, for Obamacare Victims.” *The American Enterprise Institute*, 8 Aug. 2019, <https://www.aei.org/health-policy/new-stldp-options-limited-lifeboats-not-luxury-liners-for-obamacare-victims/>.

¹⁶⁸ “Short-Term, Limited-Duration Insurance, Final Rule.” *Centers for Medicare & Medicaid Services*, 2019, <https://www.cms.gov/CCIIO/Resources/Files/Downloads/downloads/cms-9924-f-stldi-final-rule.pdf>.

¹⁶⁹ Gorman, Anna. “Short-Term Insurance Plans Are Enticing, Low-Cost Alternatives for Healthy People.” *The Washington Post*, Dec. 2018, https://www.washingtonpost.com/national/health-science/short-term-insurance-plans-are-enticing-low-cost-alternatives-for-healthy-people/2018/11/30/14e833e8-ece7-11e8-8679-934a2b33be52_story.html?utm_term=.63dd3aa634a6.

should be removed in this area. According to the Heritage Foundation, nationwide use of telemedicine increased by 643 percent from 2011 to 2016.¹⁷⁰ Research and development in this area will help drive affordability of quality health care for rural and underserved areas, and beyond.

As explained by health care policy expert John Goodman, an estimated one-third of all doctor visits do not actually require a physical visit.¹⁷¹ These include many services, like blood pressure monitoring, taking a patient's temperature, and examining basic skin-related dermatology check-ups. The popularity of telemedicine is only set to increase. The potential for the innovation in the telemedicine service field is vast and could lead to reduced costs and greater efficiency in the health industry.

Unfortunately, many states have passed laws impeding the provision of telemedicine by banning or heavily restricting its progress.¹⁷² Notably, the position of the American Medical Association still calls for doctors to be physically present when rendering medical services.¹⁷³ Such policies can stand in the way of administering routine medical assessments for people having difficulty reaching a physician. For instance, rural and underserved areas could get their vitals checked, undergo a simple check-up, or have a consultation with their doctor of choice using their handheld smart-device. Individuals with chronic health conditions requiring frequent visits to the physician would likely benefit the most from advancements in telemedicine. Beyond rural and underserved areas, telemedicine could be utilized as a means for convenient medical care for individuals in populated areas as well.¹⁷⁴ According to the Centers for Disease Control, there were approximately 884 million ambulatory care visits to physician offices.¹⁷⁵ Teladoc has estimated that one-third of the visits could be treated via telehealth, with an average of only \$40 per visit.¹⁷⁶

The RSC is recommending that states work to remove barriers for telemedicine to be able to innovate and become more prevalent. Additionally, under current law, Medicare reimburses for limited telehealth services—and only when a senior lives in a “Health Professional Shortage” area. Moreover, the service must take place in an approved medical facility. The RSC plan would reverse this so Medicare can pay for telehealth services so seniors may receive the health care they need in their own home without entering a physical building if they do not absolutely need to be there.

¹⁷⁰ Zawada, Stephanie J. “Telemedicine: The Promise and the Performance.” *The Heritage Foundation*, 17 Dec. 2018, <https://www.heritage.org/health-care-reform/report/telemedicine-the-promise-and-the-performance>.

¹⁷¹ Goodman, John C. “Standing Between You And All The Benefits Of Telemedicine: The AMA And The Federal Government.” *Forbes Magazine*, 9 July 2015, <https://www.forbes.com/sites/johngoodman/2015/07/09/standing-between-you-and-all-the-benefits-of-telemedicine-the-ama-and-the-federal-government/#f6797af7d3fd>.

¹⁷² Marks, Jacqueline D., et al. “State Telehealth Laws and Medicaid Policies: 50-State Survey Findings.” *Manatt*, 10 July 2018, <https://www.manatt.com/Insights/Newsletters/Manatt-on-Health/State-Policy-Levers-for-Telehealth-50-State-Surve>.

¹⁷³ Goodman, John C. “Will Texas Medicine Return To The Middle Ages?” *Forbes Magazine*, 22 May 2015, <https://www.forbes.com/sites/johngoodman/2015/05/22/will-texas-medicine-return-to-the-middle-ages/#796d669852bd>.

¹⁷⁴ “Telemedicine: Ultimate Guide - Everything You Need to Know.” *EVisit*, <https://evisit.com/resources/what-is-telemedicine/#2>.

¹⁷⁵ “FastStats- Physician Office Visits.” *Centers for Disease Control and Prevention*, <https://www.cdc.gov/nchs/fastats/physician-visits.htm>.

¹⁷⁶ Teladoc Investor Presentation. Teladoc, Sept. 2017, https://s21.q4cdn.com/672268105/files/doc_presentations/2017/09/Teladoc-Investor-Presentation-September-2017.pdf#page=4.

Additionally, the provision of telemedicine services would not disqualify someone from using a health savings account under the RSC plan. Under current regulations, the provision of telehealth services not subject to a deductible under a high deductible health plan can disqualify a person from using a health savings account.¹⁷⁷ However, the RSC plan delinks health savings accounts from the high deductible health plan requirement.

Certificate of Need Laws

Certificate of need laws currently exist in 36 states and the District of Columbia. These laws require health care providers to obtain certificate of need permits from their licensed state health regulatory authorities before they can expand their facilities and services.

Consequently, decisions on the needs of a community are decided by a state regulatory board of bureaucrats. States that have such laws on the books have not reaped the cost reductions originally anticipated. For instance, in 2009, overall health care costs were approximately 11 percent higher in states with certificate of need laws versus those without them— “\$7,230 per capita in the former compared to \$6,526 in the latter.”¹⁷⁸

By restricting new construction of provider facilities, these programs reduce competition, prevent the market from working on its own, and are subject to political influence. As Dr. Robert Moffit of the Heritage Foundation has pointed out, “Both the Justice Department and the Federal Trade Commission have long identified these laws as anti-competitive. A growing body of professional economic literature confirms this assessment. Certificate of need laws generally do not control costs, nor improve quality, and they restrain provider entry and innovation in health care delivery.”¹⁷⁹ For these reasons, the RSC plan urges states to reform or repeal their certificate of need laws.

CONCLUSION

Over the last decade, the ACA has left a long list of broken promises in its wake. Some, such as “if like your plan, you can keep your plan,” have been well-documented. But others have gone uncontested and unchallenged despite indisputable evidence to the contrary. In fact, the ACA’s most grievous broken promise may also be its most underreported: that the law does not actually guarantee individuals with pre-existing conditions access to affordable and quality health care.

In reality, while the ACA does deliver access to health insurance for all, it does not guarantee affordability, choices, plan retention, access to quality care, and availability of doctors— all things that are important to the chronically ill.

¹⁷⁷ “Telemedicine—Impact on HSA Eligibility,” *New England Employee Benefits Co., Inc.*, 2017, <https://www.neebco.com/wp-content/uploads/2017/03/Telemedicine-Impact-on-HSA-Eligibility.pdf>.

¹⁷⁸ Bruneau, Jordan. “The Great Health Care CON: Jordan Bruneau.” *FEE Freeman Article*, Foundation for Economic Education, 15 Jan. 2014, <https://fee.org/articles/the-great-health-care-con/>.

¹⁷⁹ Moffit, Robert E. Ph.D. “How State Leaders Can Begin Undoing Obamacare’s Damage” *The Heritage Foundation*. 25 Jan. 2018. <https://www.heritage.org/health-care-reform/commentary/how-state-leaders-can-begin-undoing-obamacares-damage>.

As this report has demonstrated – both through facts and personal stories – under the current system, vulnerable Americans, including those with pre-existing conditions, chronic illness, and serious health issues, have been left behind. Americans like:

The Davert family from Michigan (p. 24), who despite having two children suffering from brittle bone disease, lost their private health insurance and were forced onto Medicare because the ACA premiums and deductibles were unaffordable.

Coach Jim White from Alabama (p. 21), who was unable to afford coverage on the ACA exchange, and was thus forced to turn to a GoFundMe page to pay for life-saving cancer treatments after losing his job at a private school; and

Lindsey Overman from Arkansas (p. 32), who a mother of two working her way through graduate school was powerless to stop able-bodied adults drawing Medicaid benefits away from her disabled daughter, Skylar.

To argue for doubling-down on the status quo is to argue against helping these families and the countless number of other Americans who have fallen through the cracks of the ACA. At the same time, to embrace the Left’s “solution” of a government-run, one-size-fits-all ACA replacement proposal is to ignore the fact that individuals have unique health care needs. After all, the best coverage for the Davert family may not be the best coverage for you.

As conservatives, we have joined together to propose another path forward—one that can dramatically improve access to quality, affordability, and choice in the American health care system. We offer a plan that will **PROTECT** the vulnerable, **EMPOWER** patients, and **PERSONALIZE** care. It is a plan that will give Americans, including those with pre-existing conditions, access to coverage options they can actually afford to use, and it will right-size Medicaid so it can remain a sustainable health care safety net for those who truly need it for generations to come.

Our plan will unleash the health insurance market to drive down costs, delivering much-needed relief to Americans – especially those in the middle class – who are burdened by rising premiums and exorbitant deductibles. This plan will also strengthen the overall health insurance system by bringing young and healthy Americans back into the marketplace with personalized coverage, and it will work to increase care among underserved populations and those with chronic conditions by embracing – rather than stifling – innovative solutions such as direct primary care and telemedicine.

PROTECT, EMPOWER, AND PERSONALIZE. This is our plan. This what we aim to do – for the good of our health care system, our nation, and the millions of Americans who for too long have been left behind.

THE
SUPPLEMENTAL
MATERIALS

FREQUENTLY ASKED QUESTIONS (FAQS)

Q DO YOU HAVE PLANS TO ADDRESS OTHER HEALTH CARE ISSUES NOT COVERED IN THIS REPORT?

A Yes. As we mention in the introduction of the report, this is simply phase one of the RSC Health Care Plan and we expect to release a second report with additional policy details at a later date. Our second report will look specifically at additional policies that will help bend the cost curve on health care. This could include things like health care transparency reform and policies that will lead to thriving competition in the marketplace.

In addition, we understand that the development of innovative healthcare technology has the potential to strengthen the delivery, cost, and outcomes in the America's health care system. To facilitate the development and adoption of new innovative technology, our next report will propose a regulatory environment that invites solutions designed to better assess, monitor, and treat patients. Having any conversation about the future of healthcare in the United States needs to address how technology will play a vital role.

Q HOW DOES THE RSC PLAN PROVIDE PROTECTIONS FOR INDIVIDUALS WITH PRE-EXISTING CONDITIONS?

A The RSC plan is premised on the idea that protecting people with pre-existing conditions is more than just guaranteeing an insurance plan. The RSC plan would provide protections to people with pre-existing conditions and also focus on access to affordability and quality of care.

The RSC takes a holistic approach to neutralizing the issue of pre-existing conditions. It is designed to: 1) provide more affordable insurance options so that people can more easily access a plan they like; 2) enhance the portability of insurance to avoid gaps in coverage by providing guaranteed coverage protections and equal tax benefits in the employer and individual marketplaces; 3) provide states with federal funds and flexibility to establish Guaranteed Coverage Pools that would provide coverage to and effectively lower the medical costs of people with pre-existing conditions; and 4) provide states with "flex-grants" to assist them in providing their low-income populations, including those with pre-existing conditions, with access to insurance coverage. Moreover, the RSC plan would allow states to expand upon these reforms to further enhance individual marketplace rules and increase Guaranteed Coverage Pool availability.

The ACA actually compounded the issue of pre-existing conditions by reducing the incentive for people to obtain coverage prior to getting sick. This resulted in the doubling of health care premiums nationwide between 2013 and 2017 alone, and has raised deductibles so high that insurance has effectively become useless for many Americans. For instance, Bronze plan deductibles for 2019 are around \$6,000 on average, an insurmountable obstacle to care for many, especially for those with pre-existing conditions.

The RSC plan would also codify the Department of Labor's recently blocked Association Health Plan (AHP) rule, that allows employers and self-employed individuals in the "same line of business" or in a common area to pool together for purposes of providing participants with pre-existing condition protections applicable to employer-sponsored plans.

Q UNDER THE RSC PLAN, HOW WOULD PREMIUM AND DEDUCTIBLE COSTS BE REDUCED?

A By allowing a greater array of tailored insurance options, continuity of coverage incentives, and federally funded, state administered Guaranteed Benefits Pools, under the RSC plan, individuals and families could expect reductions to both premiums and deductibles.

Additionally, the RSC plan would increase affordable health insurance options in the individual marketplace, and thus attract a healthier pool of people to purchase health insurance. Those participants in the market will further decrease overall costs for everyone.

Federal Guaranteed Coverage Pool funding would also assist states in providing affordable coverage to people with pre-existing conditions. The RSC plan's flex-grants would give states funding to reduce the premiums of low-income populations and provide them with access to insurance coverage.

The RSC plan would allow people to pay for their premiums with tax-free dollars, the same tax treatment afforded to insurance provided by employers. Equalizing tax treatment will also pave the way for individuals to negotiate higher pay and have the ability to pursue more affordable, personalized plans on the individual marketplace. Employees could also push for funds that would have been gone toward an excessive employer-sponsored insurance (ESI) plan to be placed in-full into their Health Savings Account (HSA), purchase their own affordable plan, and save the remainder tax free for future medical needs. Greater control and personalization of health insurance will help combat the issue of health care overutilization in the United States.

The RSC plan also incorporates proposals to facilitate innovation in health care delivery and insurance models. For instance, it would make Direct Primary Care payments, Health Care Sharing Ministry fees, Health Status Insurance, and premiums for Short-term, Limited-duration plans all eligible, tax-free HSA expenses. The RSC plan would also remove regulatory restrictions impeding the use of telemedicine and similar emerging technologies that increase health care access and efficiency.

Q HOW IS THE RSC PLAN'S APPROACH TO EXPANDING PRIVATE INSURANCE DIFFERENT FROM THE AFFORDABLE CARE ACT?

A Despite its intentions, the Affordable Care Act (ACA) has actually reduced the incentive for people to purchase health insurance. While the ACA legally required Americans to obtain insurance, millions simply opted to pay the mandate's penalty rather than purchase a plan featuring skyrocketing premiums, cost-prohibitive deductibles, and a lower quality of care. The approach of the ACA has resulted in continually increasing costs and reduced access to health care.

The RSC plan is specifically designed to do the opposite. The proposals here would increase access to more affordable and useful insurance options, make health insurance more portable, reward individuals who have maintained continuous coverage, and provide protections for people with pre-existing conditions.

Q WOULD THE RSC PLAN PROVIDE SUBSIDIES TO HELP PEOPLE PAY FOR THEIR HEALTH INSURANCE?

A Yes, the RSC plan would provide funding to states to directly subsidize the health care costs of people with pre-existing conditions and people who are low-income. The RSC plan's flex-grants would give states the ability to provide their low-income citizens with access to affordable care in a way that best fits the needs of their state. For instance, states could use flex-grant funding for subsidizing the purchase of private health insurance and alternative care delivery mechanisms, increasing overall insurance coverage, and reducing the premiums of Guaranteed Coverage Pool plans.

The RSC plan's Guaranteed Coverage Pool funding would provide states with resources to directly subsidize the medical costs of individuals with pre-existing conditions and ensure that even those individuals who developed a condition without having insurance have a pathway to gaining coverage of their condition.

Additionally, the RSC plan would reduce the overall cost of health insurance in the individual marketplace to make insurance more affordable for all, even without the benefit of federal subsidy money. Individuals would also be able to pay for their health insurance premiums in the individual marketplace tax-free under the RSC plan.

Q HOW WOULD THE RSC PLAN EXPAND HEALTH SAVINGS ACCOUNTS?

A First and foremost, the RSC plan would increase the HSA contribution limit in order to give Americans greater control over their health care dollars. Under current law for 2019, \$3,500 may be contributed to HSAs for an individual, and \$7,000 for families. According to the Kaiser Family Foundation, the average annual family premium per enrolled employee for employer-based health insurance in 2017 was \$18,687. The RSC plan would dramatically raise HSA contribution limits to \$9,000 per individual and \$18,000 for families.

Critically, under the RSC plan, individuals would be able to pay for their premiums with pre-tax dollars from their HSAs. This would allow for individuals to effectively own their personalized health care plans so they can take their plan from job to job, enhancing portability. Additionally, similar to allowing HSAs to pay for insurance premiums, the RSC plan would make Direct Primary Care payments, Health Care Sharing Ministry fees, Health Status Insurance, and premiums for Short-term, Limited-duration plans all eligible, tax-free HSA expenses.

The RSC plan would also greatly expand the usefulness of HSAs in a number of other ways. It would allow working seniors, or anyone on Medicare, to have an HSA and continue to contribute to it. Individuals enrolled in other public health insurance programs, such as those with Tricare, Veterans Administration, or Indian Health Service benefits, would also be able to contribute to an HSA. The RSC plan would allow people to contribute to an HSA even if they or their spouse have a health Flexible Savings Accounts (FSAs). Furthermore, FSA and Health Reimbursement Account (HRA) balances could be converted into an HSA, and FSAs could be rolled over year to year at the employee's discretion. The plan would allow individuals to have an HSA and retain access to retail or onsite medical clinics, chronic disease management services, or telemedicine that is provided at no cost. Spouses who are HSA-eligible and age 55 or older could deposit their catch-up contributions into one HSA account. It would allow HSAs, HRAs, and FSAs to pay for FDA-approved over-the-counter medicines without a prescription, but not for homeopathic products, dietary supplements, or fitness equipment. Lastly, HSA funds would be protected in bankruptcy proceedings.

Q UNDER THE RSC PLAN, IF I AM INSURED, COULD MY INSURANCE BE CANCELLED BECAUSE I CONTRACT A SERIOUS DISEASE?

A Under the RSC plan, in no event could your insurance be cancelled by a carrier simply because you develop a condition after enrollment.

Q UNDER THE RSC PLAN, IF I AM INSURED, COULD MY INSURANCE COMPANY RAISE MY INSURANCE PREMIUMS BECAUSE I CONTRACT A SERIOUS DISEASE?

A Under the RSC plan, your insurance carrier could not raise your premiums simply because you develop a condition after enrollment.

Q HOW WOULD THE RSC PLAN GIVE AMERICANS ACCESS TO MORE PERSONALIZED HEALTH CARE PLANS?

A Americans will be able to obtain personalized health care plans in the individual market that fit their needs.

Under the status quo, individuals are forced to pay for health benefits they do not need or wish to have. This one-size-fits all approach contributes to the high cost of ACA plans. Consequently, many forgo insurance because the ACA has made insurance unaffordable.

Under the RSC plan, Americans would also be able to utilize Health Savings Accounts to pay for the premiums of their personalized plans on the individual market tax-free. Increased contribution limits under the RSC plan would better enable people to save for their future health care needs. Additionally, by equalizing the tax treatment between the individual and employer markets, people could more easily maintain personalized coverage as they move between jobs. This notion of portability is a core feature of the RSC plan.

Q WOULD THE RSC PLAN MAKE ANY CHANGES TO MEDICARE?

A The RSC plan would make no changes to Medicare except to facilitate use of telemedicine for the convenience of seniors' care. Indeed, this plan would further protect seniors' access to Medicare by combatting recent efforts to either maintain the status quo or implement a massive, nationwide, one-size-fits all, government-run health care system. Such a system would lead inevitably to increased taxes for seniors, potentially rationed care, and longer wait times for medical treatment.

Additionally, the RSC plan would allow working seniors, or anyone on Medicare, to have a Health Savings Account and continue to contribute to it.

Q : WOULD THE RSC PLAN PLACE A MANDATE ON INDIVIDUALS TO PURCHASE HEALTH INSURANCE?

A Contrary to the design of the ACA, the RSC plan includes no mandate for individuals to purchase health insurance and imposes no penalty if an individual chooses to forgo coverage. However, the RSC plan will lead to more affordable insurance options, provide tax equality between the employer and individual marketplaces, and incentivize individuals to purchase health insurance and maintain continuous coverage.

Q WHAT DOES THE RSC PLAN MEAN FOR PEOPLE CURRENTLY ON MEDICAID?

A The RSC plan would reform Medicaid to prioritize funding for America’s vulnerable populations while also providing states with flex-grants to provide health care to their low-income citizens.

Under the RSC plan, vulnerable recipients would receive their benefits from a dedicated and separate funding stream and no longer receive lower priority than able-bodied adults. The RSC plan will help reduce fraud and abuse and ensure that the Medicaid program remains solvent and preserved for those who have legitimate needs.

Q HOW WOULD THE RSC PLAN AFFECT INSURANCE I OBTAIN THROUGH MY EMPLOYER?

A The RSC plan maintains the current law’s pre-existing condition protections for employer-sponsored insurance, including prohibitions on denying an employee with a pre-existing condition coverage, excluding their condition from coverage for any length of time, or charging them more for having a pre-existing condition. Additionally, the RSC plan would fully maintain the current law’s exclusion of employer-sponsored insurance from taxation.

Under the RSC plan, employers would be allowed to offer HSAs to their employees whether or not those employees are provided with a high-deductible health insurance plan. Employees would be able to receive larger sums of tax-free money in HSAs under the RSC plan. It would more than double HSA contribution limits to \$9,000 per individual and \$18,000 per family. Additionally, the RSC plan would also expand HSAs so that they could be used for a number of health services and products that currently must be paid for with after-tax dollars.

The RSC plan would remove the ACA’s employer mandate which has hurt Americans, particularly low-wage Americans, by reducing their job prospects. The mandate has forced small businesses to make painful hiring and employment decisions to avoid breaching the mandate’s 50 full-time employees threshold, after which they would have to pay for their employees’ health insurance. The left-leaning Urban Institute has even admitted that “[e]liminating it will remove labor market distortions that have troubled employer groups, and which would harm some workers.”

Q DOES THE RSC PLAN ELIMINATE THE HEALTH CARE INSURANCE EXCHANGES?

A The RSC plan does not make a recommendation as to whether or not the ACA exchanges should be eliminated. However, if the reforms recommended by the RSC plan were adopted, the exchanges would serve as little more than an online forum for offering insurance plans.

CONTRAST ARGUMENTS

PRE-EXISTING CONDITIONS: THE ACA VS. RSC'S FRAMEWORK FOR PERSONALIZED, AFFORDABLE CARE

The ACA was meant to protect people with pre-existing conditions, those with chronic health conditions, and the vulnerable. But, how have they fared under the current system? The RSC report details five ways it has left them behind.

CHALLENGES UNDER THE ACA

1) DOES NOT PROTECT PEOPLE WITH PRE-EXISTING CONDITIONS—

The current system guarantees individuals can get insurance coverage, but it does so at the expense of affordability, plan retention, access to quality care, and availability of doctors- all things that are important to those that are chronically ill. Moreover, it exacerbates the issue of pre-existing conditions by disincentivizing people from getting coverage before getting sick. This is an unsustainable system.

2) **MAKES HEALTH INSURANCE UNAFFORDABLE—** The explosion in the cost of health insurance under the current system has made insurance unaffordable, causing fiscal stress to many individuals who already struggle with the stress of being sick.

3) **CAUSES EXPLOSION OF OUT-OF-POCKET COSTS—** Under the current system, deductibles have exploded, which has caused many to delay care they may need because they will bear much of the costs. This is especially a problem for those with chronic health conditions who require regular use of medical services.

4) **REDUCES ACCESS & QUALITY OF CARE—** The current system caused insurance companies to dramatically reduce their networks of hospitals and physicians to control costs, which has made it more difficult for individuals to access the care they need. The best doctors and hospitals may not be available to the people that need them most. The current system also incentivizes insurance companies to provide the sick and vulnerable with the worst coverage legally possible.

5) **PRIORITIZES ABLE-BODIED OVER THE VULNERABLE—** The Medicaid expansion prioritized able-bodied adults over the truly vulnerable instead of improving the system for the people it was designed to protect. Thousands of individuals with disabilities and significant health needs remain on waiting lists.

IMPROVEMENTS UNDER RSC'S PLAN

1) **EXTENDS PRE-EXISTING CONDITIONS PROTECTIONS—** It extends to the individual health care market important protections for people with pre-existing conditions that were put in place in the employer health care market. It does this without sacrificing affordability, access to quality care, or availability of doctors. The plan neutralizes the issue of pre-existing conditions by providing greater portability of coverage and breaking down barriers that prevent people from obtaining affordable, personalized options.

2) **MAKES HEALTH INSURANCE MORE AFFORDABLE—** It reduces regulatory barriers that have caused the current explosion of health insurance costs, which will make health insurance more affordable so individuals can access the care that fits their personal needs.

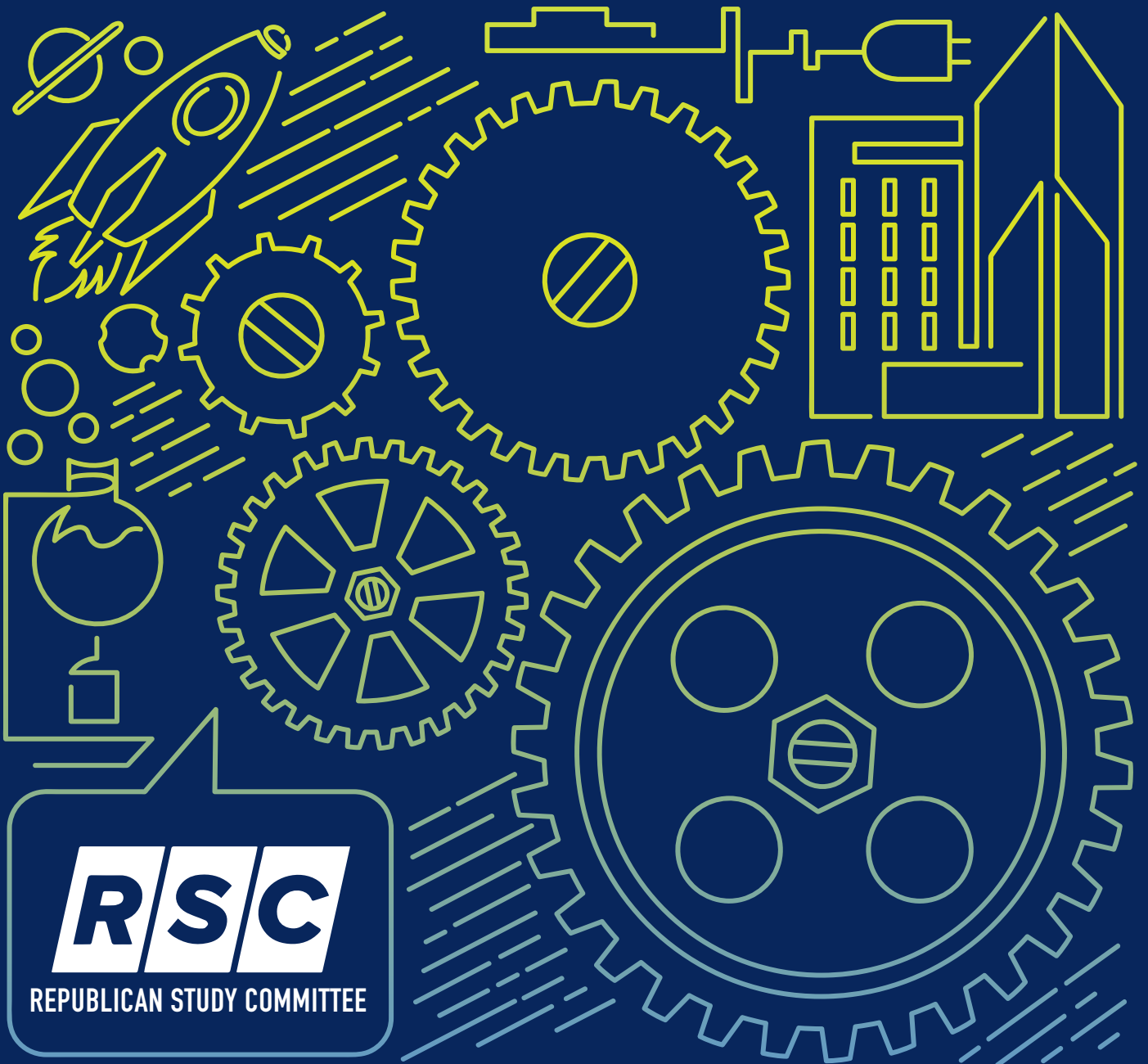
3) **EMPOWERS INDIVIDUALS TO SAVE FOR HEALTH CARE EXPENSES—** It expands and reforms Health Savings Accounts to make it easier for people to save for their personal health care needs and pay for the costs of insurance and care.

4) **IMPROVES ACCESS & QUALITY OF CARE—** It opens up more innovative insurance and care models that will provide greater personalized access to doctors and care providers, and thus improve competition and choice.

5) **PRIORITIZE THOSE IN NEED—** It provides a stable and sustainable safety net that truly focuses on the most vulnerable populations.

THE GOVERNMENT, EFFICIENCY, ACCOUNTABILITY, AND REFORM
TASK FORCE PRESENTS:

POWER, PRACTICES, PERSONNEL:
100+ COMMONSENSE SOLUTIONS
TO A BETTER GOVERNMENT



RSC

REPUBLICAN STUDY COMMITTEE

**THE GOVERNMENT, EFFICIENCY, ACCOUNTABILITY, AND REFORM
TASK FORCE PRESENTS**

**POWER, PRACTICES, PERSONNEL:
100+ COMMONSENSE SOLUTIONS TO A BETTER GOVERNMENT**

Fellow Americans,

In 2010, Congress passed a law directing the executive branch to answer a seemingly simple question: How many federal programs currently exist? They were given a deadline of two years to respond. A decade later, lawmakers and taxpayers are still waiting for the answer.

It is a self-evident truth that a government too large to calculate its own size is simply too large.

But it is not just the massive size of the federal government that should alarm every American, it is the nearly unchecked scope of its power. When a grossly inefficient bureaucracy wields too much authority over every aspect of our lives it becomes a threat to our prosperity and the very foundation of our republic.





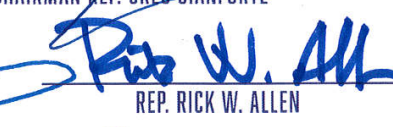






In the accompanying report, we identify and explain three primary problem areas plaguing the federal bureaucracy: POWER, PRACTICES, and PERSONNEL. Congress is largely responsible for all three.

Congress has ceded far too much of its authority to agencies and regulatory bodies, and it has chosen—more often than not—to either ignore the programmatic deficiencies that exist there, or simply throw more money at the broken systems. That approach has been destructive in many ways, and has even jeopardized the rule of law as it has left federal courts unable to efficiently administer justice. Through its inaction, Congress has also gradually allowed a handful of bad actors to compromise the reputation, efficiency, and morale of a federal workforce comprised largely of dedicated and patriotic civil servants.

The good news is that problems created by Congress can be solved by Congress. It is our duty to do so. To that end, we, the members of the RSC GOVERNMENT EFFICIENCY, ACCOUNTABILITY, & REFORM (GEAR) TASK FORCE, present the following three-step, common sense plan to achieve greater efficiency, accountability and reform in the federal government. Our plan includes more than 100 solutions and recommendations to:

1. Reclaim POWER from unelected bureaucrats;
2. Reform government PRACTICES to curb inefficiency and waste; and
3. Reemphasize and reward innovation among our nation's government PERSONNEL.

This solutions-oriented plan is not a partisan document but a blueprint for good government, and a call for action. Our government should work for the people again, and not the other way around. We owe it to the millions of hardworking Americans who fund this republic to repair it, and we are determined to fulfill that responsibility. This is how we can do it.

 RSC CHAIRMAN REP. MIKE JOHNSON	 GEAR TASK FORCE CHAIRMAN REP. GREG GIANFORTE	
 REP. DOUG COLLINS	 REP. BARRY LOUDERMILK	 REP. RICK W. ALLEN
 REP. BRUCE WESTERMAN	 REP. JOHN CURTIS	 REP. MICHAEL CLOUD
 REP. KELLY ARMSTRONG	 REP. WILLIAM R. TIMMONS, IV	 REP. DENVER RIGGLEMAN

THE INTRODUCTION

Let us state the facts: The federal government is too large, it does too many things, and what it does, it usually does not do very well.

The original design of our extraordinary Constitution—of a limited government with three distinct branches—has long since been abandoned. Today, we effectively have a fourth branch of government, often referred to as “the bureaucracy,” which has been allowed to spread over the decades into a smothering administrative thicket that our founders would not recognize.

Congress created this problem. Often to avoid accountability and controversial political decisions, it gradually created an elaborate network of agencies and sub-agencies and regulatory bodies as it willfully gave away much of its constitutional authority.

The growth of federal bureaucracies has naturally spawned an infamous culture of waste and inefficiency. The problem is compounded by the lack of meaningful metrics to measure performance and has resulted in a government so large, its myriad number of programs cannot even be counted.

Everyone seems to understand and accept that dubious government programs range from the unconstitutional, to the imprudent, to the purely comical. But this is not a laughing matter, and there is an urgent need for Congress to do much more to stamp out the rampant fraud, waste, and abuse of the precious tax dollars of hardworking Americans.

While the legislative branch has drifted further and further from its original purpose, the judicial and executive branches have as well. For example, certain activist judges in our federal courts have increasingly assumed the authority to “legislate from the bench” in direct violation of the Constitution’s separation of powers.

The executive branch has also usurped more and more legislative authority over the years through runaway regulatory agencies and their entrenched Washington bureaucrats who often act as judge, jury, and executioner wielding mandates they themselves create.

Civil service is an important calling, but the dedicated, patriotic Americans who serve so faithfully in those positions are often overshadowed by unprofessional, partisan employees who lack accountability. Bad actors have ruined the credibility of so many agencies and undermined the foundations of our republic. Meanwhile, federal unions have taxpayer-funded privileges that would make their civilian counterparts blush.

All of this has dangerously eroded the public’s faith in our institutions. A recent poll conducted by the Pew Research Center found that “only 17% of Americans today say they can trust the government in Washington to do what is right ‘just

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PEW RESEARCH CENTER**



about always' (3%) or 'most of the time' (14%)."¹ While restoring constitutional balance and removing waste in our government should not be partisan issues, the Left has been unwilling to help address this crisis. Liberals are working instead: to further expand the power of the administrative state by shifting even more authority away from Congress and the people to unelected bureaucrats; to create even more government agencies and programs regardless of duplication or effectiveness; and to resist efforts to restore common sense and accountability to existing bureaucracies. We can and must do better.

THE REPUBLICAN STUDY COMMITTEE PLAN

The Republican Study Committee (RSC) proposes this plan as a corrective roadmap for the federal government. This report of the RSC's Government Efficiency, Accountability, and Reform (GEAR) Task Force outlines our conservative vision and proposes critical reforms in three areas:

POWER

REFORM GOVERNMENT POWER STRUCTURES:

1

In step one, we restore the balance of powers between the three co-equal branches of government. We rollback decades of Congressional abdication of its authority to the executive branch, returning power to the people over unelected bureaucrats. Furthermore, we rebalance the interaction between Congress, the executive branch and the judiciary.

PRACTICES

REFORM GOVERNMENT PRACTICES:

2

Restoring the balance of powers is not enough to ensure an efficient, accountable, and reformed government. In step two, the report tackles government practices with an emphasis identifying and removing waste. This includes big, broad institutional reform and consolidation all the way to simple, common sense things like stopping payments to people who have deceased.

PERSONNEL

REFORM GOVERNMENT PERSONNEL POLICIES:

3

Lastly, step three focuses on reforming government personnel policy. No change in structure or practice will materialize without dedicated civil servants driving those needed changes. Our reforms aim to improve the morale and effectiveness of our federal workforce by improving accountability and shifting compensation practices to more closely align with those in the private sector.

¹Pew Research Center, Trust and Distrust in America, (Jul. 22nd, 2019), <https://www.people-press.org/2019/07/22/trust-and-distrust-in-america/>

REFORM GOVERNMENT POWER STRUCTURES STEP ONE

Part of the genius of our constitutional structure is its separation of powers. This system, based on a critical balance between three separate, co-equal branches of government, ensures a properly functioning government when it operates as designed. That design was based upon the founders' understanding of human nature and the fallen state of man. Since power so often corrupts, they believed that unchecked authority in the hands of just a few people could jeopardize our system and eventually encroach upon the God-given rights of every American. They were right.

Agencies across the executive branch, and their employees, are not directly accountable to the American people. These nameless faces wield broad regulatory power almost identical to that of Congress and our federal courts.

Congress has created this situation by enacting legislation that allows agencies to promulgate sprawling regulations. These regulations often spur statements of interpretation and guidance, otherwise known as "regulatory dark matter," which are in essence additional laws.² Even when Congress does not direct agencies to promulgate regulations, it often remains idle as executive agencies manipulate the meaning of law through self-serving interpretations. Consequently, agencies can promulgate, enforce, and prosecute seemingly endless rules and regulations that bind every man, woman, and child in the United States. Unfortunately, current standards for judicial review have only empowered and emboldened Washington bureaucrats to test the bounds of their quasi-lawmaking authority.

This expansive administrative state has earned its reputation for inefficiency and ineptitude. As President Ronald Reagan once quipped, "The nine most terrifying words in the English language are: "I'm from the government, and I'm here to help." Of course, the costs borne by the American people go well beyond the price tag of regulatory compliance, as they also include the costs associated with lost opportunities and stymied innovation.

To achieve a more accountable and efficient government, we must restore the balance of powers to what the framers originally envisioned. This must begin with reasserting Congress as a check on the unbridled regulatory power that the executive branch has amassed. To this end, RSC's GEAR Task Force proposes the commonsense conservative solutions outlined below.

RESTRAIN EXECUTIVE RULEMAKING AUTHORITY

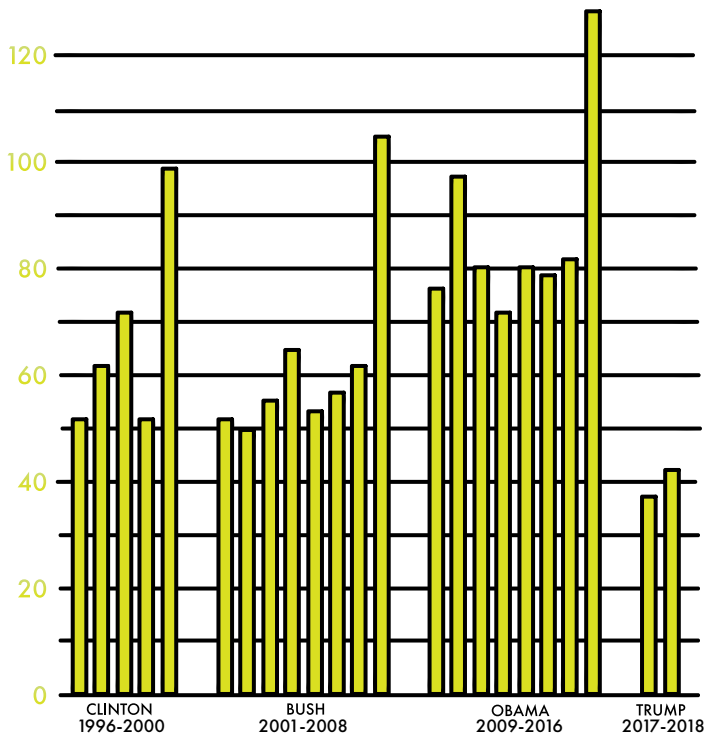
Article I of the Constitution plainly states, "All legislative Powers herein granted shall be vested in a Congress..." Despite this unequivocal language, executive branch agencies have largely supplanted Congress' legislative power through prodigious rulemaking. According to the Competitive Enterprise Institute (CEI), the

**"THE NINE MOST
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PRESIDENT RONALD REAGAN**

² John Cochrane, Law and the Regulatory State, American Exceptionalism in a New Era § 61 (Nov. 2017), https://faculty.chicagobooth.edu/john.cochrane/research/papers/AE_Ch6_John%20Cochrane.pdf

U.S. Code of Federal Regulations is currently composed of more than 180,000 pages, including more than one million regulatory restrictions.

NUMBER OF FINAL MAJOR RULES PUBLISHED BY PRESIDENTIAL YEAR



SOURCE: OFFICE OF INFORMATION AND REGULATORY AFFAIRS (OIRA)

Between 2000-2016, the average annual cost of new regulations was \$8 billion. Thankfully, in 2017, the Trump administration began a historic effort to reduce regulations and has already decreased the cost of regulation by over \$50 billion. While Democrats in Congress have unfortunately shown little interest in assisting Republicans in this regard, there is much more yet to do.

Enact the REINS Act

The REINS Act, introduced in the 116th Congress by Rep. Jim Sensenbrenner (WI-05), would require Congress to pass a joint resolution, along with a presidential signature of approval, for any major rule within 70 days of promulgation before that rule may take effect.³

This legislation would dramatically change the process by which agencies create rules by ensuring that a major rule that could not attain the public support of Congress, would not be implemented. Critically, this joint resolution would be considered under expedited procedures in the Senate so that it could pass the chamber with a simple majority. Under current law, rules take effect unless a joint resolution disapproving them is enacted. The REINS Act would help prevent potentially damaging regulations for all Americans and Congress from abdicating its lawmaking responsibility.

It is difficult to overstate the impact the REINS Act would have. President Obama’s administration issued 685 major rules during his presidency, and the federal government spent \$63 billion in 2016 alone implementing these regulations.⁴ During the Obama administration, the House of Representatives passed the REINS Act four separate times in an attempt to hold the executive branch accountable.⁵ Had this conservative solution become law, the United States could have saved billions of taxpayer dollars.

³ Regulations from the Executive In Need of Scrutiny Act of 2019, H.R. 3972, 116th Cong.

Expand the Usage of the Congressional Review Act (CRA)

The Congressional Review Act (CRA) of 1996, signed into law by President Clinton, is a legislative tool that can be used by Congress to roll back a recently promulgated regulation under an expedited parliamentary process.⁶ The CRA allows Congress to negate regulations through bicameral enactment of a joint resolution of disapproval. Such joint resolutions are not subject to filibuster in the Senate and thus can pass each chamber with simple majority votes if passed within 60 legislative days of receiving notification of a rule.

The CRA can be a powerful tool that Congress can use to prevent implementation of harmful regulations. During the 115th Congress, the CRA was used successfully 16 times by congressional Republicans and President Donald Trump to roll back last-minute Obama-era rules.⁷ The Trump administration has been unparalleled in its efforts to prevent, undo, and avoid the creation of additional regulations. We will not always have a president with such strong convictions in this regard will always be in office.

There is still untapped potential with the CRA that Congress has yet to pursue. Lawmakers should assert their Article I authority by utilizing the CRA to review and potentially nullify rules and regulations that did not follow proper CRA protocols when being implemented. Under the CRA, a rule cannot take effect until it has been reported to Congress by the promulgating agency. The Brookings Institution found “348 significant rules with apparent reporting deficiencies to the Government Accountability Office (GAO) or Congress, out of a total of 3,197 significant rules—slightly more than 10 percent.”⁸ Congress ought to review these rules and use the CRA to protect the liberty of all Americans against the dictates of the administrative state.

One example of a rule that is still subject to CRA review is an Obama-era federal land restriction that is currently the subject of litigation. In *Tugaw Ranches, LLC v. U.S. Department of Interior et al*, the Department of Interior is being sued for a 2015 rule that implemented expansive federal land restrictions to help conserve the greater sage grouse. This rule was implemented without proper notification of Congress and thus is unlawful under the CRA.⁹ A

⁶ Congressional Review Act of 1996, 5 U.S.C. § 801 (2019)

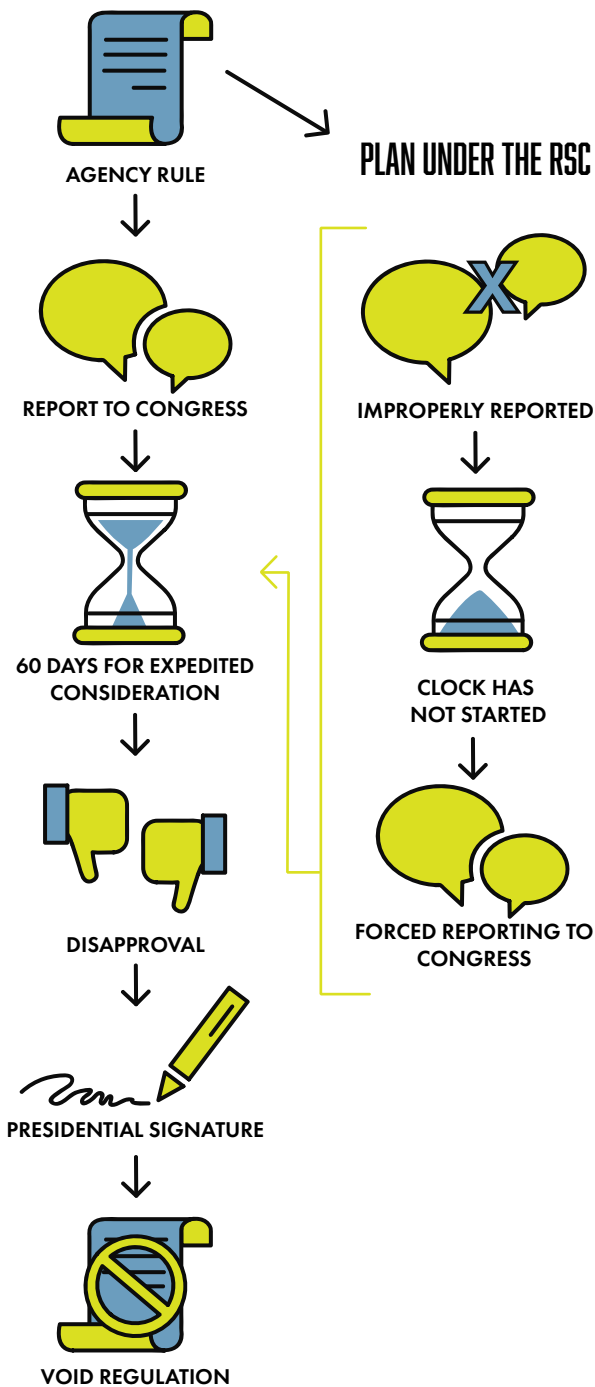
⁷ Id.

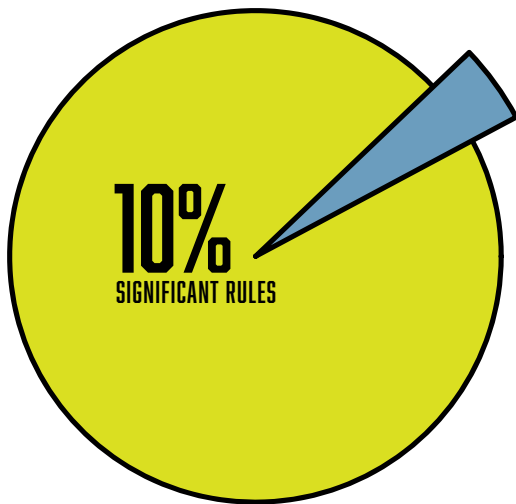
⁸ Philip Zeppos, How powerful is the Congressional Review Act?, BROOKINGS INSTITUTION (Apr. 4th, 2017), <https://www.brookings.edu/research/how-powerful-is-the-congressional-review-act/> (last visited Jan. 7, 2020).

⁹ Jonathan Wood, Idaho Joins PLF’s Defense of the Congressional Review Act, PACIFIC LEGAL FOUNDATION (Jul. 16th, 2018) <https://pacificlegal.org/idaho-joins-plfs-defense-of-the-congressional-review-act/>

EXPAND USAGE OF THE CONGRESSIONAL REVIEW ACT (CRA)

CURRENT CRA PROCESS





**SLIGHTLY MORE THAN
10% OF SIGNIFICANT
RULES HAVE APPARENT
REPORTING DEFICIENCIES**

rule that significantly impacts the ability of state governments, municipalities, and landowners to use local resources deserves to be subject to all lawful transparency measures.

Additionally, the GEAR Task Force supports explicitly codifying in statute that the CRA applies to “regulatory dark matter.” Doing so would clarify that de-facto regulation should not be exempt from any congressional oversight of official federal rule making. It would also provide an expedited path for lawmakers to block these agency policy initiatives even if, under existing law, they are not subject to traditional notice-and-comment rulemaking. The Trump administration’s Office of Management and Budget (OMB) has taken this position,¹⁰ but the current definition of “rules” subject to the CRA disapproval procedure is too vague. Consequently, Congress has failed to utilize the CRA to block regulatory dark matter.

Enact The Article I Restoration Act

Since regulations can be implemented without deliberation and debate that is often provided by the legislature, there may not always be a thorough consideration of their long-term effects. Furthermore, with federal regulations being proposed across government each day and printed in the weighty Federal Register, it is hard for anyone to keep track of every new regulation, let alone those implemented long ago. A simple and potent solution is implementing sunset requirements on regulation.

In 2019, Idaho became the least regulated state through sunseting all state regulatory provisions that the legislature did not reauthorize.¹¹ This action, along with urging agencies to reduce two regulations for every new proposal, led to the state cutting 75 percent of its regulations in one year. This is a great example for the federal government, which rarely turns its focus to eliminating old regulations.¹²

The Article I Restoration Act, introduced by Rep. Bill Posey (FL-08), would require federal regulations to expire after three years if not specifically reauthorized.¹³ To obtain reauthorization, the head of an agency would have to submit a request for reauthorization to Congress. This bill would drastically reduce the burden of regulations and their associated costs by forcing agencies to prioritize reauthorization for policies they deem most important. It would also force

¹⁰ White House Office of Management & Budget, Memorandum: Guidance on Compliance with the Congressional Review Act (Apr. 11th, 2019), <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-14.pdf>

¹¹ Office of the Governor, Idaho, Idaho cuts and simplifies 75 percent of rules in one year, becomes least-regulated state in country (Dec. 4th, 2019), <https://gov.idaho.gov/pressrelease/idaho-cuts-and-simplifies-75-percent-of-rules-in-one-year-becomes-least-regulated-state-in-country/>

¹² James Broughel & Krista Chavez, Idaho is the Least Regulated State and a Model for the Rest of the Country, MERCATUS CENTER (Jan. 2nd, 2020), <https://www.mercatus.org/bridge/commentary/idaho-least-regulated-state-and-model-rest-country>

¹³ Article I Restoration Act of 2019, H.R. 3617, 116th Cong.

unelected bureaucrats to justify unpopular regulations to public officials who must answer to the voters.

CONTAIN THE COSTS OF FEDERAL REGULATIONS

Federal regulation curtails economic freedom, costs taxpayers their hard-earned money, and stymies the growth and innovation of American businesses. The extent to which these effects perpetually hamstring the growth of our nation's economy is vast. According to CEI, federal regulations cost our nation's economy approximately \$2 trillion annually.¹⁴ That amount is worth about 10 percent of the United States' gross domestic product (GDP). Still, fully accounting for the cost of regulation is impossible when one considers the totality of regulatory impact, including lost time, jobs, and opportunities.

Fortunately, after eight years of overregulation under President Obama, the Trump administration has successfully focused on cutting cost and promoting prosperity by reducing regulation. For instance, in 2017, President Trump signed E.O. 13771,¹⁵ which called for the elimination of two regulations for every one introduced. At the close of 2019, the President Trump announced his administration had "cut regulatory costs by \$50 billion and has rolled back 7.5 regulations for every new rule created." While the Trump administration's success is worth celebrating, the long-term economic savings cannot be guaranteed without congressional action. Congress should act to prospectively restrain and measure the costs of federal regulation that may be implemented in the future.

Enact the Article I Regulatory Budget Act

The GEAR Task Force supports the Article I Regulatory Budget Act, sponsored by former RSC Chairman Rep. Mark Walker (NC-06).¹⁶ This bill would ensure that the economic costs of regulations are budgeted for by the federal government in the same way that it budgets for spending. Budgeting for regulatory costs and establishing limits on their growth increases the extent to which agency bureaucrats—and lawmakers—can be held accountable for their regulatory actions.

Under this solution, the president would be required to deliver to Congress a budget for annual regulatory costs, in tandem with the president's annual budget. Congress would then pass its own regulatory budget in conjunction with its annual government funding budget. The Congressional Budget Office (CBO) would also be required to develop a baseline showing the current trajectory of regulatory costs which would serve as a measuring stick for determining when new legal requirements would increase net regulatory costs. Legislation that would increase regulatory costs above the limits established in the regulatory budget would be

¹⁴ Wayne Crews, *Ten Thousand Commandments 2018*, COMPETITIVE ENTERPRISE INSTITUTE (Apr. 19th 2018), <https://cei.org/10kc2018> (last visited Jan. 7, 2020).

¹⁵ Exec. Order 13771, 82 FR 9339 (Feb. 3rd, 2017)

¹⁶ Article I Regulatory Budget Act of 2016, H.R. 5319, 115th Cong.

**ACCORDING TO
CEI, FEDERAL
REGULATIONS COST
OUR NATION'S
ECONOMY
APPROXIMATELY \$2
TRILLION ANNUALLY.**

prohibited. In such instances, Congress would have to defund agencies' regulatory actions that breach the limits as part of any bill to fund the federal government. These restrictions would apply to regulatory dark matter in addition to traditional agency rules. Moreover, the bill would prevent the creation of regulatory dark matter until the relevant agency has undertaken notice-and-comment procedures.

According to the R Street Institute, Canada's federal government has had success using regulatory budgeting techniques. Throughout 2010 and 2011, former Prime Minister Stephen Harper began to implement regulatory budgeting to better inform and strengthen the government's deregulation agenda. The government had already utilized a standard add-one-eliminate-one strategy to prevent further regulatory growth. Building on this, the government began to require agencies to measure and track the cost of regulation to inform more targeted deregulatory action and create a loose decentralized regulatory budget structure. Agencies would be rewarded for deregulating with the purpose of alleviating the burdens on business, rather than arbitrary deregulation. After just two years, these regulatory budget-informed measures saved Canadian citizens and businesses \$21 million in compliance costs and 263,000 hours of work time.¹⁷



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The process required by the Article I Regulatory Budget Act would restrain the regulatory costs that executive agencies could impose each year and force them to better account for the economic impacts of their actions in a way that they are not currently required. Over time, as agencies seek to impose new regulations, they will be forced to repeal existing outdated and unnecessary rules, reducing the overall burden on the country.

Enact the Regulatory Accountability Act

The GEAR Task Force also supports injecting the formal cost-cutting elements of the Regulatory Accountability Act sponsored by former member of Congress, Rep. Bob Goodlatte, into the existing rulemaking process.¹⁸ Currently, economic impacts on American citizens and businesses are governed by a patchwork of statutes and executive orders. The extent to which existing protections adequately restrain the economic costs of regulations is hindered by the lack of comprehensive statutory language designed specifically to address this concern.

Fortunately, the Regulatory Accountability Act is designed to restrain regulators, during the Administrative Procedure Act's (APA) rulemaking process, from indiscriminately burdening Americans and their businesses with economically oppressive measures. Most importantly, the bill creates enhanced procedural requirements for rules that are major or high-impact. Major rules are primarily

¹⁷ Sean Speer, REGULATORY BUDGETING: LESSONS FROM CANADA, R STREET INSTITUTE (March 2016), <https://www.rstreet.org/wp-content/uploads/2016/03/RSTREET54.pdf>

¹⁸ Regulatory Accountability Act of 2017, H.R. 5, 115th Cong.

those with an estimated cost exceeding \$100 million.¹⁹ Under the Regulatory Accountability Act, a new designation called a “high-impact” rule would be a rule estimated to exceed \$1 billion or more.²⁰ Agencies would have to provide public notice of a rule’s impact on jobs and wages, afford stakeholders an opportunity to participate in the rulemaking process, hold a formal hearing for adopting high-impact rules, and—advance rules only on the basis of the best evidence and at the least cost. The bill would even require agencies, for major rules, to publish a report on the benefits and costs to regulated entities and revise it every five years.

Enact the Unfunded Mandates Information and Transparency Act

In 1995, Congress passed into law the Unfunded Mandates Reform Act (UMRA) of 1995. This legislation was passed with the intent of curbing the federal government’s habit of imposing pricey intergovernmental mandates on state and local governments and sticking them with the cost of implementation.

Unfortunately, the UMRA framework has several loopholes that allow regulators to promulgate rules without being fully transparent as to the implications of the rule’s federal mandates. Under current law, agencies—other than independent regulatory agencies—are required to analyze the costs of potential regulations that contain federal mandates on state, local, and tribal governments and the private sector. This requirement, however, only applies to rules that cause such entities to expend, in the aggregate, \$100 million (adjusted for inflation) in any one year. Once this threshold is reached, it triggers the requirement that agencies consider less expensive alternative regulations and solicit stakeholder input prior to promulgation.



UMRA PASSED WITH THE INTENT OF CURBING UNFUNDED MANDATES ON STATE AND LOCAL GOVERNMENTS

To address this problem, the GEAR Task Force recommends that Congress should enact the Unfunded Mandates Information and Transparency Act, sponsored by House Education and Labor Committee Ranking Member, Rep. Virginia Foxx (NC-05).²¹ This legislation has passed the House four separate times with bipartisan support.

This legislation provides a framework for a more accountable process that would increase transparency of the true costs of federal mandates on state and local governments, as well as the private sector. The Unfunded Mandates Information and Transparency Act would amend UMRA to close these loopholes. First, the bill would subject independent agencies, such as the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Communications

¹⁹ Id.

²⁰ Wayne Crews, What’s the Difference between “Major,” “Significant,” and All Those Other Federal Rule Categories?, COMPETITIVE ENTERPRISE INSTITUTE (Sept. 2017) <https://cei.org/sites/default/files/Wayne%20Crews%20-%20What%20is%20the%20Difference%20Between%20Major%20and%20Significant%20Rules%20%281%29.pdf>.

²¹ Unfunded Mandates Information and Transparency Act of 2019, H.R. 300, 116th Cong.

**“AT THE VERY LEAST
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THEY DICTATE.”
REP. VIRGINIA FOXX R-NC**

Commission (FCC), to the requirements of the UMRA. Second, it would ensure that all rules with potentially major mandates are subject to the UMRA, not just those for which a general notice of proposed rulemaking is published. This is critical considering a 2012 GAO report determined agencies had not published a notice of proposed rulemaking for 35 percent of major rules.²² Last, the bill would fix the “major rule” threshold to make sure that it incorporates annual economic effects from a proposed rule’s mandate, not just “expenditures” that would result from the mandate.

Rep. Foxx summed up the benefits of the legislation stating, “At the very least policymakers and unelected regulators should know the price of what they dictate. The Unfunded Mandates Information and Transparency Act will help restore honesty and transparency to federal mandates and ensure Washington bureaucrats are held accountable for seeking public input and considering the negative consequences, in dollars and in jobs, prospective mandates will impose on the economy.”²³

INCREASE REGULATORY TRANSPARENCY

President Ronald Reagan was known to frequently employ the mantra “trust but verify.” This principle is at the heart of government accountability. The federal government should be accountable to the people. Our government was not designed to be led by philosophers in ivory towers, but rather was created to have civil servants work for the good of all Americans.

**“...TRANSPARENCY
AND EVIDENCE-
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COMMITMENT.”
RICK MANNING**

Transparency has proven to be necessary and effective when making government more accountable to the Constitution and the public. Rick Manning, President of Americans for Limited Government, eloquently stated “...transparency and evidence-based science are not just a limited government issue; they’re a better governance issue that should enjoy bipartisan commitment.”²⁴ Without transparency and accountability there will be fewer safeguards in place to prevent waste or abuse. America’s government can and should set the standard of transparency for all the world. Benjamin Franklin said it best while debating the inefficiencies of the Articles of Confederation at the Annapolis Convention, “In free Governments the rulers are the servants, and the people their superiors and sovereigns.”²⁵

The RSC GEAR Task Force supports a rigorous set of proposals to overhaul transparency across the federal bureaucracy. It is imperative that these commonsense transparency measures be enacted so Congress can more forcefully conduct its oversight duties and taxpayers can be ensured that the federal government is acting as proper stewards of their money.

²² GOV’T ACCOUNTABILITY OFFICE, GAO-13-21, Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments, 7 (2012), <https://www.gao.gov/assets/660/651052.pdf>;

²³ Office of Ranking Member Virginia Foxx, Summary: Unfunded Mandates Information and Transparency Act, <https://foxx.house.gov/legislation/umita.htm>

²⁴ Rick Manning, Better government begins with transparent information, THE HILL (Dec. 8th, 2019) <https://thehill.com/opinion/technology/473531-better-government-begins-with-transparent-information>

²⁵ Benjamin Franklin, Madison Debates, YALE LAW AVALON PROJECT (July 26, 1787) https://avalon.law.yale.edu/18th_century/debates_726.asp

Create Regulatory Report Cards for Agencies

Congress should create benchmarks for improvement using a grading criterion for measuring existing agency regulations. For instance, CEI has recommended accounting for significant factors including tallies of rules by category, measurements of impact, and ranking overall agency action.²⁶ Regulatory report cards would not only promote transparency, they would also empower better analysis on the impact of rules. A regulatory report card would create a platform for public transparency while also standardizing the quantitative and qualitative metrics used to measure the effectiveness of a rule.

Require Agency Data Disclosure in Support of New Proposed Rules

Agencies are not currently required to disclose a complete record of the data on which they base their rulemaking decisions.²⁷ This creates a significant hurdle to verifying the prudence of the action taken. Accordingly, Congress should insert statutory language into the Administrative Procedure Act that would require agencies to provide the underlying data supporting their rulemaking decision. This would better ensure that the agency rulemaking decisions are not based on arbitrary factors.

Require All Regulatory Submissions be Made Through OMB's Office of Information on Regulatory Affairs

OMB's Office of Information on Regulatory Affairs (OIRA) determines if agencies are in compliance with rulemaking requirements. It also reviews risk assessments, cost-benefit analyses, and other supporting information concerning regulations. Currently, agencies are only required to submit significant regulations to OIRA for their review in accordance with Executive Order 12866.²⁸ Congress should broaden this process by requiring agencies to submit all potential regulations to OIRA.

Under this commonsense proposal, a submission would be held to the same standard as is currently applied to review of major rules. This includes requiring agencies to submit a regulatory impact assessment that outlines the total potential impact and cost of a proposed regulation.

Enact the ALERT Act

This legislation, sponsored by Rep. John Ratcliffe (TX-04), would require agencies to provide detailed monthly disclosures on regulations to OMB for every rule the



**FEDERAL AGENCIES
SHOULD RECEIVE
REGULAR REPORT CARDS
AND CHECK UPS**

²⁶ Iain Murray, Myron Ebell & Marlo Lewis, Free to Prosper: Regulatory Reform and Agency Oversight, COMPETITIVE ENTERPRISE INSTITUTE (Jan. 8th, 2019), https://cei.org/sites/default/files/Free_to_Prospere_2019_Regulatory_Reform_0.pdf

²⁷ David Muhlhausen, et. al., Blueprint for Reorganization: Pathways to Reform and Cross-Cutting Issues, HERITAGE FOUNDATION (Jun. 30, 2017), <https://www.heritage.org/budget-and-spending/report/blueprint-reorganization-pathways-reform-and-cross-cutting-issues>

²⁸ Exec. Order 12886, 58 FR 51735; October 4, 1993 <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf#page=4>

agency expects to propose or finalize in the coming year.²⁹ It also forces them to make the reports publicly available. Finally, rules would not go into effect unless this information is electronically posted for at least six months, with a few exceptions.

Enact the Providing Accountability Through Transparency Act

This legislation, sponsored by Rep. Blaine Luetkemeyer (MO-03), would require each agency to include a 100-word, plain-language summary of a proposed rule when providing notice of a rulemaking.³⁰ This system would put the onus on regulators to explain their rules to the public and make it easier for the public to understand the proposed regulation.

Require Independent Agencies to Comply with Existing Rulemaking Requirements

Independent agencies are generally exempt from having to comply with a number of statutes applicable to the rulemaking process, namely the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Data Quality Act.³¹ These independent agencies promulgate some of the most far-reaching and economically impactful regulations in our nation. Such independent agencies include the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Communications Commission (FCC). Thus, it makes no sense that they do not have to comply with these critical regulatory restraints that significantly enhance transparency in rulemaking decisions. The GEAR Task Force supports eliminating these exemptions.

Enact the Guidance Out of Darkness (GOOD) Act

The GOOD Act, sponsored by former RSC Chairman Rep. Mark Walker (NC-06), would help to remedy disclosure issues with respect to regulatory dark matter.³² This commonsense legislation would require all guidance documents to be published for transparency considerations. Postings would be required to be made in a database on the OMB website including the date an agency published the guidance, a link to the text of the guidance, and if the action is rescinded. This legislation would shine a light on all actions agencies take that carry a similar weight to regulation. It would also make transparent actions that agencies have previously taken to avoid accountability.

Reform the National Emergencies Act (NEA)

Throughout American history, presidents have invoked emergency powers to address pending crises. This tradition dates to 1794, when President George

²⁹ ALERT Act of 2017, H.R. 75, 115th Cong.

³⁰ Providing Accountability Through Transparency Act of 2019, H.R. 1087, 116th Cong

³¹ Murray, et al., supra note 27.

³² Guidance Out Of Darkness Act of 2018, H.R. 4809, 115th Cong.

Washington issued a proclamation regarding the use of militia power to put down the Whiskey Rebellions.³³ This authority was largely drawn from “implied powers” believed to be granted by virtue of Article II of the Constitution.³⁴

The most famous application of emergency executive powers in U.S. history was the suspension of habeas corpus during the American Civil War by President Lincoln. By the end of the Korean War, the persistent and expanded use of emergency authorities became a national concern. For instance, a 1950 emergency promulgation which President Truman did not revoke after the Korean War was controversially part of the legal basis for American military intervention in Vietnam.³⁵ By 1972, Congress began to debate potential safeguards to prevent the abuse of executive emergency declarations. Eventually, it offered a bipartisan solution to provide a congressional check, the National Emergencies Act of 1976, which passed the House of Representatives with only five dissenting votes.^{36 37}

The National Emergencies Act (NEA) provides a statutory structure for the use of emergency powers by a president, including safeguards of public accountability and congressional disapproval. To use emergency powers, a president must first cite the statute from which the authority derives. The NEA does not itself grant specific powers but rather allows a president to utilize standby authorities that exist within the federal code. There are over 130 statutory emergency authorities that can be activated by virtue of the president declaring a national emergency.³⁸ Declared emergencies automatically expire within a year, unless renewed by the president. An emergency can also be terminated by a joint resolution becoming law or a president rescinding the emergency declaration.

Although the NEA has provided a framework to limit presidential emergency powers, history has shown the limit to be largely ineffective as an accountability tool. Since 1979, the NEA has been utilized 56 times, with 33 of these declarations remaining in effect, and none being successfully overridden by congressional disapproval. Considering the greatest check on emergency authority has been the discretion of presidents when exercising it, it would be difficult to argue the NEA is an effective tool in checking executive emergency actions. Some fear the NEA could be abused by a future rogue president to undertake reckless and wasteful actions, such as a socialistic green-climate initiative.

The GEAR Task Force recommends that the NEA be modified to restore the ability of Congress to act as a co-equal branch to the executive, even and especially during

³³ L. Elaine Halchin, National Emergency Powers, CONGRESSIONAL RESEARCH SERVICE (Dec. 5th, 2019), <https://fas.org/sgp/crs/misc/R44999.pdf#page=4>

³⁴ *Id.* at 2.

³⁵ *Id.* at 7.

³⁶ 50 U.S.C. §§ 1601-1651

³⁷ Halchin, *supra* note 34.

³⁸ A Guide to Emergency Powers and Their Use, BRENNAN CENTER (Sept. 4th, 2019), https://www.brennancenter.org/sites/default/files/2019-10/2019_10_15_EmergencyPowersFULL.pdf

times of crisis. Among the conservative reforms that may be considered are adding dual safeguards on the executive branch. The first would place an initial expiration date (perhaps 30, 60 or 90 days) on a president's emergency declaration. Before the stated expiration date, Congress would have to affirmatively authorize an extension of the emergency powers within a timeframe of its choosing. Rep. Chip Roy (TX-21) has introduced the ARTICLE ONE Act which would codify this requirement utilizing a 30-day period.³⁹ The second safeguard would impose a cap of some specific amount on new emergency spending. Reaching the cap prior to the declaration's expiration date would also terminate the emergency, absent an extension by Congress.

REGULATORY REFORM THROUGH LITIGATION AND THE JUDICIARY

While Congress' role in confronting unruly regulation is irreplaceable, the judiciary must play a role as well. For too long, judges have treated administrative bodies as infallible by giving too much deference to their interpretation and execution of laws passed by Congress. This practice, known as the "Chevron deference," has been devastating in enabling agencies to essentially be their own judge and jury in reviewing their rulemaking. FreedomWorks described the problem of Chevron as an "...alarming erosion of the constitutional separation of powers, allowing federal agencies to determine vaguely written statutes -- perhaps, at times, purposefully written to be vague -- without judicial review."⁴⁰ Just as the executive branch has supplanted Congress through its rulemaking, it has also encroached on the federal courts' responsibility of judicial review. Congress should help the courts restore their plenary authority of judicial review by enacting sound policy that reiterates the court's role in determining the lawfulness of regulation.

Enact the Separation of Powers Restoration Act

Separation of Powers Restoration Act (SOPRA), introduced by Rep. Ratcliffe, would reign in the executive branch by scaling back Chevron deference.⁴¹ Specifically, it would require a non-deferential review of all legal questions relevant to the regulatory controversy at hand, including constitutional and statutory interpretation. If implemented, SOPRA would place judicial review back in the hands of the judiciary and make clear the lines between judicial interpretation of law and executive enforcement of the law.

Require Judicial Review of Regulatory Impact Data

According to the Mercatus Center, "[j]udicial review of agencies' regulatory impact analys[es] could motivate agencies to base regulatory decisions on the best available evidence about the problems they seek to solve, the proposed regulation

³⁹ ARTICLE ONE Act of 2019, H.R. 1755, 116th Cong.

⁴⁰ Jason Pye & Josh Withrow, Restoring the Balance of Powers, FREEDOMWORKS, http://fw-d7-freedomworks-org.s3.amazonaws.com/IB_1_2020_Restoring_the_Balance_of_Powers.pdf

⁴¹ Separation of Powers Restoration Act of 2019, H.R. 1927, 116th Cong.

and alternative solutions, and the likely consequences.”⁴² As noted above, ensuring that an adequate record of data exists for judges to review is critical. To this end, the GEAR Task Force supports statutory reforms to the rulemaking process that require regulators to disclose data on which they base their regulatory decisions.

In conjunction with that reform, the GEAR Task Force supports enactment of the REVIEW Act, sponsored by former Rep. Marino (PA-12), to further enhance regulatory oversight conducted through our federal court system.⁴³ This measure would require a federal agency to postpone the effective start date of any high-impact rule until completion of any judicial proceedings challenging the rule. OIRA would be responsible for reviewing if a rule qualifies as high-impact. The bill defines a high-impact rule as one that has an annual negative economic impact of more than \$1 billion.

Prevent Sue-and-Settle

“Sue-and-settle” is a practice used to create de-facto regulation in order to circumvent existing rulemaking procedures. According to Rob Gordon and Hans Von Spakovsky of The Heritage Foundation, “The administration would invite special-interest groups to sue the EPA over a regulation that it wanted to change but couldn’t, at least not expeditiously...Instead of fighting the lawsuit, the EPA would then almost immediately surrender, agreeing to settle. Inevitably, the settlement entailed consenting to whatever outrageous demands were being made by the agency’s handpicked ‘adversary.’”⁴⁴

The GEAR Task Force recommends the enactment of the Sunshine for Regulatory Decrees and Settlements Act, sponsored by Rep. Doug Collins (GA-09), would subvert sue-and-settle tactics.⁴⁵ This bill would require agencies to disclose past sue-and-settle cases along with their effect on regulation. It would further create a 60-day waiting period between the day a suit is filed and a final settlement. This legislation would erode the ability of agencies to collude with partisan third parties.

⁴² Reeve Bull & Jerry Ellig, Judicial Review of Regulatory Impact Analysis, MERCATUS CENTER (Mar. 9th, 2017) <https://www.mercatus.org/publications/regulation/judicial-review-regulatory-impact-analysis>

⁴³ REVIEW Act of 2016, H.R. 3617, 116th Cong.

⁴⁴ Rob Gordon & Hans Von Spakovsky, Scott Pruitt Ends an Obama Administration Abuse of Power, NATIONAL REVIEW (Oct. 21st, 2017), <https://www.nationalreview.com/2017/10/scott-pruitt-ends-epa-sue-settle-scheme-obama-administration-abuse-power/>

⁴⁵ Sunshine for Regulatory Decrees and Settlements Act of 2017, H.R. 712, 115th Cong.

REFORM GOVERNMENT PRACTICES STEP TWO

Americans from all walks of life and political persuasion want an efficient government that delivers results. Every elected official promises their voters that they will work to serve them by leading a government that delivers solutions for the American people. No policy makers intentionally supports policies that create waste, yet, voters know that the federal government has developed a great tolerance of inefficiency. Many lawmakers and career bureaucrats continue to propose more spending and more bureaucracy to overwhelm, rather than solve, underlying programmatic deficiencies. Conservatives recognize that, sadly, there are vast areas of governance that need to be reformed in order to achieve government functions that are practicable, efficient, and accountable. The RSC GEAR Task Force supports a series of proposals to reform government practices to achieve these objectives for the American people.

Policies that lead to good governance and increased efficiency should not be partisan. Government practices, structures, and programs should be more businesslike, not more bureaucratic. They ought to be streamlined to maximize the value of every tax dollar invested in the federal government. Since Americans work hard and generously sacrifice much of their paychecks to the federal government, they should be treated more like shareholders. Citizens should know that the government will be responsible stewards of their hard-earned resources.

In order to maximize the efficiency of government practices, executive agencies should not be duplicative. Instead, offices and personnel should be structured in a way that synthesizes resources and maximizes the ability to tackle challenges head on. Executive agencies need to restructure to better fit changing times and modern challenges. Rather than the typical Washington approach of throwing more money at an office and hoping it will change, the government should be innovative.

Furthermore, federal spending is out of control and the government has completely lost track of how many programs it is funding. When someone pays a bill, they can look at the receipt or statement to see what goods and services accrued the cost they owe. By contrast, the federal government has succumbed to a standard not accepted anywhere else in American life—billing the taxpayer with no way of itemizing the cost. This is an outcome of the larger problem of unaccountable spending. Congress needs to get back to seriously reviewing programs it is funding, not only from a policy perspective but also through the lens of efficiency and accountability.

The RSC GEAR Task Force has a plan to reform government practices, restructure executive offices and agencies, and provide accountability for programs. By addressing practices, structure, and programs, this section of the report provides a reformed vision of government that is truly efficient for and accountable to the people.

GOVERNMENT-WIDE PRACTICES

Government practices need reform at all levels. Before more technical and specific

practices are improved upon, government-wide practices should be addressed. Without getting the macro fundamentals of governing right, more technocratic functions of highly specialized agencies cannot be meaningfully reformed. The federal government needs to shape up some of its most broad and basic functions in a variety of ways to usher our federal government into the 21st Century.

Improve Metrics

Reliable performance metrics inform sound policy, while imprecise metrics fuel poor decision-making.⁴⁶ In business, successful managers do not make strategic decisions without evidence, and government should be held to the same standard. It is critical that our government adequately and accurately measure the impacts of federal programs and initiatives while debating new policies and revising old ones. After all, federal policymaking has a measurable impact on individuals, families, and society at large. Thus, Congress should modernize the federal government's collection of metrics to ensure our federal policymakers are informed by the best available information including stronger outcome-based metrics.

In 2016, Congress passed the Evidence-Based Policymaking Commission Act which created the Commission on Evidence Based Policy.⁴⁷ One year later in September 2017, the Commission produced a report analyzing the importance of evidence-based policy making. It used the Drug Abuse Resistance Education program (DARE) as one example of the positive impact data can have in revising policies. DARE was created to help students avoid drugs, gangs, and other harmful activities. Over 30 surveys and analyses were done on the impact of the popular DARE program throughout the 1990's and early 2000's that demonstrated that the program was largely ineffective. In response to this, the DARE program partnered with Pennsylvania State University to rewrite their curriculum. Preliminary studies on the impact of the new DARE curriculum are very encouraging.⁴⁸

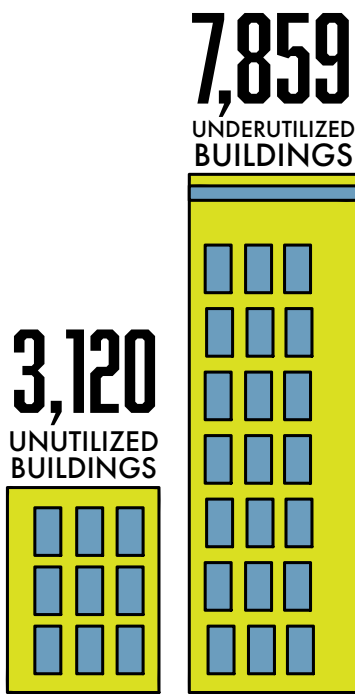
Congress should work to optimize federal metrics with a simple two-step approach. First, Congress should request a GAO study on best practices by federal agencies on performance-based metric collection. Because agencies use different methods of collection and measure different activities, it is important for Congress to survey the best practices currently in use. Second, informed by GAO's report, it should require agencies to harmonize their terminology in data collection.⁴⁹ It is challenging for government to develop meaningful government-wide metrics because agencies use different terms to describe the same things. This discrepancy renders data vague, if not meaningless, for policymakers seeking to make data-driven decisions.

⁴⁶ Marc Berson & Howard Risher, *It's Time to Improve Government's Use of Metrics and Analytics*, GOVEX-EC.COM (Nov. 19th, 2017), <https://www.govexec.com/management/2017/11/its-time-improve-governments-use-metrics-and-analytics/142416/>

⁴⁷ 5 U.S.C. 3109 and 5316 (2019)

⁴⁸ Commission on Evidence-based Policymaking, *Report on the Promise of Evidence-Based Policymaking* (Sept. 2017) <https://www.cep.gov/report/cep-final-report.pdf>

⁴⁹ *Id.*



CRS 2017 REPORT

Utilize Excess Federal Office Space

Current policies pertaining to management of federal property are grossly inefficient and contradict commonsense business practice. Under the status quo, empty office buildings cannot be sold by agencies that want to be efficient. Instead, they must let their vacant offices remain a purposeless cost on their balance sheets. According to a 2017 CRS report, “In FY2016, federal agencies owned 3,120 buildings that were vacant (unutilized), and another 7,859 that were partially empty (underutilized).”⁵⁰ If a space is no longer in use and an agency would like to get rid of it, the current process limits their ability to do so, by requiring the General Services Administration (GSA) to verify if another federal agency can use the office space before it can be put on the market for sale.

This inefficient requirement should be eliminated. If this reform were implemented Citizens Against Government Waste (CAGW) estimates, it would lead to a savings of \$15 billion over five years.⁵¹ Putting up red tape around the practice of selling unused office space does not provide the federal government any sort of advantage. Instead, agencies should be able to sell their unused offices to provide for greater fiscal responsibility and better stewardship of taxpayer dollars.

Another efficient technique used to manage excess federal office space is known as enhanced leasing authority. For example, the National Aeronautics and Space Administration (NASA) uses enhanced leasing authority in order to curb waste by letting NASA rent out their underutilized properties to like-minded organizations for research purposes. This enhanced leasing authority is granted to NASA due to the unique quality of their assets, including highly specialized laboratories and other unique research capabilities. Furthermore, since space exploration and research are largely carried out through an enterprise approach, with NASA working side-by-side with state and private partners, enhanced leasing is an opportunity for NASA to accrue cost savings while staying within their normal purview of operations.

Enhanced leasing authority is meant to promote fiscal responsibility, as it allows for organizations to enter contracts with NASA with the potential to have some of the costs of their research reimbursed while paying NASA for the workspace. In FY 2018, enhanced leasing authority saved NASA \$6.7 million.⁵²

Enhanced leasing authority was extended for two years in the December 2019 omnibus.⁵³ Congress should codify this exercise in good governance and promote further efficiency at NASA by extending enhanced leasing authority for seven years in a standalone bill. Government efficiency should be voted on by its merits, rather

⁵⁰ Garrett Hatch, The Federal Assets Sale and Transfer Act of 2016: Background and Key Provisions, CONGRESSIONAL RESEARCH SERVICE (Oct. 31 st, 2017), <https://fas.org/sgp/crs/misc/R44999.pdf#page=4>

⁵¹ Citizens Against Government Waste, Prime Cuts 2018, <https://www.cagw.org/reporting/2018-prime-cuts>

⁵² NASA Enhanced Use Leasing Extension Act of 2019, H.R. 5213, 116th Cong.

⁵³ Further Consolidated Appropriations Act of 2020, H. R. 1865, 116th Cong.

than tied to a larger more contentious spending bill. This more stable approach would allow for NASA officials to have more predictability when pursuing contracts that generate revenue for NASA. Finally, Congress should consider granting similar authority to other agencies.

Enact the Transparency in Federal Buildings Projects Act

Being the largest employer in the nation, the federal government has a lot of office space. This reality stems from federal officials constantly planning, building, and discerning projects to build offices. It is difficult for policymakers and private sector stakeholders who want to better understand the full portfolio of federal office buildings, as there is no centralized location sharing this vital information.

The Transparency in Federal Buildings Projects Act, a commonsense piece of legislation sponsored by Rep. Gary Palmer (AL-06), would require the GSA to publish online all prospectuses submitted by GSA to Congress concerning proposed public building projects and associated information.⁵⁴ This legislation already passed the House of Representatives in October 2019.⁵⁵ It is time for the Senate to pass this important reform and send it to the White House to be signed into law.

Leverage Common Contracts

The enormity of the federal government has created a system where government agencies often obtain duplicative services and products from third-party vendors. Yet, if the government more often approached contracts as a unified buyer, it could leverage the buying power that comes with great size.

The GEAR Task Force supports the OMB Performance Plan's proposal for agencies to leverage common contracts so that the shared contracts allow for taxpayer savings, increased efficiency, and greater value. The elimination of fragmented buying by agencies and duplicative contracts to the same vendor for largely the same work is estimated to lead to a savings of billions of taxpayer dollars.⁵⁶ Congress should require agencies to use common contracting techniques when such practice is feasible.

Stop Paying Dead People

According to the Social Security Administration's (SSA) Inspector General (IG), millions of hard-earned tax dollars are paid out to deceased people every year. The SSA's IG received data identifying 17 million deceased individuals from the Veterans Administration (VA) in 2016. The IG ran this data against SSA records and was able to estimate that the SSA paid \$37.7 million to 746 dead veterans.⁵⁷

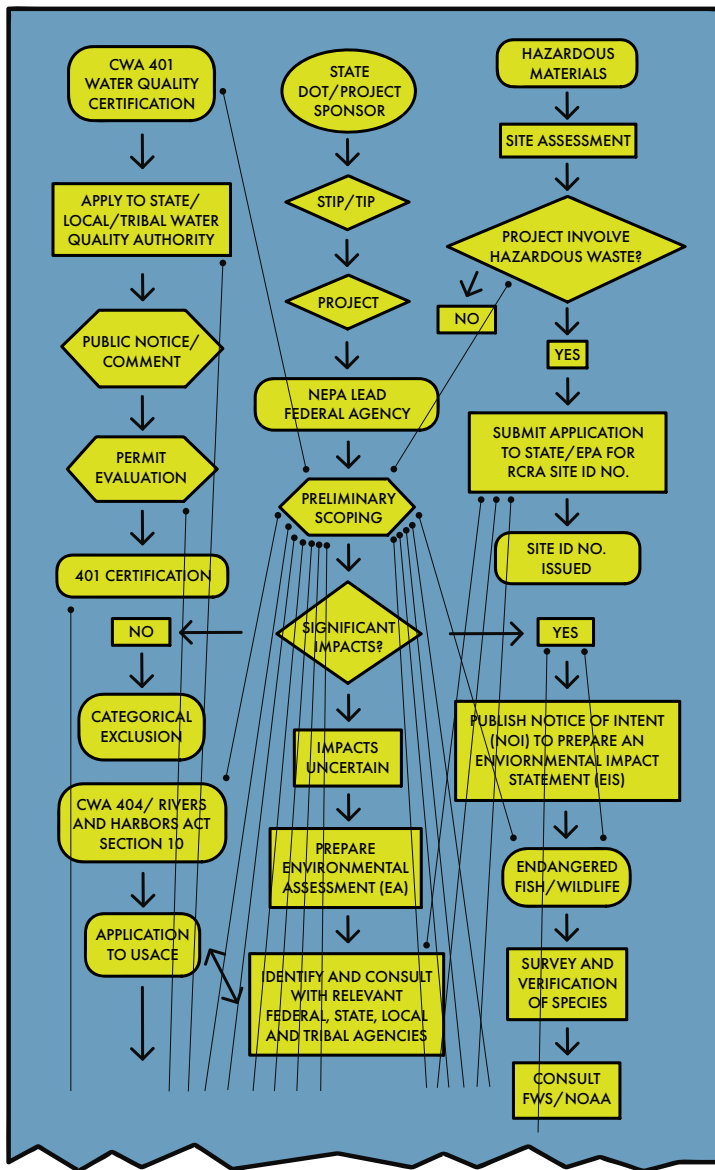
⁵⁴ Transparency in Federal Buildings Projects Act, H.R. 2502, 116th Cong.

⁵⁵ Office of Congressman Gary Palmer, Palmer Stands for Increased Access to Federal Building Proposals, (Oct. 28th, 2018), <https://palmer.house.gov/media-center/press-releases/palmer-stands-increased-access-federal-building-proposals>

⁵⁶ General Services Administration, Category Management: Leveraging Common Contracts and Best Practices to Drive Savings and Efficiencies, (Dec. 2019)

⁵⁷ Matthew Adams, Kennedy Sponsors Bill to Stop Paying Dead People, AMERICANS FOR TAX REFORM

Because this sample size was limited to just veterans, it can be assumed that this issue is far vaster when all deceased Americans are included. In 2015, the SSA IG identified 6.5 million individuals listed as being 112 years of age or older without any recorded death information.⁵⁸ The SSA's failure to curb these improper payments to deceased individuals is an embarrassing problem for the federal government.



THE PROCESS OF OBTAINING A FEDERAL PERMIT (ONLY HALF THE CHART SHOWN)

the potential impact certain projects will have on the environment.⁶² The term impact has been understood more broadly over time to include more indirect or cumulative effects. In 2016, for instance, the Obama Administration issued a rule requiring agencies to consider the “reasonably foreseeable” climate impacts

(Mar. 15th, 2018), <https://www.ctr.org/kennedy-sponsors-bill-stop-paying-dead-people>
⁵⁸ Office of Inspector General, Numberholders Age 112 or Older Who Did Not Have a Death, SOCIAL SECURITY ADMINISTRATION (Mar. 2015) https://oig.ssa.gov/sites/default/files/audit/summary/pdf/Summary%2034030_0.pdf
⁵⁹ Stopping Improper Payments to Deceased People Act of 2019, H.R. 2543, 116th Cong.
⁶⁰ Id.
⁶¹ Kelsey Brugger, Trump unveils landmark rewrite of NEPA rules, E&E NEWS (Jan. 9th, 2020) <https://www.eenews.net/stories/1062036913>
⁶² Republican Study Committee, FY2020 Budget, (May 2019) <https://mikejohnson.house.gov/sites/mike-johnson.house.gov/files/Final%20RSC%20FY%202020%20FOR%20PRINT.pdf>

If agencies were able to better communicate and had access to a complete death database, there should be no improper payments made to the deceased. GEAR Task Force Chairman Rep. Greg Gianforte (MT-At Large) is the lead Republican spearheading the bi-partisan effort to fix this problem. To that end, he has cosponsored the Stopping Improper Payments to Deceased People Act.⁵⁹ This commonsense bill would allow federal agencies to work together and have access to the complete death database in order to prevent payments to dead people. It would also require the SSA to partner with states in compiling and sharing death data.⁶⁰ Finally, the bill would provide a framework for state and local agencies to appropriately collect and disseminate death data. This legislation would end the piecemeal approach to collecting data on deaths ensuring that no more federal tax dollars are wasted on the dead.

Enact Permitting Reform

Obtaining a permit through the federal government is a process fraught with inefficiency. President Trump described the problems with federal permitting as “big government at its worst.” Perhaps the largest hinderance encountered during the federal permitting process is the National Environmental Policy Act (NEPA).⁶¹ NEPA requires federal agencies to assess

arising from greenhouse gases produced by a number of economic and energy-related activities.⁶³ This burdensome and confusing regulatory structure has led to the NEPA review taking nearly 6 years on average.⁶⁴

Congress has sought to address inefficiency in the permitting process in recent years. For instance, Title 41 of the FAST Act, enacted in 2015, contained temporary reforms to streamline permitting for certain covered infrastructure projects.⁶⁵ Covered projects include anything subject to NEPA, valuing at least \$200 million, that is ineligible for existing streamline or exemption. While these reforms were significant, borrowing mostly from the Federal Permitting Improvement Act, they were limited in scope.⁶⁶

In 2017, the Trump administration issued Executive Order 13807 to address some of the problems created by NEPA. The E.O. instituted the “One Federal Decision” policy that places a 2-year goal on NEPA reviews. It also requires the lead State agency to set a timetable for the NEPA review process and a structure for issue resolution.⁶⁷

GEAR Task Force member Rep. Kelly Armstrong (ND-At Large) has introduced bipartisan legislation, the Federal Permitting Reform and Jobs Act, which would build on recent reforms and greatly improve the federal permitting process.⁶⁸ The bill would expand and make permanent the reforms implemented in the Title 41, of the FAST Act, commonly known as FAST-41. This would make permanent a significant reduction of the burden created by NEPA. It would also create a two-year deadline for agencies to finalize permitting determinations. Furthermore, the bill would codify President Trump’s Executive Order 13807 allowing for the Steering Council to help overcome any obstacles in an individual permitting process, if the agency or applicant seek assistance.

As Rep. Armstrong has stated, “Anyone who has dealt with the federal government knows the frustration that the slow bureaucratic process can bring. Government delays to infrastructure projects have a tangible cost to job growth.” Congress must continue to improve the permitting process if the federal government is going to operate more efficiently.

To begin the new decade, the President announced his plans to further reform the regulatory regime codified in the National Environmental Policy Act (NEPA).⁶⁹ This landmark proposal would end the requirement that permit applicants account

“ANYONE WHO HAS DEALT WITH THE FEDERAL GOVERNMENT KNOWS THE FRUSTRATION THAT THE SLOW BUREAUCRATIC PROCESS CAN BRING. GOVERNMENT DELAYS TO INFRASTRUCTURE PROJECTS HAVE A TANGIBLE COST TO JOB GROWTH.”

**GEAR TASK FORCE MEMBER
REP. KELLY ARMSTRONG
(ND-AT LARGE)**

⁶³Natural Resources Committee, Hearing Summary: Full Committee Oversight hearing titled “Modernizing NEPA for the 21st Century”, U.S. HOUSE OF REPRESENTATIVES (Nov. 29th, 2017) https://republicans-naturalresources.house.gov/uploadedfiles/hearing_memo_-_fc_ov_hrg_on_nepa_11.29.17.pdf

⁶⁴ Phillip Rossetti, Addressing Delays Associated with NEPA Compliance, AMERICAN ACTION FORUM <https://www.americanactionforum.org/research/addressing-delays-associated-nepa-compliance/>

⁶⁵ 42 U.S.C. § 4370m

⁶⁶ Federal Permitting Improvement Act of 2015, S. 280, 114th Cong.

⁶⁷ Exec. Order No. 13807, 82 FR 40463 (2017)

⁶⁸ Federal Permitting Reform and Jobs Act of 2019, H.R. 3671, 116th Cong.

⁶⁹Brugger, supra note 47.

for “cumulative effects” and “indirect impacts.” These standards have often proved to be impossibly burdensome, asking contractors to consider implications beyond reasonable predictability and with indirect relation to a potential project. Furthermore, the Trump administration has announced plans to exempt projects with minimal federal funding from NEPA review and to require one agency to take the lead in processing applications to reduce duplication.

Modernize the Endangered Species Act

The Endangered Species Act (ESA) directs the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to list or delist animal species as endangered based upon the use of “Best Available Science.” Unfortunately, this term has largely been left open to interpretation. This has created a gap in a broad range of interpretations. Since the ESA does not define what constitutes best available science, courts have interpreted the obligation often falling back on deferential review and contributing to endless litigation.

Government practices that hinge upon a crucial phrase should not be left so vague as to undermine the enforcement of a policy. Thus, the phrase “Best Available Science” needs to be clearly defined and modernized in its application. The Endangered Species Transparency and Reasonableness Act, sponsored by Rep. Tom McClintock (CA-04), offers a solution that clarifies the meaning of “Best Available Science.”⁷⁰ This legislation would require that data used by federal agencies for ESA listing decisions be publicly available online. This proposal would create accountability as it would allow individuals to know the basis for the government’s listing decision.⁷¹

Another problem posed by the ESA listing process is the inappropriate designation of critical habitat space by the FWS. Critical habitat space is land that is preserved to help protect an endangered species. In the past, designations of critical habitat space have involved setting aside vast amounts of land to protect species that cannot inhabit the land. For example, in 2018, the Supreme Court ruled unanimously that the FWS could not take over 1,500 acres of private and commercial land in an attempt to recover an endangered species of frog. This decision was made on the simple basis that the land had never been inhabited by the endangered species, and the land did not possess the environmental features the frog needed for survival. In plain terms, the Court ruled that critical habitat must be actual habitat for the species.⁷²

To address this issue the GEAR Task Force recommends that Congress enact the Critical Habitat Improvement Act, sponsored by RSC Chairman and House

⁷⁰ Endangered Species Transparency and Reasonableness Act of 2018, H.R. 3608, 115th Cong.

⁷¹ *Id.*

⁷² Faimon Roberts, In Louisiana dusky gopher frog case, U.S. Supreme Court overturns lower courts, NEW ORLEANS ADVOCATE (Nov. 28th, 2018) https://www.nola.com/news/courts/article_69e7aae2-b56d-55cd-be36-33e47af62125.html

Committee on Natural Resources member, Rep. Mike Johnson (LA-04).⁷³ This legislation would codify the August 2019 Department of Interior (DOI) rule that reformed the standards related to the designation of critical habitats.⁷⁴ Specifically, the legislation would require that critical habitat designations be made only with land where the DOI Secretary has identified what elements are necessary for the survival of an endangered species. Furthermore, the DOI Secretary can only use land that is deemed essential to species survival. Finally, the DOI must exhaustively attempt to use land currently inhabited by an endangered species, before turning to unused land to be designated as critical habitat.⁷⁵

OVERHAUL FEDERAL TECHNOLOGY PRACTICES

Successful businesses understand that operations cannot happen efficiently without an effective technology policy. According to GAO, the federal government invests over \$90 billion annually in information technology (IT). Yet, government technology is completely lagging, and aspects of federal IT management are outdated or duplicative. The federal workforce is undertrained in applicable technologies and most agencies have not fully implemented required reforms in software management. Furthermore, the government’s incredible capacity for collecting data through various agency reports has little use without an effective management of government IT. Congress has taken a proactive role in IT oversight in the last decade but must continue to lead needed reforms to promote better efficiency and accountability.

Improve the Federal Information Technology Acquisition Reform Act (FITARA) Scorecard

In 2014, Congress passed the Federal Information Technology Acquisition Reform Act (FITARA) into law.⁷⁶ FITARA was the first major reform to congressional oversight of federal government IT in the new millennium.⁷⁷ FITARA created a scorecard system where agencies are given a grade on their IT policies and how well they have implemented the reforms required under FITARA. Grades are determined based on compliance with seven categories. Categories include data consolidation, transparency and risk management, Chief Information Officer (CIO) authority enhancement, software purchasing, and other related factors. Agencies must testify before Congress about their grades and steps they are taking to improve poor performance. This accountability-based model has produced effective results. For example, in 2018, only seven agencies started the year with the highest possible score.⁷⁸ However, by the end of the year with the help of effective oversight, 18 of the 24 agencies under FITARA had obtained the highest possible score.

The GEAR Task Force believes that Congress should continue to build off the success of the FITARA model by seeking improvements from agencies where they currently fall short.⁷⁹ As of 2018, no agency had fully implemented the FITARA requirements for streamlining CIO authorities. Furthermore, in 2018, agencies were found to

⁷⁹ Id. at 74.

have underreported IT contracts by a value of approximately \$4 billion. Despite the generally positive results of the FITARA program, this lack of accountability is unacceptable. Congress should more thoroughly provide oversight in the areas of FITARA scoring where agencies are falling short, so that FITARA requirements will become fully implemented across agencies.

Consolidate Data Centers

Federal agencies have recently identified over 12,000 data centers, a number that continues to climb.⁸⁰ There is no reason for the federal government to have countless data centers, especially considering that maintaining so many is costly and inefficient. Since 2011, the government has offered FedRAMP as a security monitoring service to secure agency data on the cloud. Transitioning data to the cloud has been stalled by agencies not granting reciprocal authorization when using FedRAMP. Currently the federal government spends over \$70 billion on IT system operations and maintenance.⁸¹ Much of this cost is due to duplication, which is exacerbated by duplicative data centers and inefficient implementation of cloud technology. In 2017, the GAO High Risk Report recommended that the government create savings through data center consolidation. Currently, the OMB IT Dashboard tracks the costs of federal IT and provides guidelines for federal agencies on how to execute cost-saving consolidation. Recommendations were made by GAO to agencies to achieve \$5.7 billion in savings through data center consolidation.⁸²

A simple step for Congress to inject accountability into the process of consolidation is to require that all federal data center consolidation cost savings are reported to OMB. This would provide increased transparency for policymakers as it would centralize important data in one public platform. Furthermore, some data is already collected and disseminated by OMB, so the precedent for the government practice is already established. The GEAR Task Force recommends that Congress overhaul federal data storage by incentivizing agencies to consolidate and move towards the cloud. Agency funding should be maintained for those who reach consolidation benchmarks set by Congress, while agencies that fail to meet such benchmarks should have funding incrementally reduced until corrective action is taken.

Increase Use of Software Asset Management

With government investing an enormous amount of money in technology and the constant innovations being made in software, it is understandable that agencies will often update their software assets. By the same token, the process of managing these costly assets is crucial, with there being an absolute need to keep an accurate inventory of existing software.

⁸⁰ Government Accountability Office, DATA CENTER OPTIMIZATION: Additional Agency Actions Needed to Meet OMB Goals (Apr. 2019), <https://www.gao.gov/assets/700/698448.pdf#page=14>

⁸¹ Committee on Oversight and Government Reform, Hearing Summary: To the Cloud: The Cloudy Role of FEDRAMP in IT Modernization, U.S. House of Representatives (Apr. 11th 2019) <https://oversight.house.gov/legislation/hearings/to-the-cloud-the-cloudy-role-of-fedramp-in-it-modernization>

⁸² Government Accountability Office, *supra* note 77.

In GAO's 2018 report on government duplication, it was revealed that 20 agencies had not completed software inventories required by law.⁸³ Agencies will often purchase duplicate programs simply because they are not tracking what they already own.⁸⁴ Congress should require that all agencies eliminate redundant software products and services and reduce excessive information technology software licenses. Furthermore, Congress must conduct rigorous oversight to ensure that agencies are in compliance with federal law pertaining to software asset management.

Transition Government Records to Electronic Systems

A recent White House plan called for the conversion of all records from paper to electronic form.⁸⁵ This may seem obvious as we enter the third decade of the 21st century, but this is a major undertaking. The National Archives and Records Administration (NARA) is attempting to convert its treasure trove of information to electronic systems by 2022. While agencies across government have many important tasks in front of them, converting records to modern system is essential to efficient data management. By moving all records to electronic systems, government will be better equipped to access its data and respond to individual requests more quickly. Congress should assist in this historic effort by codifying the Trump administration's deadline for NARA and using it as a benchmark for all federal agencies.

EFFICIENT PRACTICES FOR NATIONAL SECURITY

America stands at a critical juncture concerning its national security. The government must always prepare for threats spanning from the violence of terrorists and cartels to high tech nuclear and cyber threats from near-peer adversaries. America's national security apparatus needs to run as a well-oiled machine. Efficient practices and fiscal accountability are just as critical to national security efforts as any other factor involved. Congress must do what it can to maintain a robust oversight role in all aspects of governance concerning the defense of our nation.

Reduce Government Security Clearance Processing Delays

The federal government has long struggled with processing security clearances in a timely manner. In October 2019, a new agency, the Defense Counter Intelligence and Security Agency (DCISA) was created through a merger between the Defense Department's Defense Security Service (DSS) and OPM's National Background

⁸³ The Chief Information Officer (CIO) of each executive agency is required to create a full inventory including 80 percent of software license spending and enterprise licenses in the agency. They are also required to regularly track licenses and license management, analyze software usage for the purposes of cost-effective decision making, deliver training on software license management, and establish the goals of software management for the agency. CIOs are required to report to the agency's Director on financial savings, which then must be made public. Government Accountability Office, 2018 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits (Apr. 2018) <https://www.gao.gov/assets/700/691514.pdf#page=89>

⁸⁴ Citizens Against Government Waste, *supra* note 57.

⁸⁵ White House Office of Management & Budget, Memorandum: Transition to Electronic Records (Jun. 28th, 2019), <https://fas.org/sgp/trump/omb-electronic.pdf>

Investigations Bureau (NBIB) into one office.⁸⁶ The backlog of pending clearances, inherited from OPM has been significantly reduced from 725,000 pending investigations in 2018 to under 218,000 at the onset of 2020. This number is in line with the administration's "steady-state" inventory target. Secret level clearances were processed 55% faster and top-secret applications were processed 60% faster.⁸⁷ This is a major improvement when previously a top-secret security clearance took over a year to process, and a secret level clearance took close to a year.⁸⁸

The GEAR Task Force recommends that Congress codify GAO's recommendation to allow for clearance investigations to be executed more efficiently.⁸⁹ In doing so, Congress should request an evidence-based review of investigation and adjudication timeliness objectives, with a report to Congress on their findings. This report should review the quality of background investigative measures. Congress should also require DCSA to develop and implement a comprehensive IT and workforce plan that identifies what is needed to meet current and future demand for background investigations services and to improve the processing time for investigations.

Address Cybersecurity Shortcomings

America's critical infrastructure, along with the ability for all federal offices to be able to conduct business is dependent on the government's cybersecurity system and capabilities. Hackers, criminals, and terrorists seek to exploit America's cybersecurity systems in the same way threatening actors seek to overcome physical security systems. For example, in early 2020 a group of Iranian affiliated hackers penetrated the U.S. Federal Depository Library Program's website and wrote pro-Iranian messages, depicted the President of the United States being assaulted, and wrote an ominous message about Iranian cyber capabilities.⁹⁰ While the breach did not produce overly harmful results, it nonetheless demonstrated current vulnerabilities within the federal network. Cybersecurity needs are constantly evolving as the capacity of hackers change, so the government must continue to update its cyber practices to protect America's systems.

Since 2010, GAO has made over 3,000 recommendations concerning the U.S. government's cybersecurity policies.⁹¹ As of GAO's last full survey of these concerns in 2017, only 448 recommendations had been implemented. The Trump administration has made cyber security a priority and has implemented important

⁸⁶ Lindy Kyzer, DoD Appoints NBIB Director as Acting Director, Defense Counterintelligence and Security Agency, CLEARANCEJOBS.COM (Jun 24th, 2019), <https://news.clearancejobs.com/2019/06/24/dod-appoints-nbib-director-as-acting-director-defense-counterintelligence-and-security-agency/>

⁸⁷ Adam Mazmanian, Clearance Backlog Continues to Drop, FEDERAL COMPUTER WEEK (Jan. 22nd, 2020) <https://fcw.com/articles/2020/01/22/clearance-backlog-drops-senate-hearing.aspx>

⁸⁸ Lindy Kyzer, OPM Cuts Security Clearance Backlog in Half, But Processing Delays Spell Trouble for Pentagon, GOVEXEC (Jul. 22nd, 2019) <https://www.govexec.com/management/2019/07/opm-cuts-security-clearance-backlog-half-processing-delays-spell-trouble-pentagon/158586/>

⁸⁹ Government Accountability Office, *supra* note 77.

⁹⁰ Lex Haris, Hackers briefly deface website for U.S. government library with pro-Iranian message, CBS NEWS (Jan. 4th, 2020) <https://www.cbsnews.com/news/iran-hackers-briefly-deface-website-for-u-s-government-library-with-pro-iranian-message/>

⁹¹ Government Accountability Office, *supra* note 77, at 58.

policies addressing current federal practices.⁹² The administration has released multiple strategy documents and attempted to address current threats such as the need to fully staff cyber security positions within the federal government.

Congress should use its oversight authority to support the Trump administration's cybersecurity initiatives. Specifically, Congress should require that an inter-department strategy be developed to implement the suggestions of GAO that remain outstanding.⁹³ Furthermore, Congress must require reports to the relevant congressional committees on governmental efforts to secure federal information systems, protect cyber infrastructure while also safeguarding individuals' privacy and personal data.

Safeguard State Secrets Through Security Clearance Reform

A major threat to the security of state secrets is the recruitment of federal workers with newly acquired security clearances to work at private entities with questionable ties to nefarious governments. Security clearances are a state privilege and many companies are seeking consultants with clearances under the guise of innocuous purposes with the potential to exploit their access to classified information. With the current debate raging over Huawei as an example, the threat of foreign government affiliated companies exploiting access to America's secrets through individuals with limited experience cannot be overstated.⁹⁴ In fact, President Obama's Senior Director for Cyber Security Policy is now a lobbyist for a Chinese government shell company.⁹⁵

The Safe Career Transitions for Intelligence and National Security Professionals Act, sponsored by Rep. Jim Banks (R-IN), is a leading proposal to address this issue.⁹⁶ This legislation would ban companies that are barred from doing business with the federal government, like Huawei and ZTE, from being able to hire former civil servants with security clearances. It would also give the Director of National Intelligence (DNI) the ability to add companies to the list.

ENACTING FUNDAMENTAL REFORM TO FEDERAL JUDICIAL PRACTICES

When courts are unable to efficiently administer justice, the integrity of America's rule of law is put at risk. Furthermore, when our nation's system for redressing

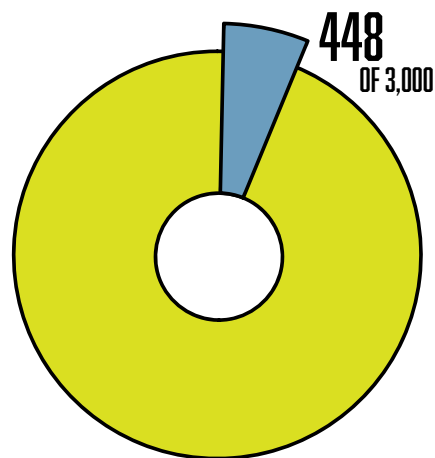
⁹² White House Press Release, President Donald J. Trump is Strengthening America's Cybersecurity Workforce to Secure Our Nation and Promote Prosperity (May 2nd, 2019), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-strengthening-americas-cybersecurity-workforce-secure-nation-promote-prosperity/>

⁹³ Government Accountability Office, *supra* note 77, at 28.

⁹⁴ Thomas Ayres, How to Pre-Empt the Huawei Threat, WALL STREET JOURNAL (Nov. 17th, 2019) <https://www.wsj.com/articles/how-to-pre-empt-the-huawei-threat-11574018700>

⁹⁵ Dan Strumpf, Trump Takes Aim at Huawei After Ex-Obama Official Becomes Lobbyist, WALL STREET JOURNAL (Apr. 15th, 2019) <https://www.wsj.com/articles/how-to-pre-empt-the-huawei-threat-11574018700>

⁹⁶ Safe Career Transitions for Intelligence and National Security Professionals Act of 2019, H. R. 3997, 116th Cong.



**ONLY 448 OF THE 3,000
GAO RECOMMENDATIONS
FOR U.S. GOVERNMENT'S
CYBERSECURITY POLICIES
HAVE BEEN IMPLEMENTED**

grievances between individuals, organizations and government is weighed down with inefficiency, unnecessary conflicts can linger in society. Congressional and executive operations become jeopardized when laws and policies are held up in lengthy and unaccountable legal proceedings. For these reasons, the virtues of efficiency and accountability should drive reforms to the federal judicial system just as they should within the other two branches of the federal government.

Modernize the 9th Circuit Court

The 9th Circuit Court of Appeals has grown too large to effectively carry out the duties of an appellate circuit. Compared to other circuits, it requires the most judges by far and covers the most geography and population. The 9th Circuit covers around 40 percent of America’s land mass and 65 million people, amounting to 20 percent of our population.⁹⁷ It also has over 11,000 pending cases, which make up nearly one third of the backlog miring America’s circuit courts.⁹⁸ As described by former House Judiciary Committee Chairman Rep. Bob Goodlatte, “[the 9th Circuit is] twice the size of any other circuit. The geographic breadth and workload of the Ninth Circuit makes it challenging for parties and their counsel to have timely court dates in their region.”

The administrative challenges posed by its size have been a matter of debate for many decades.⁹⁹ Two non-partisan reports analyzing the challenges faced by the 9th Circuit have been commissioned. In 1973, the Hruska Commission was published by then Senator Roman Hruska (R-NE) which called for the 9th Circuit to be broken into two separate circuits.¹⁰⁰ More recently, in 1998 Supreme Court Justice Byron White produced the White Commission, which suggested reforming the structure of the 9th Circuit.¹⁰¹ The need to more efficiently administer the 9th Circuit is simply undeniable.

To resolve this issue, the GEAR Task Force supports enactment of the Judicial Administration and Improvement Act of 2019, sponsored by Rep. Andy Biggs (AZ-05). Similar to the suggestion of the Hruska Commission, this legislation would divide the 9th Circuit into two separate federal circuits. The new 9th Circuit would maintain California, Guam, Hawaii, Oregon, Washington, and Northern Mariana Islands. The legislation would also create a 12th Circuit composed of Alaska, Arizona, Idaho, Montana, and Nevada. This proposal offers a balanced solution

⁹⁷ Mark Brnovich & Ilya Shapiro, Split Up the Ninth Circuit—but Not Because It’s Liberal, WALL STREET JOURNAL (Jan. 11th, 2018) <https://www.wsj.com/articles/split-up-the-ninth-circuit-but-not-because-its-liberal-1515715542>

⁹⁸ Senate Judiciary Committee, Testimony of DIARMUID F. O’SCANNLAIN (Jul. 31st, 2018), <https://www.judiciary.senate.gov/imo/media/doc/07-31-18%20O%27Scannlain%20Testimony.pdf#page=8>

⁹⁹ Aquiles Suarez, No More Justice Delayed: Time To Divide the Ninth Circuit Court of Appeals HERITAGE FOUNDATION (Jun. 14th, 1989) <https://www.heritage.org/node/21644/print-display>

¹⁰⁰ Commission on Revision of the Federal Court Appellate System, Report: Structure and Internal Procedures: Recommendations for Change, (Jun. 1975), <https://www.fordlibrarymuseum.gov/library/document/0019/4520540.pdf>

¹⁰¹ Commission on Structural Alternatives for the Federal Courts of Appeals, Final Report, (Dec. 18th, 1998), <https://www.law.berkeley.edu/wp-content/uploads/2019/03/Commission-on-Structural-Alternatives-for-the-Federal-Courts-of-Appeals-1998.pdf>

by splitting states and territories equitably between two circuits to better promote the efficient administration of federal court duties. As Ilya Shapiro of the Cato Institute put it, “Smaller circuits encourage substantive knowledge of local law and collegiality among the judges.”¹⁰²

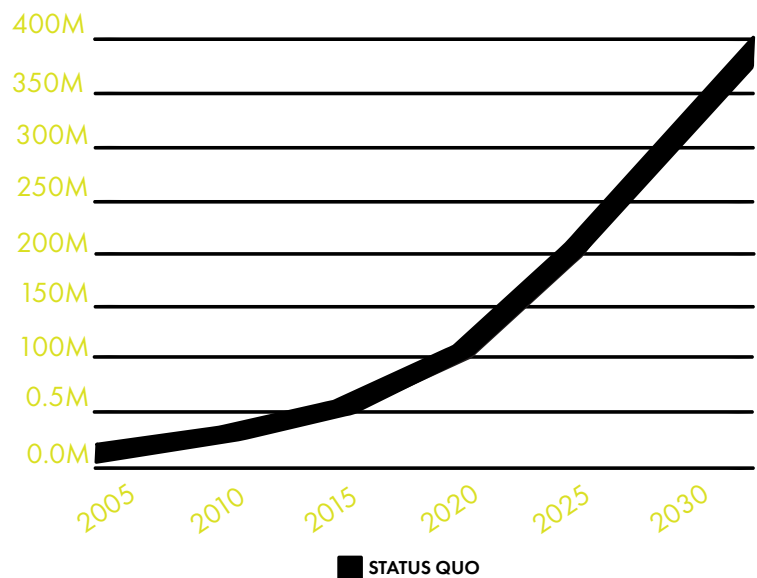
Optimize Immigration Court Efficiency

Similar to the issues concerning the 9th Circuit Court of Appeals, the challenges faced by immigration courts have recently been greatly politicized. Nonetheless, there are severe non-partisan challenges that currently undermine the simple function of American immigration courts. Due to extreme inefficiency, the current backlog of cases in immigration courts now exceeds 1 million claims.¹⁰³ This backlog has grown rapidly over the past decade. As the backlog has grown, wait times have increased, sometimes even taking years to process a case, according to the Bi-Partisan Policy Center.¹⁰⁴ This burden is currently imposed upon approximately 400 immigration judges, according to the Department of Justice.¹⁰⁵ The backlog not only increases wait times, it strains housing facilities, and undercuts the ability of judges to swiftly grant asylum to genuine claimants or quickly remove individuals who abuse the system. Overall immigration court inefficiencies undermine America’s national security and humanitarian concerns in adjudicating immigration law.

The RSC GEAR Task Force recommends Congress prioritize hiring more immigration judges. Specifically, Congress should pass Rep. Debbie Lesko’s (AZ-08) legislation that would authorize the Attorney General to appoint 100 more immigration judges.¹⁰⁶ This would expand the number of judges by about a quarter of its current size. A major increase in judges will lessen the caseload burden per judge allowing for more time to process individual cases more efficiently. It is disgraceful that an administrative court system designed to be efficient has become more bogged down than an appeals court. There is nothing partisan about efficiently

COMPARISON OF MEASURES MEANT TO MITIGATE THE IMMIGRATION COURT

Backlog: Impact by 2030



¹⁰² Mark Brnovich & Ilya Shapiro, Split up the Ninth Circuit – but Not Because It’s Liberal, CATO INSTITUTE, <https://www.cato.org/publications/commentary/split-ninth-circuit-not-because-its-liberal>

¹⁰³ Michelle Hackman, U.S. Immigration Courts’ Backlog Exceeds One Million Cases, WALL STREET JOURNAL (Sep. 18th, 2019) <https://www.wsj.com/articles/u-s-immigration-courts-backlog-exceeds-one-million-cases-11568845885>

¹⁰⁴ Aquiles Suarez, No More Justice Delayed: Time To Divide the Ninth Circuit Court of Appeals HERITAGE FOUNDATION (Jun. 14th, 1989) <https://www.heritage.org/node/21644/print-display>

¹⁰⁵ U.S. Department of Justice, About the Office of the Chief Immigration Judge, <https://www.justice.gov/eoir/office-of-the-chief-immigration-judge>

¹⁰⁶ A Bill to authorize the Attorney General to appoint 100 additional immigration judges, and for other purposes of 2019, H.R. 3859, 116th Cong.

administering the law and providing effective due process by processing cases reasonably quickly out of respect to the interest of both parties in any case.

Provide Accountability for the Judgement Fund

The Judgment Fund was created to provide for payments to successful plaintiffs in civil suits brought against the United States. The fund is managed by the Bureau of Fiscal Service under the Department of the Treasury.¹⁰⁷ Payments from the Judgment Fund are non-discretionary, due to its function in paying out judgments and settlements as they occur. Unfortunately, there historically has been little effective oversight of the Judgment Fund because specifics about its payments have long been obscured.¹⁰⁸

Congress has recently begun to remedy this problem. Recently, two leading proposals the Judgment Fund Transparency Act, sponsored by Rep. Chris Stewart (UT-02).¹⁰⁹ Tand Rep. Doug Collins' (GA-09) the Open Book on Equal Access to Justice, sponsored by Rep. Doug Collins, were signed into law in early 2019 as part of a larger legislative package¹¹⁰ These reforms allow for transparent reporting on payments made by the federal government to award attorney's fees of prevailing parties in suits against the federal government. Congress should continue to enhance accountability for the Judgment Fund. Current reporting standards regarding payments received can be strengthened to require specific reporting on the facts of a case. Reporting can also be broadened for national security consideration to disclose if a prevailing party has ties to foreign governments. Finally, since Judgment Fund accountability measures are a new government practice, Congress should work with the Department of the Treasury to review current reporting and standardize best practices. The Department of the Treasury should also report to Congress on any anomalies outside of current reporting requirements, including flagging the largest payments from the Judgment Fund and the most frequent recipients of funds. Measures like these, allow for Congress to be better informed when considering structural reforms to the Judgment Fund in order to provide for greater efficiency and transparency.

Provide Checks on Federal Injunctive Authority

Activist judges have recently assumed the authority to frequently issue nationwide injunctions on laws and regulations.¹¹¹ This practice, according to Supreme Court Justice Clarence Thomas, is "legally and historically dubious." Thomas noted that these injunctions did not take place until approximately 150 years after America's

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SUPREME COURT JUSTICE
CLARENCE THOMAS**

¹⁰⁷ U.S. Department of Treasury, Judgment Fund FAQs, <https://fiscal.treasury.gov/judgment-fund/faqs.html>

¹⁰⁸ House Committee on the Judiciary, Hearing Transcript: Oversight of the Judgment Fund (Mar 2nd, 2017) <https://www.govinfo.gov/content/pkg/CHRG-115hrg25481/html/CHRG-115hrg25481.htm>

¹⁰⁹ Judgment Fund Transparency Act of 2017, H.R. 1096, 115th Cong.

¹¹⁰ Open Book on Equal Access to Justice Act of 2015, H.R. 3279, 114th Cong.

¹¹¹ Marcia Coyle, Clarence Thomas, Alone, Asserts National Injunctions Are 'Historically Dubious', NATIONAL LAW JOURNAL (Jun. 26th, 2018) <https://www.law.com/nationallawjournal/2018/06/26/clarence-thomas-alone-asserts-national-injunctions-are-historically-dubious/?slreturn=20200013200336>

founding. He further explained, “These injunctions are beginning to take a toll on the federal court system— preventing legal questions from percolating through the federal courts, encouraging forum shopping, and making every case a national emergency for the courts and for the executive branch.”¹¹²

Simply put, nationwide injunctions breed inefficiency. When hastily enacted, a federal judge can halt a national policy without a full proceeding that weighs its Constitutionality. Furthermore, under current law there is little recourse to hold accountable a federal judge who is hasty when issuing nationwide injunctions.

To appropriately rein in runaway federal courts, it is Congress that must act. Article 1, Section 8, Clause 9 states, “The Congress shall have Power To ...constitute Tribunals inferior to the supreme Court...” and Article Three, Section 1 of the Constitution states, “The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” The Constitution makes clear that all inferior federal courts are created and given legitimacy through an act of Congress. Congress has acted over the years to create and reform the circuits which make up the federal judiciary. These decisions have been made within the context of figuring out what practices would allow for the administration of justice most efficiently for Americans within each court jurisdiction.

Congress should address the problem of activist judges so that government can more efficiently enact policy goals that elected officials are entrusted to advance.¹¹³ The GEAR Task Force recommends that Congress enact the Nationwide Injunction Abuse Prevention Act of 2019, sponsored by Rep. Mark Meadows (NC-11).¹¹⁴ This legislation would limit the injunctive authority of a federal judge to their federal circuit or the parties represented in a case. Individual judges would no longer act as de facto policymakers, as they would be unable to declare sweeping nationwide injunctions that prevent the enforcement of law far beyond their own jurisdictions. This would also take pressure off the Supreme Court to hear every case where a federal judge freezes an executive action, since its complete implementation and enforcement would not be frozen by the partisanship of a single judge.

CONSOLIDATE AND RESTRUCTURE GOVERNMENT

Historically the federal government has reorganized its offices to meet great challenges. After World War II, President Truman proposed to Congress the idea to create a unified Department of Defense to organize greatly expanded military assets to meet the needs of America’s future armed conflicts.¹¹⁵ In the aftershock of the attacks on September 11, 2001, President George W. Bush led the largest reorganization of government since President Truman by working with Congress to

¹¹² TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. v. HAWAII ET AL., 585 U. S., 48

¹¹³ William Barr, End Nationwide Injunctions, WALL STREET JOURNAL (Sept. 5th, 2019), <https://www.wsj.com/articles/end-nationwide-injunctions-11567723072>

¹¹⁴ Nationwide Injunction Abuse Prevention Act of 2019, H.R. 4292, 116th Cong.

¹¹⁵ 50 U.S.C. ch. 15 § 401 (2019)

create the Department of Homeland Security, to secure the homeland in the face of modern global terrorist threats.¹¹⁶

As America enters a new decade, our nation faces a crisis in government inefficiency. The federal government has never been larger or more expensive, yet, we have never had more tools at our disposal to streamline, consolidate, and reduce the size of government. To meet this challenge conservatives have long preached of the need to lessen the size and scope of the federal government and have put forth many policies that would work toward such an end.

The Trump administration has shown a strong desire to restructure and consolidate core components of the executive branch. Their zeal has been made clear by OMB's Reform Plan and Reorganization plan entitled "Delivering Government Solutions in the 21st Century."¹¹⁷ Thus, the GEAR Task Force has chosen to highlight proposals that represent a strong first step in streamlining and restraining government.

The practice of restructuring, consolidating, and moving offices and functions in the name of the efficiency and accountability is a mandate owed to the American people. Federal realignment should be business oriented. Government reorganization should reduce waste and be undertaken with the same vigor that came with reorganization to confront previous challenges. Accordingly, the RSC GEAR Task Force urges Congress to undertake many of the conservative commonsense proposals by the Trump Administration for federal reorganization designed to reduce the size and scope of government.¹¹⁸

Merge the Department of Education into the Department of Labor

The Department of Education's Washington-centric approach often harms students who would be more effectively served if policy was set at the state and local level. The Department's lack of focus on developing students to be ready for the demands of a 21st century career is a fatal flaw. America needs a well-educated workforce to tackle tomorrow's problems, and sadly today's Department has been unable to deliver in this respect. A strong first step in addressing this failure is to limit the government's role to assisting the states in preparing students for successful careers after graduation. To do so, the Education Department should be merged into the Department of Labor in line with the proposal advanced by the Trump administration.¹¹⁹

This proposal recognizes the intrinsic connection between education and the formation of America's workforce. Both chambers of Congress already recognize this link through the jurisdiction of their committees. The House has a Committee

¹¹⁶ Andrew Glass, On This Day: Homeland Security Department Begins Operations, Jan. 24th, 2003, POLITICO (Jan. 24th, 2019) <https://www.politico.com/story/2019/01/24/homeland-security-department-begins-2003-1116070>

¹¹⁷ White House Office of Management and Budget, Reform and Reorganization Plan, (June 2018) <https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf>

¹¹⁸ Id.

¹¹⁹ Id. at 25.

on Education and Labor while the Senate has a Committee on Health, Education, Labor and Pensions. By merging the Department of Education into the Department of Labor, the executive branch can similarly address policies related to workforce development while shrinking the size and scope of government.

The RSC's American Worker Task Force has been developing its own plan that, among other goals, seeks to empower students, educators, and local communities so that today's students can achieve meaningful and well-paying jobs tomorrow. Additionally, the RSC's American Worker Task Force will offer proposals designed to foster innovative education and training policies, remove bureaucratic red tape preventing competition in the workforce, and addressing issues that disproportionately punish families and workers in the current welfare system. The RSC will chart a course for empowering the American worker.

Move Non-commodity Nutrition to the Department of Health and Human Services.

The U.S. Department of Agriculture (USDA) is tasked with broad authority far beyond the scope of analyzing agricultural commodity markets, assisting with agriculture-based trade, and managing federal programs designed to assist America's farmers. One of the primary issues USDA is forced to address beyond agriculture is welfare policy.

The GEAR Task Force recommends that Congress codify the White House Proposal to move non-commodity nutrition programs to the Department of Health and Human Services.¹²⁰ This proposal would involve moving welfare policy into the Office of Administration for Children and Families at HHS. Programs subject to this reform include SNAP, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program (CACFP), and the Farmers' Market Nutrition Programs. These programs should be viewed primarily through the lens of welfare policy. Furthermore, moving these tense debates out of USDA allows for agricultural policy to be focused on maintaining America's status as the breadbasket of the world.

Housing these welfare programs into one office would also be better for creating policies that impact beneficiaries. Having one office with jurisdiction over these programs will allow for a more systematic understanding of the interconnections in America's welfare system. It would further enable experts to make decisions that are prudent not just for one program's beneficiaries, but for all Americans in need. Finally, having one office would streamline government accountability as individuals would easily know what office to reach out to with any questions that they have about any program they may be using, rather than wondering which agency handles it.

¹²⁰ White House Office of Management and Budget, *supra* note 118, at 29.

Merge the Department of Commerce National Marine Fisheries Service (NMFS) with the Department of Interior's Fish and Wildlife Service (FWS)

Under the status quo, America has two agencies in different Departments with very similar missions. Both the NMFS and FWS are charged with enforcing the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). These laws seek to protect vulnerable species through federal regulation and, among other things, charge each agency with recommending conservation action in relation to infrastructure projects. If a highway or dam is being erected through a newly impacted ecosystem both agencies can be requested to do duplicative work outlining the impact on vulnerable species. This process is not only inefficient but can also be confusing if the agencies offer differing proposals.

Congress should enact legislation to codify the White House proposal to merge the NMFS with the FWS.¹²¹ This agency would have unified policies toward maintaining fisheries and conserving wildlife. It would also create a more streamlined chain of command when doing ESA and MMPA reconditions, thus allowing for better turnaround in processing permitting requests.

Move the Policy Function of the Office of Personnel Management (OPM) to the Executive Office of the President (EOP)

OPM is outdated and in need of reform. Created in Title II of the 1978 Civil Service Reform Act, OPM was designed to manage personnel and management functions of the federal government.¹²² OPM's most important duty is to conduct personnel support for executive branch policy staff which is easily overshadowed by the work of individual agencies like the General Services Administration (GSA), which has arose to conduct overlapping responsibilities in the modern government structure.

Congress should codify the White House proposal to elevate the OPM's policy work in personnel management to the EOP. This would enhance the work of OPM policy personnel staff by better resourcing them through the EOP and centralizing their role in the overall mission of a President to hire competent policy staff in the White House and across all agencies.

Consolidate the Department of Energy's (DOE) Applied Energy Programs into an Office of Energy Innovation

Under the current structure of the Department of Energy, much of the research and development (R&D) funding that is invested in energy research is compartmentalized by energy source. This structure effectively contradicts the vision of the Trump administration to have an all energy source, free-market, approach that promotes American energy independence. It also invites commercial energy interests to lobby for funding for their individual energy interest without gearing their argument toward a wholistic national policy vision.

¹²¹ White House Office of Management and Budget, supra note 118, at 39.

¹²² 5 U.S. Code § 1103. (2019).

The GEAR Task Force recommends that Congress codify the White House proposal to combine and consolidate applied energy programs into a new office called the Office of Energy Innovation.¹²³ This structural change would recognize that all R&D funding in energy research should be conducted in the interest of America’s energy independence. By having all R&D programs funded out of the same office, funding would be tied to merit-based arguments. Having competition in funding promotes the national interest and competition, rather than the interest of a single industry. Furthermore, lawmakers will be able to provide better oversight of R&D funding, as it would be housed in a unified location.

PROVIDE ACCOUNTABILITY FOR PROGRAMS

The GEAR Task Force recognizes that making the federal government more efficient and accountable requires a frank discussion identifying some of the misguided programs crafted by our elected representatives. It is unreasonable to expect perfection from anyone, including from our federal lawmakers, but constant evaluation of past decisions is a prerequisite to an efficient and accountable government. This means that lawmakers must regularly determine what programs warrant continued operation, in their present form or otherwise.

Conservatives recognize it would be impossible for every program to be a resounding success. In fact, the web of federal agencies and activities has grown so large, that the federal government cannot even keep track of how many programs it has.¹²⁴ In 2010, Congress enacted the Government Performance and Results Act (GRPA), a bill that among other things required OMB to list all federal programs by October 1, 2012 on a single website.¹²⁵ The executive branch not only missed this deadline, but to date has been unable to accurately determine exactly how many programs exist within the federal government. Seven years later, the Trump administration OMB stated that the data infrastructure was not in place for a federal program inventory in 2012.¹²⁶

To address this the GEAR Task Force recommends that Congress pass the Taxpayers Right to Know Act, introduced in the House of Representatives by Rep. Tim Walberg (MI-07).¹²⁷ This legislation would create an online inventory of all federal programs by using program activities defined by agencies in the budget cycle as the basis for creating a federal program database. This practice was recommended by OMB in 2019.¹²⁸

Under the status quo, if government cannot keep track of the totality of federal programs, it should be expected that the merit and efficiency of individual programs must be reviewed from time-to-time. The evaluation process of programs by

¹²³ White House Office of Management and Budget, *supra* note 118, at 65.

¹²⁴ Andrew Lautz, How Many Government Programs Are There?, NATIONAL TAXPAYERS UNION, (Jul. 22nd, 2019), <https://www.ntu.org/publications/detail/how-many-federal-government-programs-are-there>

¹²⁵ 5 U.S.C. § 306(a)(5)

¹²⁶ Russel Vought, Letter to Senator Lankford regarding GPRMA, White House Office of Management and Budget (Oct. 8th, 2019) https://gallery.mailchimp.com/d4254037a343b683d142111e0/files/1545c47c-7109-49db-ac49-fec53691bb40/2019_10_08_OMB_GPRMA_Response_Letter.pdf

¹²⁷ Taxpayers Right to Know Act of 2019, H.R. 3830, 116th Cong.

¹²⁸ Russell Vought, *supra* note 127.

lawmakers could result in a reduction in scope of a program, a reform of its internal operation, or even its complete elimination. Moreover, the reasons why federal lawmakers may reconsider the continued operation of a federal program are many. For instance, a federal program could be obsolete, fail to produce expected outcomes, become redundant of other programs, or surpass the bounds of federal authority. A few federal programs may even laughably defy common sense. With this in mind, the GEAR Task Force has supplied a sampling of federal programs across a broad subject matter that lawmakers should reevaluate.



ARTS & SCIENCES/SERVICE

National Capital Arts and Cultural Affairs Grant Program

This grant program provides funding for Washington D.C. cultural institutions. This revenue could be generated by outside ticket sales, private donations, and private investors.¹²⁹ The goal of offering art for the public is a noble one, but it forces taxpayers to become the patrons of projects that private individuals support. It also puts the government in the impossible situation of deeming what is art and what is not art.

D.C. Streetcar Funding

The D.C. Streetcar program is a highly inefficient form of public transportation in Washington D.C. Despite its peculiarity it is comically unpopular. The program has already cost over \$200 million to the taxpayer.¹³⁰¹³¹

National Endowment for the Humanities (NEH) and for the Arts (NEA)

The NEH and NEA fund a broad scope of arts and cultural projects. While some are popular, they routinely use taxpayer money to fund questionable initiatives. For instance, in 2017, these programs funded an all dog performance of Hamlet and a climate change art camp for adults. Whether or not any initiative is worthy of being called art is something the American people can and should debate. But this debate should not be decided by Washington bureaucrats with taxpayer funding.¹³²

Save America's Treasures (SAT) Grants Program

The SAT program was created to help preserve historic locations throughout the country. Sadly, its funding has been directed toward unessential causes like the San Francisco Art collection. There have been issues of improper use of grant funds in the past too. In 2017, the city of Derby had to return \$110,000 in grant funds originally awarded to help restore an opera house.^{133 134}

¹²⁹ Citizens Against Government Waste, supra note 57.

¹³⁰ Matthew Yglesias, Meet the worst transit project in America, VOX.COM, (Jul. 24th, 2015), <https://www.vox.com/2014/7/25/5937215/dc-streetcar-disaster-mixed-traffic-streetcars-are-evil>

¹³¹ Marc Scribner, DC Streetcar Opens as a Monument to Morally Bankrupt Urban Planning, COMPETITIVE ENTERPRISE INSTITUTE, (Jul. 24th, 2015), <https://cei.org/blog/dc-streetcar-opens-monument-morally-bankrupt-urban-planning>

¹³² Citizens Against Government Waste, supra note 57.

¹³³ Jean Falbo-Sosnovich, Derby to pay back \$110,000 federal grant from opera house project, NEW HAMPSHIRE REGISTER (Jan. 30th, 2017) <https://www.nhregister.com/business/article/Derby-to-pay-back-110-000-federal-grant-from-11311155.php>

¹³⁴ Citizens Against Government Waste, supra note 57.

Stennis Center for Public Service

This program exists to recruit young people to careers in Congress and public life. The Stennis Center for Public Service annually costs \$1.4 million to American taxpayers. Jobs in public life are already popular and competitive making the Stennis Center superfluous.¹³⁵

National Science Foundation Research of Social Sciences

Originally, the National Science Foundation was created to fund projects promoting American scientific interests, such as STEM or medical research for national defense purposes. Instead, the program has poured billions of dollars into questionable social science studies examining topics such as, the “social impacts” of tourism in the northern tip of Norway, and “whether hunger causes couples to fight” according to the Washington Examiner. The National Science Foundation was appropriated over \$8 billion for FY 2019. STEM research that promotes our national interest may warrant taxpayer funding, but social sciences and arts simply do not rise to the same level.¹³⁶

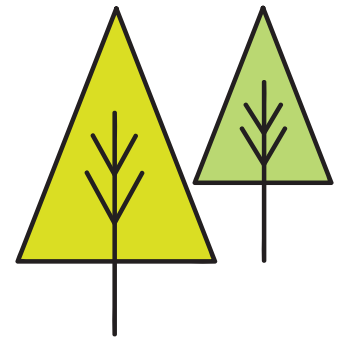
ENVIRONMENT/CONSERVATION

Aquatic Plant Control Research Program

The Aquatic Plant Control Research Program is administered by the U.S. Army Corp of Engineers. It funds individual projects to research and combat invasive aquatic plants in domestic waters. According to Citizens Against Government Waste, the program has funded 24 earmarks since 1994, totaling over \$58 million for aquatic plant control projects. One such earmark was \$400,000 from Senator Schumer (D-NY) to upstate New York to help eradicate undesired plants in the Finger Lakes.^{137, 138}

Brown Tree Snake Eradication Program

The Brown Tree Snake is an invasive species from Australia that has become a major problem for Guam. The snake is responsible for eliminating 10 of 12 birds indigenous to Guam. To eliminate the Brown Tree Snakes, the federal government resorted to an unusual method of animal control.¹³⁹ The government pumps rats full of acetaminophen, basically Tylenol, which is poisonous to snakes.¹⁴⁰ Then the



¹³⁵ Daren Bakst, Budget Book, HERITAGE FOUNDATION (2015), <https://budgetbook.heritage.org/agriculture/eliminate-conservation-technical-assistance-program/> (last visited Jan. 8th, 2020).

¹³⁶ David Muhlhausen, et. al, supra note 25.

¹³⁷ Citizens Against Government Waste, supra note 57.

¹³⁸ Office of U.S. Senator Schumer, SCHUMER ANNOUNCES, AFTER HIS PUSH TO SECURE FEDERAL FUNDING THIS SUMMER TO ATTACK INVASIVE HYDRILLA, ARMY CORPS WILL SPEND \$400K TO REMEDIATE 27 ACRE AREA OF HYDRILLA IN CAYUGA LAKE, (Jun. 15th, 2017), <https://www.schumer.senate.gov/newsroom/press-releases/schumer-announces-after-his-push-to-secure-federal-funding-this-summer-to-attack-invasive-hydrilla-army-corps-will-spend-400k-to-remediate-27-acre-area-of-hydrilla-in-cayuga-lake-senator-says-these-federal-funds-will-help-eradicate-invasive-species->

¹³⁹ Ker Than, Drug Filled Mice Air-Dropped Over Guam to Kill Snakes, NATIONAL GEOGRAPHIC, (Sept. 26th, 2010), <https://www.nationalgeographic.com/news/2010/9/100924-science-animals-guam-brown-tree-snakes-mouse-tylenol/>

¹⁴⁰ M. Alex Johnson, Two thousand mice dropped on Guam by parachute — to kill snakes, NBCNEWS.

government drops the poison-filled rodents onto the island of Guam by parachute in the hopes that the hungry snakes will scavenge them up and slowly die over 60 hours. As serious as this snake problem is, there must be more efficient ways to address it than dropping dead drug filled rodents out of planes by parachute.

The Maritime Guaranteed Loan Program

The maritime guaranteed loan program provides loan guarantees to cover the costs of ship building and rebuilding in American shipyards. This loan program has been suspended in the past for loan defaults and has long been criticized.¹⁴¹ President George W. Bush called the program an “unwarranted corporate subsidy” and Senator McCain described it as an “egregious example of pork barrel spending.”¹⁴² The government should not provide services that more reasonably could be obtained through the free market.

The Conservation Technical Assistance Program

The Natural Resources Conservation Service runs this program as an advisory resource for governmental and private landowners.¹⁴³ The program provides technical assistance for the maintenance of land and soil conservation as well as legal assistance. This program uses taxpayer money to offer services landowners could reasonably purchase in the private sector. As currently structured, the program will cost \$4.8 billion over the next 5 years.

National Estuarine Research Reserve System

The National Estuarine Research Reserve System is a federal network of 29 protected coastal estuaries that are preserved for conservation and research efforts. The work of preserving estuaries should belong to local communities. Taxpayers in Alabama, Illinois, and Pennsylvania should not be forced into funding the San Francisco Bay National Estuarine Research Reserve System, which recently studied the impact of climate change on oysters.¹⁴⁴ Furthermore, research is already done by many private organizations and academic institutions pertaining to these issues at no federal cost. This program has an annual cost of \$23 million.¹⁴⁵

Sea Grant Program

The Sea Grant is duplicative of many federal programs, such as other NOAA coastal funds that study ecological issues at the Great Lakes. This includes two National

COM, (Dec. 2nd, 2013), <https://www.nbcnews.com/news/us-news/two-thousand-mice-dropped-guam-parachute-kill-snakes-flna2D11685572>

¹⁴¹ Citizens Against Government Waste, *supra* note 57. 38.

¹⁴² Ryan Sibley, Government Agency with a History of Losses Keeps it Up, SUNLIGHT FOUNDATION (Apr. 12th, 2010) <https://sunlightfoundation.com/2010/04/12/government-agency-history-taxpayer-losses-keeps-it/>

¹⁴³ Daren Bakst, *supra* note 136.

¹⁴⁴ San Francisco Bay National Estuarine Research Reserve, Current and Past Research, (Dec. 2nd, 2013), <http://www.sfbaynerr.org/research/current-and-past-research/>

¹⁴⁵ Wasson and Zabin, et. al, A Guide to Support Olympia Oyster Restoration and Conservation, SFBAYSUB-TIDAL.org (Jun, 2015), <http://www.sfbaysubtidal.org/OYSTERGUIDE-FULL-LORES.pdf>

Estuarine Research Reserves in the Great Lakes region. Furthermore, due to the narrow scope, this issue falls within the purview of state and local governments. This program costs \$73 million.¹⁴⁶

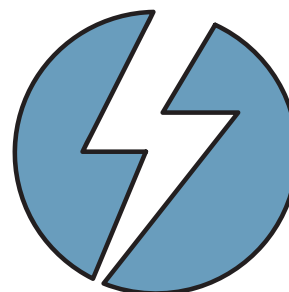
Pacific Coast Salmon Recovery Fund

The Pacific Coast Salmon Recovery Fund disproportionately benefits the West Coast and a narrow fishing industry interest. There is no precedent for creating funds to conserve every vulnerable fish population. This issue could more appropriately be dealt with at the state level or by private industry. This fund has cost the American taxpayer \$1.4 billion since its creation in 2000.¹⁴⁷

ENERGY

Advanced Technology Vehicle Manufacturing Loan Program

The Advanced Technology Vehicle Manufacturing Loan Program provides subsidies for manufacturers producing technology that promote national energy independence. This fund exists largely to encourage companies into introducing more fuel-efficient cars, rather than letting manufacturers produce solely what the market dictates. Having a subsidy that encourages producers to ignore the will of consumers is wasteful and puts government inappropriately in the board room of a private company. This program was created in 2007 and given \$25 billion of taxpayer-backed loan authority that it has used to extend credit to some of the largest auto manufacturers in the world.¹⁴⁸



ENERGY STAR Program

This program promotes partisan environmental policy outside the purview of the executive branch by selectively providing subsidies to companies that reduce carbon emissions. According to a GAO study in 2010 this program is vulnerable for fraud and abuse.¹⁴⁹ GAO created four fake manufacturing companies to submit 20 products with fake emissions claims. Under this program 15 were certified and offered federal subsidies.¹⁵⁰

Domestic Energy Subsidies

In 2017, American consumers spent \$1.1 trillion on their energy needs.¹⁵¹ This

¹⁴⁶ Chelsea Harvey & Chris Mooney, Trump's proposed NOAA cuts would disarm our coasts in the face of rising seas, scientists say, WASH. POST (Mar. 10th, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/03/10/proposed-noaa-cuts-would-disarm-our-coasts-in-the-face-of-rising-seas-scientists-say/>

¹⁴⁷ National Oceanic and Atmospheric Administration, Pacific Coast Salmon Recovery Fund, NOAA.GOV, <https://www.fisheries.noaa.gov/grant/pacific-coastal-salmon-recovery-fund-0>

¹⁴⁸ U.S. Department of Energy, ADVANCED TECHNOLOGY VEHICLES MANUFACTURING (ATVM) LOAN PROGRAM, NOAA.GOV, <https://www.energy.gov/lpo/advanced-technology-vehicles-manufacturing-atvm-loan-program>

¹⁴⁹ Government Accountability Office, Covert Testing Shows the Energy Star Program Certification Process Is Vulnerable to Fraud and Abuse, (Mar. 5th, 2010) <https://www.gao.gov/products/GAO-10-470>

¹⁵⁰ Citizens Against Government Waste, *supra* note 57, note 57.

¹⁵¹ University of Michigan, U.S. ENERGY SYSTEM FACTSHEET, Center for Sustainable Systems (2019),

staggering amount of money supported an industry that makes up 5.8 percent of our nation's GDP.¹⁵² Thus, one might question why the federal government spends billions in direct subsidies and tax breaks to support research and development in the private sector.



Moreover, the federal government funds various energy programs that favor certain types of energy over others to artificially prop up certain industries with taxpayer dollars. Intervening in the private market in this way fuels inefficiency and ultimately produces higher overall costs for Americans. The federal government should not pick and choose winners in the energy market.¹⁵³

LABOR AND ECONOMIC DEVELOPMENT/FINANCE

Neighborhood Reinvestment Corporation

This program is duplicative and has an infamous history. GAO found NeighborWorks gave grants to the now notorious company Acorn.¹⁵⁴ ACORN employees were caught advising people on how to commit various criminal actions including trafficking prostitutes and evading the IRS.¹⁵⁵ It is also duplicative of already existing programs at HUD, according to CBO.¹⁵⁶

Susan Harwood Training Grants

These safety training grants to non-profits duplicate already existing Occupational Safety and Health Administration (OSHA) activities.¹⁵⁷ Funding is not well targeted as it may also be used for non-training related goals, such as paying for overhead. The LIUNA Training and Education Fund requested grant money in 2017 in order to pay toward supporting the salary of five employees making six-figures each.¹⁵⁸

Trade Adjustment Assistance

The Trade Adjustment Assistance program provides aid to individuals whose jobs were displaced by international trade. Regardless of one's thoughts on whether this is a proper role of government, Congress appropriates over \$800 million annually, but only about 37% of aid recipients report landing jobs in their targeted field.¹⁵⁹

<http://css.umich.edu/factsheets/us-energy-system-factsheet>

¹⁵² Id.

¹⁵³ Energy sector subsidies cover production methods such as hydroelectric, wind, solar, geothermal, natural gas, crude oil, coal, nuclear, and biomass.

¹⁵⁴ Government Accountability Office, Letter: NeighborWorks America: Availability of Appropriations for Grants to Affordable Housing Centers of America, (Sept. 29th, 2010) <https://www.gao.gov/decisions/appro/320329.htm>

¹⁵⁵ Bill Tucker, Chris Murphey and Steve Turnham, ACORN workers caught on tape allegedly advising on prostitution, CNN (Sept. 10th, 2009) <https://www.cnn.com/2009/POLITICS/09/10/acorn.prostitution/>

¹⁵⁶ Citizens Against Government Waste, *supra* note 57. Citizens Against Government Waste, *supra* note 57.

¹⁵⁷ Id.

¹⁵⁸ ALG Research, The Labor Department's Harwood Grant Program Should Be Eliminated, (May 17th, 2019) <http://algresearch.org/2019/05/labor-departments-harwood-grant-program-eliminated/>

¹⁵⁹ Eric Morath, President Trump's Fiscal 2019 Budget Proposal -- Live Analysis, WSJ (Feb. 12th, 2018), <https://www.wsj.com/livecoverage/trumps-2019-budget-proposal-live-analysis/card/1518462457>

DOL Office of Federal Contract Compliance Programs

This office is a costly bureaucratic mess for federal managers and is redundant of the EEOC. The Federal Contract Compliance Programs office cost over \$103 million in FY 2019 alone.¹⁶⁰

National Technical Information Service

NTIS is a laboratory in the Department of Commerce created for helping American industry be more competitive.¹⁶¹ Considering how inefficient federal practices and structures are, it is unlikely American industry needs the governments advice on competition. This fund received \$985 million in FY 2019 alone.¹⁶²



EDUCATION

Student Support and Academic Enrichment Grants

Education policy, including funding, is best handled at the state and local level. This program allows communities to underfund programs they intend to use knowing they can count on additional federal funding to plug the holes. Costing over \$1 billion annually, this fund has almost no restraints on it.¹⁶³

Supporting Effective Instruction State Grants

This program provides funds to recruit, train, and support local schoolteachers. These grants makeup the third largest program at the Department of Education, yet evidence shows that the program conveys little value for teacher development.¹⁶⁴

Federal Supplemental Educational Opportunity Grants

This program provides need-based grants for individual undergraduate education. This is duplicative of other federal financial subsidies for college education and cost over \$800 million in FY18.¹⁶⁵

21st Century Community Learning Centers

These centers, which cost \$1 billion annually, exist to help students perform better on standardized tests. The efficacy of the program has not been measured in collected data.¹⁶⁶

¹⁶⁰ U.S. Department of Labor, Congressional Budget Justification, (2019) <https://www.dol.gov/sites/dolgov/files/general/budget/2020/CBJ-2020-V2-10.pdf>

¹⁶¹ Doug Bandow, The More Wasteful a Federal Program Is, the More Essential It Is to Washington, FORBES (Jan. 6th, 2014) <https://www.forbes.com/sites/dougbandow/2014/01/06/the-more-wasteful-is-the-federal-government-program-the-more-essential-it-is-to-washington/#7cb768e36cb4>

¹⁶² Paul Bedard, Trump to cut \$4 billion in domestic programs, elimination of Legal Services Corporation, WASH. EXAMINER (Mar. 11th, 2019), <https://www.washingtonexaminer.com/washington-secrets/trump-to-cut-4-billion-in-domestic-programs-elimination-of-legal-services-corporation>

¹⁶³ Alyson Klein, What's in ESSA's Big Flexible-Spending Pot, ED. WEEK, (Jun. 8th, 2018) <https://www.edweek.org/ew/articles/2018/06/06/whats-in-essas-big-flexible-spending-pot.html>

¹⁶⁴ Lindsay M. Burke, "What Trump's Education Budget Gets Right, and Where It Can Improve" HERITAGE FOUNDATION, <https://www.heritage.org/education/commentary/what-trumps-education-budget-gets-right-and-where-it-can-improve>

¹⁶⁵ Klein, supra

¹⁶⁶ Bedard, supra note 163.



HOUSING

Public Housing Capital Fund

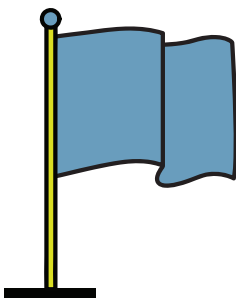
This fund assists public housing agencies in modernizing their facilities. These federal funds are duplicative of state and local programs that are better suited to address housing. This program is funded at \$2.78 billion.¹⁶⁷

Public Housing Operating Fund

This program provides federal funds for housing agencies to supplement the cost of their daily operations. This federal program is duplicative of state and local programs that are better suited to address housing.¹⁶⁸

Home Investment Partnership Program

This program seeks to help improve low-income housing. Housing is an issue that primarily falls within the purview of state and local government. This federal intrusion into housing funds provides a shield from accountability for state governments who can fall back on the federal funding debate when faced with scrutiny.¹⁶⁹



FOREIGN POLICY

McGovern-Dole International Food for Education Program

The McGovern-Dole program, run by the United States Department of Agriculture (USDA), provides foreign aid through NGOs working in impoverished nations. There is no evidence to say that this program eliminates food insecurity.¹⁷⁰

Cultural Exchange Programs

The State Department offers Cultural Exchange Programs through the Bureau of Educational and Cultural Affairs. These programs sponsor students, teachers, and other leaders to travel to other nations for a cultural exchange. This service is offered privately by many universities and non-profits. This program costs over \$300 million with over 90 percent of expenses unaccounted for.¹⁷¹

Clean Technology Fund

This fund helps and encourages developing countries to use green energy technology and costs American taxpayers \$5.4 billion annually.¹⁷²

¹⁶⁷ Donna Kimura, Fiscal 2019 HUD Budget Approved, AFFORDABLE HOUSING FINANCE (Feb. 20th, 2019), https://www.housingfinance.com/news/fiscal-2019-hud-budget-approved_o

¹⁶⁸ Id.

¹⁶⁹ U.S. Department of Housing and Urban Development, FY 2016: HOME INVESTMENT PARTNERSHIPS PROGRAM, (2016) https://www.hud.gov/program_offices/comm_planning/affordablehousing/programs/home/

¹⁷⁰ Tim Worstall, A Good Part Of Donald Trump's Budget - Eliminating McGovern-Dole, FORBES.COM (Mar. 18th, 2017), <https://www.forbes.com/sites/timworstall/2017/03/18/a-good-part-of-donald-trumps-budget-eliminating-mcgovern-dole/#486f8f344ff3>

¹⁷¹ Bedard, supra note 163.

¹⁷² Climate Investment Funds, Clean Technologies Fund, <https://www.climateinvestmentfunds.org/topics/clean-technologies>

Strategic Climate Fund

This program funds international efforts to limit carbon caused by deforestation, create “climate resilience,” and develop renewable energy technology in developing nations. The fund functions through a multilateral agreement and costs billions of dollars to impose partisan energy policy on sovereign nations.¹⁷³

Green Climate Fund

The Green Climate Fund invests in developing nations’ efforts to combat “climate change.”¹⁷⁴ President Trump announced the U.S. would no longer pay into this fund when he pulled America out of the Paris Climate Accords. Initially, President Obama had pledged \$3 billion, but Trump saved over \$2 billion from being wasted on it.¹⁷⁵

Global Environment Facility

This program operates through NGOs around the world to provide support for addressing environmental issues.¹⁷⁶ The program functions as an account for environmental initiatives that governments can invest in without further control over where that money is spent. Since 1994, the U.S. has given \$2.7 billion to this multilateral slush fund for environmental policies.¹⁷⁷

United States Emergency Refugee and Migration Assistance Fund

This program was created to help Cuban refugees in 1962 who did not qualify for the status of refugee, or the aid associated with the status. The authority to use the fund has been reinterpreted and broadened by DOJ rulemaking. This program is almost entirely rolled into USAID in the President’s budget.¹⁷⁸

DOL International Labor Affairs Bureau

The DOL International Labor Affairs Bureau (ILAB) costs nearly \$70 million annually and most of its budget is spent on advocating on foreign labor practices. The program was originally created to advocate for American labor interests in trade negotiations.¹⁷⁹

Contributions to the International Development Association

This is a Department of the World Bank that is charged with helping developing countries. It advances partisan policies on climate and gender. Any American aid should be given directly through State and USAID.¹⁸⁰

¹⁷³ Climate Investment Funds, About the Funds, <https://www.climateinvestmentfunds.org/node/5>

¹⁷⁴ The Green Climate Fund Website, <https://www.greenclimate.fund/home>

¹⁷⁵ Associated Press, Nations pledge \$9.8B to global climate fund to help the poor, AP (Oct. 25th, 2019), <https://apnews.com/ae7e3e749afa4dc788ff6303ad01006c>

¹⁷⁶ The Global Economic Facility Website, <https://www.thegef.org/>

¹⁷⁷ Congressional Research Service, Paris Agreement: U.S. Climate Finance Commitments, (Oct. 2nd, 2019), <https://fas.org/sgp/crs/misc/IF10763.pdf>

¹⁷⁸ Rachel Oswald, Lawmakers from both parties resist humanitarian and refugee aid changes, ROLL CALL (Mar. 22nd, 2019), <https://www.rollcall.com/news/congress/lawmakers-resist-humanitarian-refugee-aid-changes>

¹⁷⁹ Bedard, supra note 163.

¹⁸⁰ Congressional Research Service, 2018 World Bank Capital Increase Proposal (Dec. 14th, 2018), <https://fas.org/sgp/crs/misc/IF10895.pdf>

Contributions to the International Bank for Reconstruction and Development

Originally created to help rebuild Europe after WWII, this office has become a global slush fund with evolving purposes. Any American aid should be given directly through State and USAID.¹⁸¹

Complex Crises Funds

This program was originally created as DOD funding for evolving geo-political situations. Now, it is a USAID fund with little restrictions, managed solely at the discretion of the USAID Administrator.¹⁸²

U.S. Trade and Development Agency

This independent agency is duplicative of many federal offices including the Office of the U.S. Trade Representative. It costs over \$50 million annually.¹⁸³

Foundations

The federal government contributes to multiple funds that are used as a resource for NGOs with a focus on a specific geopolitical region. While debating foreign aid is important, investing in foundations that indiscriminately fund NGOs over an entire region may not provide enough accountability for policymakers to target U.S. investment overseas. Furthermore, NGOs that specifically target different regions can operate on private donations and investors, they do not need American taxpayer money. Examples of these programs include the Inter-American Foundation, the Asia Foundation and Development Bank, and the African Development Foundation and Bank.

¹⁸¹ Id.

¹⁸² Congressional Research Service, Department of State, Foreign Operations Appropriations: A Guide to Component Accounts (Apr. 10th, 2019), <https://fas.org/sgp/crs/misc/IF10763.pdf>

¹⁸³ Daren Bakst, *supra* note 136.

REFORM GOVERNMENT PERSONNEL POLICIES STEP THREE

A perfect plan, policy, or system is meaningless without having the right people. Yet, without a federal workforce made up of true civil servants that are talented, patriotic, and hardworking, meaningful reform cannot be implemented. Unfortunately, the Trump Administration has at times been burdened as commonsense proposals are undermined by partisan federal bureaucrats.

By contrast, in the world of business, a company cannot be successful without having the right people in place. The need to have effective personnel policies in order to maximize efficiency and success is true for any employer, including the federal government. After all, the federal government is the largest employer in the nation. Businesses go to great lengths to develop successful personnel policies from hiring, to compensation, to promotion and accountability. It is past time that government function more like a business.

Most federal workers are passionate and devoted to carrying out the mission of their office. Sadly, the behavior of the worst bad actors in the federal government undermines the commitment of our hardworking civil servants. The Task Force commends those federal workers that approach each day as an opportunity to serve the American people but are guided by the age-old truth that a chain is only as strong as its weakest link. With this in mind, the Task Force seeks to advance reforms that ensure that the federal government has the strongest links possible for the sake of ensuring the American people are served by an efficient and accountable government.

Instances of unacceptable federal employee behavior have been well-documented over the years. Some involve a federal employee abusing their position at the expense of coworkers. Take for example Paula M. Steen, an IT Specialist at the U.S. Department of Agriculture (USDA).¹⁸⁴ Paula scammed three of her co-workers, including a blind individual, out of over \$100,000 over the course of four years using false charges, loans, and repayments. In other occurrences, federal workers, including supervisors, have knowingly looked the other way as employees took advantage of taxpayers. In one instance an assistant commissioner of the Bureau of Public Debt committed fraud to the point of hardly working while earning \$170,000 a year.¹⁸⁵ She would come in hours late, if at all and leave early. She also used much of her official time to conduct personal business for the Humane Society. Investigators estimated she was paid for \$100,000 in hours she did not work. Her supervisor also admitted to knowing about these issues and not acting.

Perhaps the most incredible instance of fraud committed by a federal employee in the last decade was done by a man named John Beale.¹⁸⁶ Over 13 years, Beale

¹⁸⁴ U.S. Department of Justice, Former Federal Employee Pleads Guilty to \$113,000 Scheme to Steal from Co-workers (Dec. 18th, 2013), <https://www.justice.gov/usao-wdmo/pr/former-federal-employee-pleads-guilty-113000-scheme-steal-co-workers> (last visited Jan. 8th, 2020).

¹⁸⁵ Luke Rosiak, Top Treasury employees swindled thousands of dollars, in-the-know bosses did nothing, WASHINGTON EXAMINER (Feb. 27th, 2014), <https://www.washingtonexaminer.com/top-treasury-employees-swindled-thousands-of-dollars-in-the-know-bosses-did-nothing> (last visited Jan. 8th, 2020).

¹⁸⁶ Ian Simpson, Ex-EPA adviser admits to fraud, CIA stint claim, 13 years of lies, REUTERS (Sept. 27th ,

skipped work as an EPA advisor while claiming to work for the CIA. If having a fake career with the CIA was not egregious enough, Beale further pretended to have malaria to receive a special parking spot that cost hundreds of dollars per month. It is believed John Beale cheated the government out of nearly \$1 million all by himself.

While these are a few extreme examples of misconduct by federal employees, unfortunately there are other misdeeds happening in our agencies today that left unaddressed impact the morale of the many diligent civil servants operating in our government today. It is with those individuals in mind that the RSC GEAR Task Force has accumulated proposals that collectively create a transformative vision for civil service reform. If the ideas, legislation, and policies espoused in this section were enacted, it would move our government toward parity with the private sector, empower managers to lead, and honor hard work.

REFORM HIRING AND REMOVAL OF FEDERAL EMPLOYEES

Hiring and removal of employees in the United States federal government is a mess. Unlike in the private sector, federal employees generally do not work at the will of their boss or supervisor. Instead, removing a federal employee is extremely difficult and time consuming. It currently takes about a full calendar year to remove one federal employee. The federal system for hiring and removing does not empower managers, office executives, or department leaders. Instead managers are effectively forced to keep problematic employees to the detriment of effective federal workers. The reforms supported by the RSC GEAR Task Force will allow agencies to utilize more efficient and fair hiring and removal practices resembling those used in the private sector.

Modernize the Hiring Process

The federal government cannot expect to have a more professional workforce without having a faster and more reliable process for hiring highly qualified candidates. Unfortunately, one of the largest gaps in efficiency between the practices of business versus that of government is in hiring. According to the Office of Personnel and Management (OPM), the 2016 Merit Principles Survey found that federal supervisors believe their most difficult workforce management task is getting a pool of quality candidates.¹⁸⁷ Additionally, only 42 percent of respondents to the 2018 Federal Employee Viewpoint Survey (FEVS) believe that their work unit is able to recruit people with the appropriate skills.¹⁸⁸

2013), <https://www.washingtonexaminer.com/top-treasury-employees-swindled-thousands-of-dollars-in-the-know-bosses-did-nothing> (last visited Jan. 8th, 2020).

¹⁸⁷ Margaret Weichert, Memo on Strategies to Advance Mission Outcomes, OFFICE OF PERSONNEL MANAGEMENT (Sept. 19th, 2019), [https://www.chcoc.gov/sites/default/files/OPM Memo Improving Federal Hiring through the Use of Effective Assessment Strategies to Advance Mission Outcomes.pdf](https://www.chcoc.gov/sites/default/files/OPM%20Memo%20Improving%20Federal%20Hiring%20through%20the%20Use%20of%20Effective%20Assessment%20Strategies%20to%20Advance%20Mission%20Outcomes.pdf)

¹⁸⁸ Office of Personnel Management, 2018 Federal Employee Viewpoint Survey Results, (2019) <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-management-report/governmentwide-report/2018/2018-governmentwide-management-report.pdf>

On average, it takes federal agencies three times longer than private entities, to complete the hiring process for a single employee.¹⁸⁹ In 2017, it took an average of 106 days to complete a hire within a federal agency.¹⁹⁰ Being without a worker for that long could deter managers from seeking to upgrade their employees.

Wisely, the Trump administration has made overhauling federal hiring practices a major priority for OPM.¹⁹¹¹⁹² The administration has begun the process of empowering human resources to utilize better business techniques when hiring. One reform that is currently being implemented is an aggressive expansion of training for human resources staff under the delegated examining (DE) system. Congress should assist the Trump administration in empowering professionals in charge of hiring to work more efficiently like their private sector peers. Congressional action should focus on two intertwined goals: constructively utilizing hiring managers and automating human resources functions¹⁹³.

The present hiring system is administered by OPM. OPM is responsible for posting vacancies, screening and compiling applicants, and referring most qualified candidates to hiring managers at agencies. Hiring managers are not able to recruit or consider applicants outside of OPM's initial referral. Furthermore, subject matter experts at agencies are completely separated from the process. Hiring managers are seldomly included in a constructive way during the current hiring system. This paradigm jeopardizes the ability to hire a highly qualified candidate because the people most essential to hiring are largely removed from the hiring process.

Furthermore, OPM's standardized screening of candidates leaves too much latitude for applicants to self-certify their qualifications, which can leave hiring managers with a pool of applicants who lack genuine accreditation. Congress should require executive branch agencies to create new hiring standards that tangibly tie in the hiring manager. By requiring hiring managers to be a more significant part of the process, efficiency can be brought back to the hiring process in a way that is consistent with the agency culture. Furthermore, Congress should require that hiring managers include advice from subject matter experts in the hiring process. Each agency hires personnel to fill a broad spectrum of functionality. In order to help ensure that an agency is hiring the best personnel for each role, it makes sense to include feedback from those who best understand the job and policies it covers.

¹⁸⁹ Volcker Alliance, Volcker Alliance and Partnership for Public Service Launch Civil Service Reform Initiative (Sept. 5th, 2017), <https://www.volckeralliance.org/news/volcker-alliance-and-partnership-public-service-launch-civil-service-reform-initiative>

¹⁹⁰ Volcker Alliance, Renewing America's Civil Service (Oct., 2018), <https://www.volckeralliance.org/projects/renewing-americas-civil-service> (last visited Jan. 8th, 2020)

¹⁹¹ Office of Personnel Management, Technology Systems, <https://www.opm.gov/services-for-agencies/technology-systems/>

¹⁹² White House Office of Management and Budget, Improving the Hiring Process Action Plan, (Dec. 2019), https://www.performance.gov/OPM/2019_dec_OPM_Improve_the_Hiring_Process.pdf

¹⁹³ Jeff Neal, What it would take to create real hiring reform, FEDERAL NEWS NETWORK (Apr. 13th, 2017) <https://federalnewsnetwork.com/commentary/2017/04/what-it-would-take-to-create-real-hiring-reform/>

The Trump administration recently had success with a pilot program that put hiring managers and subject matter experts at the center of the hiring process. The Department of Interior and Department of Health and Human Services recently placed eight subject matter experts in the hiring process for every two human resources staff.¹⁹⁴ Baseline data shows that selecting a new hire took on average 37 days in the tested categories. During the pilot, selection took 11 and 16 days respectively.¹⁹⁵

The GEAR Task Force recommends that Congress also conduct oversight on the use of automation in hiring preclearance procedures.¹⁹⁶ OPM employees are charged with trying to prescreen applicants for referral. By reasserting a hiring manager's role in hiring, the need to have a nuanced preclearance process is removed. Instead human resources functions should be focused on quickly removing unqualified applicants. Congress should investigate best practices used in the private sector, such as automation to better track and remove unqualified job applicants through techniques like key word usage.¹⁹⁷

Another hiring reform that has been tested as a pilot program is called "hiring to attrition." This pilot, carried out by the Federal Bureau of Investigations (FBI) involved hiring candidates based on the rolling needs of the FBI rather than simply hiring when a new position became available. In other words, the FBI created and maintained a pipeline of qualified candidates to ensure that they bureau maintained adequate staffing. This concept is important because the federal government has a significantly higher attrition rate when compared to the private sector. Under the pilot program, the FBI recently faced 78 percent employment levels and an annual attrition rate of 9 percent but was able to create a fully operational pipeline of applicants and have a fill rate approaching 98 percent.

To maximize the value of targeted recruitment and combat federal attrition rates, all federal agencies should build off of the FBI's pilot program to continuously vet current civil servants for vacant roles across government. This tactic could allow for quicker transitions and higher employment levels to combat the unique nature of federal employment. Continuous vetting of federal employees would maximize the utility of the federal workforce and would likely be more efficient than passive recruiting efforts including non-targeted job postings.

¹⁹⁴ Jessie Bur, Can agencies improve hiring by letting current feds in on the process?, FEDERAL TIMES, <https://www.federaltimes.com/management/hr/2019/10/23/can-agencies-improve-hiring-by-letting-current-feds-in-on-the-process/>

¹⁹⁵ Erich Wagner, Efforts to Reform Federal Hiring Already Showing Results, GOVEXEC.COM, (Oct. 22nd, 2019) <https://www.govexec.com/management/2019/10/efforts-reform-federal-hiring-already-showing-results/160781/>

¹⁹⁶ Society for Human Resource Management, Screening by Means of Pre-Employment Testing (Sept. 10th, 2018), <https://www.shrm.org/ResourcesAndTools/tools-and-samples/toolkits/Pages/screeningbymean-sofpreemploymenttesting.aspx>

¹⁹⁷ Suresh Sambandam, The New Age of Automation in the Recruitment Process, HRTECHNOLOGIST.COM (May 1st, 2019) <https://www.hrtechnologist.com/articles/recruitment-onboarding/the-new-age-of-automation-in-the-recruitment-process/>

Enact the MERIT Act

It is a fact of modern life that not every employee that gets hired is a shining star. For this reason, it is just as critical to have an efficient mechanism for removing toxic employees as it is to hire new workers. The MERIT Act, introduced by GEAR Task Force member Rep. Barry Loudermilk (GA-11), offers much needed reforms to enhance employee removal practices in the federal government.¹⁹⁸ This legislation would shorten the timeframe necessary to remove a bad employee to 30 days. On average, it currently takes over 300 days to remove a toxic federal worker. By eliminating the red tape that exists when taking adverse actions against a bad actor in the federal government and allowing for senior executives to be removed rather than demoted, the MERIT Act offers a framework much closer to the efficiency and rigor found in the private sector.

Another commonsense reform offered by Rep. Loudermilk's legislation is to limit the retirement compensation awarded to a federal employee removed for committing a felony in abuse of their official duties. The period of service during which the crime occurred would be eliminated when calculating the annuity owed to a criminal federal employee. The MERIT Act also reins in unnecessary appeals. The bill would prohibit union appeals to the Merit Systems Protection Board (MSPB) based upon adverse personnel actions. Further, it would prohibit appeals to the MSPB in response to short-term furloughs or furloughs during a government shutdown.

Finally, the MERIT Act grants managers the authority to recoup bonuses paid to employees who were later found to have committed workplace violations, if that violation would have led to a bonus not being granted in the first place.

Provide Mandatory Removal of Federal Employees Who Commit Crimes

Without question, federal employees who commit crimes during their tenure of service in the government should be removed from public service. Under current law, agencies may indefinitely suspend without pay an individual who committed a serious crime, while their removal is processed.¹⁹⁹ However, it is not uncommon that agencies claim they are required to keep employees guilty of committing serious crimes, arguing removal would equate to wrongful termination. For example, in 2016, the VA admitted to demoting, but keeping on staff an individual who was convicted of assisting an armed robbery.²⁰⁰ The decision was made because the individual supposedly did not pose a direct threat to VA employees. There should be no gray area or hesitation when it comes to firing serious criminals.

¹⁹⁸ MERIT Act of 2017, H.R. 559, 115th Cong.

¹⁹⁹ Ian Simpson, MSPB Reminds Agencies They Don't Need Airtight Proof to Get Suspected Criminals Off the Payroll, GOVEXEC.COM (May 24th, 2016), <https://www.govexec.com/management/2016/05/mspb-reminds-agencies-they-dont-need-airtight-proof-get-suspected-criminals-payroll/128567/> (last visited Jan. 8th, 2020).

²⁰⁰ Eric Katz, Employees Can Be Involved in Armed Robberies as Long as It's On Their Own Time, VA Says, GOVEXEC (Apr. 25th, 2016) <https://www.govexec.com/federal-news/2016/04/employees-can-drive-getaway-cars-armed-robberies-long-its-their-personal-time-va-says/127771/>

Modernize the Evidentiary Threshold Necessary for Removal

Current federal regulation requires federal managers who seek to remove an employee to show that a preponderance of evidence must exist to support their removal.²⁰¹ Furthermore, managers must demonstrate evidence that the removal of an employee would improve the overall performance of their agency. This effectively imposes an enhanced judicial standard of evidence on federal managers, rather than allowing them to make sensible business-minded removal decisions. After all, the goal of federal personnel policy should be to provide the best possible value to the American taxpayer, not make Washington bureaucrats even less accountable for their actions.

To make upgrading personnel more efficient, the legal standard for removing a poor performing federal employee should be reformed so that managers are not overly hamstrung in these decisions. A good starting point would be to adopt the standard proposed by The Heritage Foundation, under which managers would have to possess “substantial evidence” supporting the decision to remove the employee. For context, this is the standard used in administrative law to review the decisions of administrative law judges. This standard simply means, “that a reasonable person could come to that conclusion, although another reasonable person could look at the evidence and disagree.”²⁰² Considering that this standard would still generally insulate federal employees more than their private sector counterparts from adverse employment actions, the GEAR Task Force urges lawmakers to consider reducing this standard even further.

By creating a new evidentiary standard that appropriately entrusts a manager’s ability to make a judgement pertaining to efficiency while simply requiring reasonable grounds for that judgment, firing practices in the federal government will become more businesslike and less like arduous court proceedings.

Reform Adverse Employment Action Authority

In addition to establishing an appropriate evidentiary standard for removing problematic federal employees, the scope of offenses for which employees are regularly removed should be rightsized to promote accountability as well. A great place to start is updating the Anti-Deficiency Act.

Under the Anti-Deficiency Act, spending taxpayer money on a program or during a time-frame for which there is no appropriation is punishable by firing, fines, and even jail time. Sadly, no one has ever been prosecuted under this statute.²⁰³ This is despite the fact that in the last 10 years, 197 violations were reported with the

²⁰¹ 5 CFR 1201.4

²⁰² Rachel Greszler and James Sherk, Why it is Time to Reform Compensation for Government Employees, HERITAGE FOUNDATION (July 27th, 2016), <https://www.heritage.org/jobs-and-labor/report/why-it-time-reform-compensation-federal-employees> (last visited Jan. 8th, 2020).

²⁰³ Arnold, William G. (2009). The Antideficiency ACT Answer Book. Management Concepts. p. 112.

estimated value of violations equaling \$9.66 billion dollars.²⁰⁴ Over this period, only eight federal employees were suspended or removed. Moreover, violations were not hidden away deep in administrative files, but rather made headline news. The New York Times reported that the Obama administration paid health insurance companies around \$7 billion despite failing to receive congressional appropriation.²⁰⁵ In addition, the Obama administration's prisoner transfer deal for the famous deserter Bowe Bergdahl involved violations of the Anti-Deficiency Act too.²⁰⁶

The Anti-Deficiency Reform and Enforcement Act, introduced by Rep. Paul Mitchell (MI-10), is a good first step in rightsizing the scope of the actions for which a federal employee can be punished.²⁰⁷ It would expand grounds for removing employees under the Anti-Deficiency Act to include misusing an official vehicle or aircraft for personal travel. Furthermore, the legislation would strengthen the Anti-Deficiency Act by incentivizing reporting and requiring agency action when anti-deficiency violations are reported. Under this legislation individuals who report violations can be given a monetary award up to \$1,000 or 1 percent of the value of the violation.

Ban Taxpayer-Funded Union Work

While unions can offer employees a range of resources and purport to contribute to a healthy work environment, they can also restrict workers' ability to represent themselves, force members to pay dues, and even put their own interests over those of their membership and the American people. According to OPM, under current law, federal employees are paid for the time they spend "performing representational work for a bargaining unit in lieu of their regularly assigned work." OPM further explained "[i]n other words, official time is treated as work time, [and] thus is funded by the American taxpayers."²⁰⁸

The RSC GEAR Task Force recognizes that the concept of "official time" violates basic principles of stewardship to the American taxpayer. As such, it should be explicitly banned and treated as a fireable offense. In order to move toward such a change, Congress should enact two pieces of legislation sponsored by Rep. Jody Hice (GA-10).²⁰⁹²¹⁰ Rep. Hice's bills would provide needed accountability regarding federal official time policy. First, the Official Time Reform Act, would ban federal employees from lobbying while on official time. Second, the Official

²⁰⁴ Gordon Gray, Primer on the Anti-Deficiency Act, American Action Forum (Aug. 3rd, 2016) <https://www.americanactionforum.org/research/antideficiency-act-primer/>

²⁰⁵ Carl Hulse, In a Secret Meeting, Revelations on the Battle over Health Care, NEW YORK TIMES (May 30th, 2016)

²⁰⁶ Government Accountability Office, Letter: Department of Defense—Compliance with Statutory Notification Requirement, (Aug. 21st, 2014) <https://www.gao.gov/assets/670/665390.pdf>

²⁰⁷ Anti-Deficiency Reform and Enforcement Act of 2019, H.R. 1203, 116th Cong.

²⁰⁸ U.S. Office of Personnel Management, FY2016 Report on Official Time Usage in the Federal Government, (May 2018) <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/reports/2016-official-time-usage-in-the-federal-government.pdf>

²⁰⁹ Official Time Reporting Act of 2019, H.R. 605, 116th. Cong.

²¹⁰ Official Time Reform Act of 2017, H.R. 1364, 115th Cong.

Time Reporting Act would simply require OPM to report to Congress on all agency personnel conducting union duties at work.

Limit Adverse Employment Action Appeals

Partially covered by the MERIT Act, appeals of adverse action should be limited and well defined. Currently, the appeals process employees can take in response to adverse action is overly broad and redundant. The prospect of time-consuming appeals can deter federal managers from taking adverse employment actions that are warranted against a poorly performing employee. According to Rachel Greszler of The Heritage Foundation, federal employees can appeal certain decisions “through union grievances or the Merit Systems Protection Board, and ultimately through the court system.”²¹¹

The GEAR Task Force supports a reform proposed by Rachel Greszler to limit outside appeals to formal disciplinary actions, such as removal or demotion, but not to compensation decisions.²¹² Barring appeals of management decisions such as performance ratings and step increases would cut down on frivolous appeals and increase efficient managerial decisions.

Furthermore, Congress should enact legislation that limits the venue for outside appeals to be heard. Under current law the U.S. Merit Systems Protection Board (MSPB), U.S. Federal Labor Relations Authority, (FLRA), Office of Special Counsel (OSC), and Equal Employment Opportunity Commission (EEOC) are all available venues for appeals to be processed. Legislation should be enacted limiting appeals to any one of these offices in response to disciplinary action.

PAY AND BENEFITS

The GEAR Task Force recognizes that modernizing the federal workforce must include reforming how federal employee pay and benefits are structured. The federal government’s current compensation framework largely ignores the more efficient compensation approach that has evolved out of the private market. In the federal government, employees receive on average 17 percent more in total compensation, when benefits are included, than their counterparts in the private sector. This amounts to \$31 billion per year in added compensation costs that are borne by the American taxpayer. It does not adequately incentivize productive behavior, overcompensates many employees at the cost of undercompensating others, and relies on hidden and overgenerous benefits. Unfortunately, this approach only tends to fuel the poor performance of federal workers and overall operation of the federal government.

²¹¹ Rachel Greszler and James Sherk, Why it is Time to Reform Compensation for Government Employees, HERITAGE FOUNDATION (July 27th, 2016), <https://www.heritage.org/jobs-and-labor/report/why-it-time-reform-compensation-federal-employees> (last visited Jan. 8th, 2020).

²¹² Id.

Incentivize Performance and Recruitment of Highly Qualified Employees

If people working in federal offices are expected to innovate, their managers must be empowered to develop individuals and teams to their full potential. Rewarding employees based on performance is critical to achieving this. Unfortunately, the existing compensation system for federal employees is almost entirely devoid of a merit-based component.

Federal employee base pay uses a standardized, seniority-based system that revolves around the General Schedule (GS) pay scale. It entitles federal employees to a “step increase” pay raise every year that they demonstrate an “acceptable level of competence.” In other words, federal employees get a raise for merely not getting fired—which as was noted above, is virtually impossible to carry out. Furthermore, managers are largely limited in trying to prevent a below adequate employee from getting scheduled raises within one paygrade. For a manager to delay a within grade pay raise, they must assess the employee as performing below an “acceptable level of competence” before a scheduled raise. After a denial is made, a manager must reassess the decision every 52 weeks, as they look for results that the employee has reformed their practices and become relatively competent in their performance.²¹³

Federal compensation is further inflated because employees are entitled by statute to an annual cost of living adjustment (COLA) pay increase. This COLA varies year-to-year, but cannot exceed 3%, based upon inflation. With a compensation package almost completely removed from merit, employees have little incentive to perform at a higher level that would ultimately benefit the American taxpayer.

Employees are also eligible to receive bonuses that are supposed to be merit-based, but even these are deeply flawed. These so-called ratings-based awards are virtually guaranteed to all employees. According to the GAO, over 99 percent of federal employees were rated high enough to receive a ratings-based award.²¹⁴

The GEAR Task Force recognizes that from an incentives perspective, a standard bonus for everyone equates to a bonus for none. Starting in FY2020, the relative size of employee bonuses will be increased as a way of injecting more merit-based considerations into federal compensation.²¹⁵ This move unfortunately has historically been negated by the fact that nearly every employee qualifies for this type of bonus.

²¹³ U.S. Office of Personnel Management, Handling Issues Within Grade Increase Denials, <https://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/handling-issues-related-to-within-grade-increases.pdf>

²¹⁴ Government Accountability Office, Distribution of Performance Ratings Across the Federal Government, 2013, <https://www.gao.gov/products/GAO-16-520R>

²¹⁵ For FY 2010 to FY 2017, bonuses were capped at 1 percent of aggregate funds spent on salaries for non-Senior executive Service (non-SES) level employees. For the same time period, SES level employees were capped at 4.5 percent. From FY 2017 to FY 2020 those numbers have shifted to 1.5 percent and 7.5 percent, respectively. <https://chcoc.gov/content/guidance-awards-ses-and-slst-employees-fiscal-year-2017>

Wisely, the Trump administration, under the direction of Margaret Weichert, the Acting Director of OPM, has issued guidance designed to better reward high performers with bonuses. For instance, in July 2019, Acting Director Weichert directed federal agencies to “ensure only employees who have demonstrated the highest levels of individual performance receive the highest annual ratings of record and the highest performance awards.”²¹⁶

Also in July 2019, Weichert and Acting Director of OMB Russell Vought, directed agencies to “adjust as appropriate, the balance between rating-based awards and individual contribution awards (e.g., special act awards)” as a more effective way “to reward and recognize high performing employees and those with talent critical to mission achievement.”²¹⁷ The new policy also calls for agencies to utilize their “Work Force Funds” to carry out these goals.

While these recent administrative changes are a welcome shift toward merit-based compensation, there are still other changes that can and should occur. The Task Force urges Congress to statutorily reduce the federal government’s reliance on annual step increases. Managers should be given reasonable discretion to determine how employees progress up the GS pay scale based on performance. As a first step to accomplishing this, the extent to which a federal employee’s compensation automatically grows over every year by virtue of advancing one “step” should be cut in half. Savings from doing so should then be used to give discretion to the manager to award raises to those employees that deserve them based on their job performance and increase managers’ authority to reward annual bonuses.

Additionally, OPM’s description of “fully successful” provided by its July 2019 guidance, while an improvement over current agency practice, still falls short of describing the level of performance that many Americans would deem worthy of a bonus. The guidance describes this updated threshold as follows:

Performance at the Fully Successful level is a positive notation. Fully Successful individuals deliver on behalf of our citizens, meeting prescribed objective, measurable outcomes relating to the duties that they perform. Fully Successful should be seen as the category for employees who are meeting valid performance standards designed to deliver on what the American public should be able to expect from their civil servants.²¹⁸

²¹⁶ Chief Human Capital Officer Council, Guidance on Awards for SES and SL/ST employees for Fiscal Year 2017, (Aug. 12th, 2016) <https://chcoc.gov/content/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing>

²¹⁷ Chief Human Capital Officer Council, Guidance on Awards for Employees and Agency Workforce Fund Plan (Jul. 12th, 2019) <https://chcoc.gov/content/guidance-awards-employees-and-agency-workforce-fund-plan>

²¹⁸ Id.

The GEAR Task Force believes that bonuses should not be rewarded for a level of performance that simply meets expectations. They should be reserved for those employees that exceed expectations. Therefore, the Task Force recommends making “Exceeds Fully Successful” the new benchmark for bonuses. Exceeds Fully Successful, according to the new OPM guidance is “reserved for the individuals who are delivering measurable outcomes for the American public in a way that is measurably beyond the standard set for fully successful.” Additionally, pursuant to this enhanced standard, Departments should be required to set their own explicit framework for managing benchmarks guiding positive financial reinforcement for employees.²¹⁹

Finally, the Task Force recommends repealing current law prohibiting basing bonus decisions on the relative performance of an employee compared to their peers. In other words, employees cannot be “graded on a curve”, or competitively.²²⁰ Repealing this prohibition would simply add another tool to the toolbox for managers freeing them to design innovative incentive models for the top performers and encourage increasingly productive behavior.

Reform the GS Pay Scale to Attract Higher Performing Employees

Another flaw in the federal employee compensation system is the fact that it overcompensates less qualified employees while undercompensating employees with higher qualifications. The natural byproduct of this incongruity—along with the dearth of performance incentives noted above—is to repel highly qualified candidates while incentivizing those with less qualifications to retain federal employment. According to the Congressional Budget Office (CBO), federal employees with a high school diploma or less receive wages 34 percent higher than those of their private sector counterparts, while federal employees with a doctorates and professional degrees were underpaid by 24 percent.²²¹

The GEAR Task Force urges lawmakers to explore options for rightsizing the wages of federal workers to better match their qualification in order to ensure that the federal workplace does not become a bastion for low-achieving employees. For example, the GS scale could be expanded at both ends to accommodate higher and lower wage-earners. Lawmakers could also expand the usage of Special Rates, which OPM currently uses to address staffing problems. These challenges are caused by, among other things, “significantly higher non-Federal pay rates than those payable by the Federal Government within the area, location, or occupational group involved.”²²²

²¹⁹ Kettl, et. al., supra note 11.

²²⁰ Chief Human Capital Officer Council, Applying Rigor in the Performance Management Process and Leveraging Awards Programs for a High-Performing Workforce (Jul. 12th, 2019 <https://chcoc.gov/content/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing>

²²¹ Chart of Federal Employee Pay Compared to Private Sector, CONGRESSIONAL BUDGET OFFICE (Apr. 25th 2017),

<https://www.cbo.gov/publication/52637#section1> (last visited Jan. 8th, 2020).

²²² Special Rate Requests, OFFICE OF PERSONNEL MANAGEMENT, <https://apps.opm.gov/SpecialRates/srsrequest.aspx> (last visited Jan. 8th, 2020).

Congress should also limit having to make a performance improvement plan only for those they want to take an adverse employment action against. Performance improvement plans are burdensome and requiring them is an inefficient use of managerial resources and taxpayer funds.

DIFFERENCES IN AVERAGE HOURLY COMPENSATION BETWEEN FEDERAL AND PRIVATE-SECTOR WORKERS, BY EDUCATIONAL ATTAINMENT

Difference by Percentage

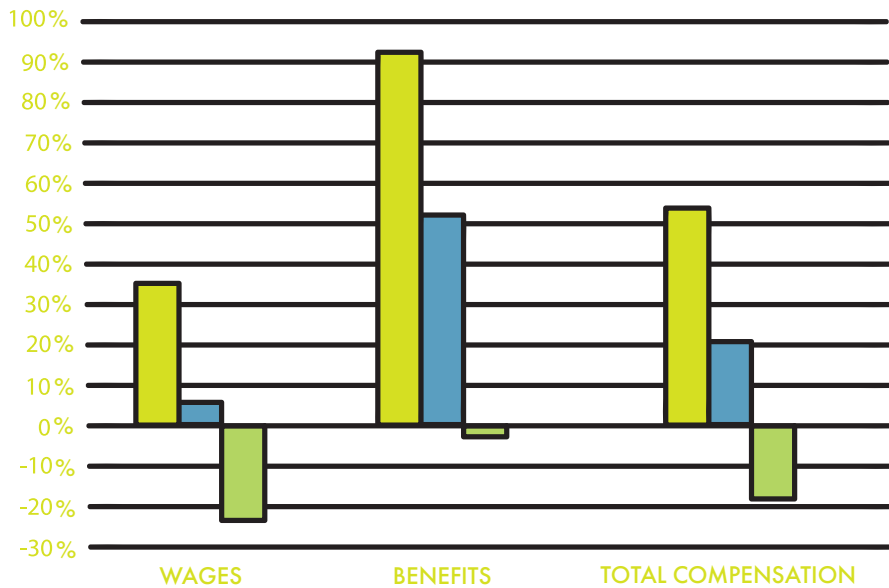


Chart of Federal Employee Pay Compared to Private Sector, CONGRESSIONAL BUDGET OFFICE (Apr. 25th 2017), <https://www.cbo.gov/publication/52637#section1> (last visited Jan. 8th, 2020).

HIGH SCHOOL DIPLOMA OR LESS ■
 BACHELOR'S DEGREE ■
 PROFESSIONAL DEGREE OR DOCTORATE ■

package. According to the Congressional Budget Office (CBO), in 2016, these exorbitant benefits cost taxpayers \$91 billion, with \$83 billion for federal pensions and only \$8 billion for TSP contributions.²²³

The FERS system is simultaneously immoderate and unstable, while remaining a burden on the American taxpayer. While federal employees enjoy benefits from both types of retirement plans, only 56 percent of private sector employees have a job where they participate in some type of retirement benefit.²²⁴ Federal employees also receive benefits worth 14.0 to 14.2 percent of their wages, while the average retirement benefit for private sector employees is 3 percent.²²⁵ Moreover, this massive system is an inherently unstable retirement model. For the pension system to work as designed, it requires a very low rate of error based upon many assumptions.

Reform Federal Retirement Plans

The other weakness of the federal compensation system is the bloated benefits package the federal workforce receives. Not only are these benefits expensive to fund, they tend to mask the true costs of the workforce and further fuel a compensation system lacking performance incentives.

Federal retirement benefits account for the largest benefit-based expense of the federal government. The primary driver of retirement benefits is the federal pension called the Federal Employee Retirement System (FERS). Federal employees also receive a 401k-style Thrift Savings Plan (TSP), but unfortunately this makes up a much smaller piece of the retirement

²²³ Justin Falk, et. al., Options for Changing the Federal Retirement Service, CONGRESSIONAL BUDGET OFFICE (Aug. 2017), <https://www.cbo.gov/publication/53003>

²²⁴ National Compensation Study: 2019, U.S. Bureau of Labor Statistics (Sept. 2019), <https://www.bls.gov/ncs/ebs/benefits/2019/employee-benefits-in-the-united-states-march-2019.pdf>

²²⁵ Andrew Biggs, Have Public Pensions Become More Generous, FORBES.COM (Aug. 14th, 2018) <https://www.forbes.com/sites/andrewbiggs/2018/08/14/have-public-employee-pensions-become-more-generous-or-less/#57be31611e20>

The evidence of failed pension systems litters the entire United States.²²⁶ According to ALEC, the staggering unfunded liabilities of state administered pension plans exceeds \$6 trillion.²²⁷ Sadly, even the best managed, most stable, state pension plans have a significant funding gap.²²⁸

The GEAR Task Force supports a phase-out of the FERS system for future federal hires, eventually offering an enhanced TSP-only system in its place.²²⁹ This would raise the base federal TSP contribution as well as the cap on federal matches. This approach would create savings for the taxpayer, while granting greater certainty to future contributors. By having a higher contribution threshold with an increased benefit option, employees will one-day invest more personally in their savings and have a more transparent view of their personal responsibility in saving for retirement.

Optimize Paid Leave Benefits

In recent years many private sector businesses have been moving to provide a paid leave program to their employees to meet a growing market demand in the talent retention and recruitment space. In December of 2019, Congress reacted to this by passing into law a 12-week paid parental leave program that applied to nearly all federal workers.²³⁰ CBO has estimated that this plan will cost taxpayers approximately \$8 billion over ten years.²³¹

On its face this may seem like a prudent act designed to allow the federal government to compete with the private sector for personnel. However, when viewed in the context of overall federal paid leave policy, this only adds to an already bloated compensation and benefits system for federal workers in comparison to private sector workers.

In 2015, private sector employees at large companies received an average of 29 days of paid leave, including vacation, sick leave, and holidays.²³² On the other hand, federal employees with just three years of service are able to receive 43 days of paid leave per year, can access up to 30 days of advanceable sick leave for reasons such as illness, childbirth, and adoption,²³³ and now, pursuant to the paid

²²⁶ Powers, et. al., Unaccountable and Unaffordable, AMERICAN LEGISLATIVE EXCHANGE COUNCIL (Dec. 2017) https://www.alec.org/app/uploads/2017/12/2017-Unaccountable-and-Unaffordable-FINAL_DEC_WEB.pdf

²²⁷ Id.

²²⁸ Id.

²²⁹ Greszler & Sherk, supra note 217.

²³⁰ Jack Kelly, In A Historic Bill, Federal Workers Will Receive 12 Weeks Of Paid Parental Leave, FORBES.COM (Dec. 19th, 2019), <https://www.forbes.com/sites/jackkelly/2019/12/19/in-a-historic-bill-federal-workers-will-receive-12-weeks-of-paid-parental-leave/#6ef6f3722902>

²³¹ Congressional Budget Office, Letter regarding Statutory Pay-As-You-Go Effects of S. 1790, the National Defense

Authorization Act for Fiscal Year 2020 and the Budgetary Effects of the Federal Employee Paid Leave Act, (Dec. 11th, 2019) <https://www.cbo.gov/system/files/2019-12/s1790paygosenate.pdf>

²³² Greszler & Sherk, supra note 217.

²³³ Fact Sheet: Advanced Sick Leave, OFFICE OF PERSONNEL MANAGEMENT, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/advanced->

parental leave expansion of 2019, get an additional 12 weeks of paid parental leave. Thus, a qualifying federal employee could be paid for nearly an entire year of leave. This calculation does not even account for the “wide range of leave options and workplace flexibilities” available to federal employees “to assist an employee who needs to be away from the workplace” that include “leave under the Family and Medical Leave Act (FMLA), donated leave under the voluntary leave transfer program, leave without pay, alternative work schedules, credit hours under flexible work schedules, compensatory time off and telework. Agencies may also have a voluntary leave bank program.”²³⁴

The GEAR Task Force recognizes that this imbalance between federal employee and the private sector leave policy is simply gratuitous and should be corrected as part of a larger goal of shifting federal personnel policies closer to those driven by the private employment market. To do so, the GEAR Task Force recommends that lawmakers make the newly available 12 weeks of parental leave count against existing paid leave days. Additionally, lawmakers should phase in a reduction in the total amount of traditional paid leave days to match the 29 days available in the private sector.

Promote Responsible Federal Employee Health Insurance Plans

Lastly, federal employee health insurance benefits should be restructured to incentivize employees to choose more affordable plans. Currently under the Federal Employee Health Benefits program (FEHB) participants choose from a range of plans and pay for about 30 percent of premiums, with the federal government covering the remaining 70 percent.²³⁵ Since this ratio does not change with the higher-priced coverage options, federal employees have no incentive to choose the cheaper plan, as the majority of the cost is covered by the government.

The GEAR Task Force supports transitioning to a premium support system under which the government would offer a standard, flat federal contribution toward the purchase of health insurance and employees would be responsible for paying the rest. This option is designed to encourage employees to purchase plans with the appropriate amount of coverage that fits their needs.

sick-leave/ (last visited Jan 7, 2020)

²³⁴ Fact Sheet: Voluntary Leave Bank Program, OFFICE OF PERSONNEL MANAGEMENT, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/voluntary-leave-bank-program/>

²³⁵ Greszler & Sherk, *supra* note 217.

The expectations in Washington D.C. are different than those experienced by the rest of the nation. Around the country, hardworking Americans are expected to be efficient and accountable when running their businesses, their households, and their personal lives.

On the other hand, in Washington D.C., expectations are hardly the same. Government efficiency and accountability is the exception, not the rule. This tolerance of waste and irresponsibility has further engrained a toxic mindset in government that puts bureaucracy over American citizens.

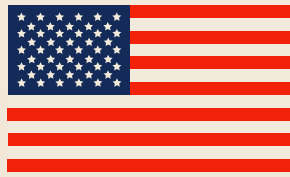
While well-intended, the answers offered by the political Left are not solutions, but rather superficial stopgaps that prolong problems while also creating new ones. Democrats would continue to abdicate legislative power to an administration that shares their policy goals. They would create more executive offices and programs to spend taxpayer money on wishful campaign promises. They would continue to allow judges to create policy in spaces where they encounter political resistance within the legislative process. In short, the answer the Left has offered, is the same that they will continue to propose: more government, more spending, and more bureaucrats.

The RSC GEAR Task Force has offered a practical vision to achieve an efficient and accountable government with three simple steps:

1. Reform Government POWER structures
2. Reform Government PRACTICES
3. Reform Government PERSONNEL policies

This proposal offers over 100 commonsense policy solutions to transform the government and deliver better results to the American people.

Most people would agree that the government should not pay benefits to dead people and that it should be able to count how many programs it has. Most people would also agree that the three branches of government should function efficiently and with accountability to the American people. The federal government should waste no time in working toward this simple vision of efficiency and accountability. Congress should lead this reform by beginning to enact the policies recommended in this report so that our government can live up to the expectations of the American public.

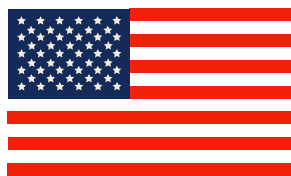


THE RSC NATIONAL SECURITY STRATEGY

***STRENGTHENING
AMERICA &
COUNTERING GLOBAL THREATS***



THE REPUBLICAN STUDY COMMITTEE'S TASK FORCE ON
NATIONAL SECURITY AND FOREIGN AFFAIRS



THE RSC NATIONAL SECURITY STRATEGY

***STRENGTHENING
AMERICA &
COUNTERING GLOBAL THREATS***



FELLOW AMERICANS,

At the beginning of each Congress, every member raises his or her right hand and swears an oath to support and defend the Constitution from all enemies, both foreign and domestic. Today, our constitutional government, our American way of life, and the U.S.-led world order based on freedom face a variety of growing threats from abroad. Our nation's two political parties are offering very different ideas for how we tackle those threats.

For eight years, President Obama's failed policies allowed our greatest adversaries to grow stronger while weakening America's position as the world's preeminent power. During this time, Communist China and Russia went completely unchecked, Iran was gifted a plane full of cash, jihadist groups such as ISIS were casually dismissed as the "JV squad," key allies were offended, foreign aid and United Nations dues failed to advance U.S. interests, and America behaved sheepishly on the world stage.

In contrast, since taking office, President Donald Trump has restored bold American leadership and credibility by advancing an "America First" national security and foreign policy agenda. This approach seeks to advance American global interests above all else and restore confidence in America's purpose. It recognizes the United States is the best force for good in the world and that our strength creates more freedom, prosperity, and potential for people everywhere. The idea of "American Exceptionalism" shines bright again. As a result, America is standing up to Communist China for the first time in decades, Russia has been exposed as a national security threat, Iran's sweetheart nuclear deal has been replaced with a maximum pressure campaign, and we have decimated traditional ISIS strongholds. Additionally, international governing bodies and recipients of U.S. foreign aid have been put on notice that American support comes with "America First" conditions. And importantly, President Trump has stood by our most important ally in Israel, even taking the long overdue, extraordinary step of moving our embassy to Jerusalem.

Congressional Democrats have fought this commonsense "America First" strategy at every turn. They have repeatedly questioned the president's aggressive posture against Communist China, even defending China's handling of the COVID-19 crisis. Despite supporting President Obama's weak posture on Russia, they now claim to be "Russia hawks" even though there is ample evidence to the contrary. They were outraged when President Trump pulled out of the Iran nuclear deal and even more upset when he took down terrorist leader Qassem Soleimani

in defense of American lives. Instead of celebrating our embassy's move to Jerusalem, Congressional Democrats expressed silence or open disdain. They continue to support the same failed foreign policies that undermined American credibility, damaged our alliances, and emboldened tyrants and terrorists.

We, the members of the Republican Study Committee's National Security & Foreign Affairs Task Force, are committed to building upon President Trump's efforts to keep our country safe and to advancing policies in Congress that will strengthen American leadership. The RSC National Security Strategy: Strengthening America & Countering Global Threats provides a comprehensive blueprint with over 130 policy recommendations for how Congress can engage in this important debate.

The crisis our country is currently enduring makes it vitally important that American leadership on the global stage remains robust. The ideas we present here would ensure that remains the case for generations to come.


RSC Chairman, Rep. Mike Johnson


Task Force Chairman, Rep. Joe Wilson


Rep. Rob Wittman


Rep. Ann Wagner


Rep. Alex Mooney


Rep. Don Bacon


Rep. Jack Bergman


Rep. Neal Dunn


Rep. Clay Higgins


Rep. Ralph Norman


Rep. Dan Crenshaw


Rep. Bryan Steil


Rep. Michael Waltz

THE RSC NATIONAL SECURITY STRATEGY

STRENGTHENING AMERICA & COUNTERING GLOBAL THREATS

Since the end of World War II, the United States has been the dominant force on the global stage. The strength of our national character and our economic and military might cannot be matched, and we have used our position as a force for good, fostering a world order rooted in our values of freedom, human rights, the rule of law, and open markets. The fall of the Soviet Union in the early 1990s left the U.S. as the sole remaining superpower, and the loss of our competition gradually caused a shift in our national security strategy.

America is still the freest, most powerful, and most prosperous nation in all the world. However, over the past two decades, U.S. dominance has increasingly been challenged by numerous rising threats to the U.S.-led global order. These threats point to the reemergence of powerful competition, the likes of which we have not seen since the Cold War, and they require us to reevaluate our national security strategy once again.

There is perhaps no bigger threat to continued U.S. dominance than China. For decades now, the prevailing foreign policy consensus on that nation has been misguided. Conventional wisdom was that a narrow strategy of simply integrating China into global markets and facilitating a more robust trading relationship would transition Beijing away from communism and toward freer markets. Instead, China has exploited its opportunities to double down on authoritarianism and use international markets to amass enormous economic and military strength, often by nefarious means. Beijing now leverages this strength to undermine the U.S.-led international order by replacing our leadership with their own distorted worldview. The recent COVID-19 crisis has clearly illustrated the danger of allowing this to happen.

Meanwhile, throughout the last decade in particular, Russia has aggressively reasserted itself as a global power with its own clear intent to undermine the U.S.-led international order. Under the leadership of dictator and former KGB agent Vladimir Putin, the

Kremlin's goals are to advance authoritarianism both at home and abroad. It has invaded and occupied several neighboring democracies, helped prop up other authoritarian regimes, used its vast natural resources to blackmail its neighbors, and sought to undermine Western democracies, including the U.S., with disinformation campaigns. Russia also maintains a military that is capable of challenging the U.S. and has worked to undermine NATO, the most successful alliance of democracies in the world.

While the rise of China and Russia pose the biggest strategic threats to the United States, rogue regimes like Iran remain extremely dangerous as well. Iran continues its pursuit of nuclear weapons, seeks Israel's destruction, and stands as the world's most prolific sponsor of terrorism. More broadly, Salafi-jihadist groups like ISIS and Al Qaeda have grown in a number of new theaters and remain a top security concern.

These growing threats require Congress to adopt new policies focused on advancing America's interests at home and abroad. Protecting the liberty, security, and prosperity of the American people is the most fundamental role of our government, and it must be done efficiently and effectively. A strong America is essential because our strength enables us to counter threats, oppose tyrants and terrorists, and advance the ideals of peace, freedom, and prosperity around the globe. By contrast, the Russian and Chinese governments seek to dominate their own people and assert control over the other countries of the world.

Congress has an important, but too often underutilized, role in the development and execution of national security policy. This report by the Republican Study Committee's National Security & Foreign Affairs Task Force presents a comprehensive blueprint for how Congress can fulfill its responsibility and includes more than 130 policy recommendations focused on strengthening America and countering our global threats.

COMMUNIST CHINA: A NEW STRATEGY FOR COUNTERING AMERICA'S TOP THREAT

"The PRC's [People's Republic of China] rapid economic development and increased engagement with the world did not lead to convergence with the citizen-centric, free and open order as the United States had hoped. The CCP has chosen instead to exploit the free and open rules based order and attempt to reshape the international system in its favor. Beijing openly acknowledges that it seeks to transform the international order to align with CCP interests and ideology. The CCP's expanding use of economic, political, and military power to compel acquiescence from nation states harms vital American interests and undermines the sovereignty and dignity of countries and individuals around the world."

– The White House, *U.S. Strategic Approach to the People's Republic of China*¹

The COVID-19 pandemic, which originated in Wuhan, China, has caused a renewed focus on the challenge that China poses to the United States. From the beginning of the outbreak, the Chinese Communist Party (CCP) has worked to conceal events and manipulate the narrative. China silenced doctors and journalists who spoke out and pressured international organizations such as the World Health Organization (WHO) to defend the country's pandemic response and even disseminate Chinese government talking points. Chinese officials then created an alternative narrative, fueling a conspiracy theory, peddled through state sponsored outlets, that the virus was created by the U.S. military.

Yet, China's coercive and deceptive actions should not be surprising. China, after all, is a communist nation that seeks to overtake the United States as the world's preeminent power. It is a strategic competitor and the foremost national security challenge that the United States faces today. It has worked to displace the United States in the Indo-Pacific region, expand the reaches of its state-driven economic model, and reorder the region in its favor. But, as President Trump's National Security Strategy notes, China also seeks to both challenge America's overall power and influence and shape a world that is antithetical to U.S. interests.

In November 2012, at the 17th CCP Congress, China's President Xi Jinping, the country's most authoritarian leader in modern memory, first announced his vision for achieving "the Chinese dream of national rejuvenation" and military and economic dominance. Five years later at the 18th CCP Congress, Xi explained that "the dream of the Chinese people is closely connected with the dreams of the peoples of other countries; the Chinese Dream can be realized only in a peaceful international environment and under a stable international order." This dream, as many experts have noted, is for the CCP to replace the American-led international system with one under CCP leadership. Former Under Secretary of Defense for Policy John Rood has noted, "China wants not only to become the world's largest and most influential economy, but also to be the world's largest and most influential nation in all spheres of life."

China is on its way to achieving that dream, primarily through rapid economic growth and military modernization. China currently has the world's second-largest economy in terms of nominal GDP (\$14.14 trillion) and the largest in terms of purchasing power parity (PPP) GDP (\$27.31 trillion). In 2000, China controlled only four percent of the global economy, and the United States controlled 31 percent. Today, China stands at 15 percent, and the United States' share has dropped to 24 percent.

The growth of China's centrally controlled economy has been fueled largely by tools of economic coercion, including intellectual property theft and economic espionage of U.S. companies. In 2019 alone, one in five North American-based companies said that Chinese firms had stolen their intellectual property (IP) within the last year. Between 2013-2017, the economic damage of IP theft totaled \$1.2 trillion. The CCP also deliberately sends thousands of Chinese students to the United States and other nations under the guise of international scientific collaboration to systematically target critical technologies to advance China's national security interests. Secretary of Defense Mark Esper has stated that China "is perpetrating the greatest intellectual property theft in human history."

As part of the "Chinese dream," China aims to become the world's science and technology leader by 2050. If current trends continue, the National Science Board estimates that China may become the leading global investor in research and development in just a few years. Much of this growth is due to China's theft of IP. As Secretary Esper has noted, China is combining "direct state investment, forced technology transfer, and intellectual property theft to narrow the gap between U.S. and Chinese equipment, systems, and capabilities." A report by the Center for a New American Security (CNAS) has noted that, while the Soviet Union was never able to match the American technological superiority, the same may not be true for China.

China has, in turn, used this wealth and technology theft to embark on an ambitious project of military modernization. The Department of Defense's 2019 Report on the Military and Security Developments Involving the People's Republic of China notes that "China uses a variety of methods to acquire foreign military and dual-use technologies, including targeted foreign direct investment, cyber theft, and exploitation of private Chinese nationals' access to these technologies, as well as harnessing its intelligence services, computer intrusions, and other illicit approaches."

According to The Heritage Foundation's 2020 Military Index, China is the "most comprehensive threat that the U.S. faces," being both "formidable" in its military capabilities and "aggressive" in the scope of its provocative behavior.

In addition to its economic aggression and military modernization, China conducts political warfare and disinformation campaigns against the United States and other democracies. It frequently targets academia, the media, business, and cultural institutions to suppress criticism and promote positive views of the CCP. It uses so-called "Confucius Institutes," Chinese-language centers in American universities, to peddle pro-Chinese political narratives to college students. A 2019 Senate Permanent Subcommittee on Investigations report found that Confucius Institutes are located at more than 100 American colleges and have received more than \$150 million in support from the Chinese government.

The CCP has also used its increasing wealth to pursue "financial diplomacy" through state-directed investment projects overseas. While on their face, these initiatives seem to simply finance infrastructure improvements in developing nations, the CCP uses them as a direct attempt to "counterbalance" the United States and advance a China-centric vision. Its efforts include more than \$48 billion in infrastructure investment between 2000-2016 in East Asia alone. China's One Belt One Road Initiative—the centerpiece of this strategy—plans to invest over \$1 trillion in infrastructure across the globe.

For the CCP, foreign assistance and involvement in international organizations are a means to cast its political system and approach to economic development as superior alternatives to those of the United States and other democratic countries. As part of this approach, Beijing has increased pressure on foreign countries, companies, and even individuals to conform to its worldview. China's soft power strategy has paid dividends, including being appointed to bodies such as the United Nations (U.N.) Human Rights Council, where it possesses the ability to vet candidates for critical U.N. human rights posts.

The CCP's aggressiveness abroad is in many ways rooted in its authoritarianism at home. Xi has concentrated more power than any Chinese leader since Mao Zedong. In March 2018, the National People's Congress voted nearly unanimously to amend their constitution to remove presidential term limits. Under President Xi, China has become even more totalitarian in its censor-

ship of media and the internet and has established an elaborate system of surveillance of its citizens. It has also undertaken a strategy of “sinicization” of all religion, which attempts to control and manipulate all aspects of religious faith into a socialist mold with Chinese characteristics. This has been particularly evident in the Muslim-majority province of Xinjiang and the Buddhist-majority province of Tibet, which, in the words of the U.S. Commission on International Religious Freedom (USCIRF), “increasingly resemble police states.” Christians have also faced increasing persecution from the CCP, including forced church closures, the jailing of pastors, and even the issuance of a state-sanctioned translation of the Bible, which promotes a “correct understanding” of the text that emphasizes compatibilities with communism. Additionally, the CCP has worked to quash democracy in Hong Kong despite assurances to the international community that it would respect “One Country, Two Systems.” In May 2020, China announced that it would be taking over Hong Kong by instituting a national security law that would apply mainland Chinese law to the special administrative region. This action would essentially mean the end of the “One Country, Two Systems” framework.

China’s actions in Hong Kong are just the latest example of how the CCP fears liberal democracy more than anything else and views itself in ideological competition with Western democratic values. Shortly after Xi took power in 2012, the General Office of the CCP circulated a document entitled the Communiqué on the Current State of the Ideological Sphere or—Document No. 9—that made clear the CCP’s authoritarian vision sees itself at war with the American values of constitutional democracy, free markets, rule of law, and human rights. The document states that promoting Western democracy is an attempt to undermine the system of socialism with Chinese characteristics, that promoting “universal values” is an attempt to weaken the theoretical foundations of the CCP’s leadership, and that promoting civil society and free markets are an attempt to undermine the CCP.

In sum, the Chinese grand strategy of achieving the “Chinese dream” entails transforming the international system to one under CCP leadership. Industrial espionage, intellectual property theft, malign political influ-

ence in democratic nations, making developing countries dependent on Chinese loans and construction projects, and discrediting liberal democratic notions of human rights are all tools China has used in its effort to assert international dominance. The CCP’s goal was probably best described by former Vice President Dick Cheney’s national security adviser Aaron Friedberg as “making the world safe for authoritarianism.”

The old way of thinking about China has failed. A strategy limited to trade and economic integration alone has not caused China to democratize or grow less aggressive in its behavior. On the contrary, the CCP has grown more authoritarian and aggressive. The Task Force believes that Congress must adapt to a new strategy, one which seeks also to push back against the CCP and its efforts to undermine U.S. interests, remake the world order, and promote an alternative form of governance. The CCP’s efforts are multifaceted and require reforming existing laws and enacting new legislation in a broad variety of areas. The Task Force knows that Congress must take the lead in pushing such a strategy forward. Pushing back against China must begin by advancing policies in at least five different areas. First, we must push back against China’s industrial espionage and intellectual property theft and malign economic behavior. Second, we must stop China’s malign political influence and disinformation campaigns. Third, we must stand up to China’s human rights violations. Fourth, we must counter China’s global military modernization. Fifth, we must strengthen our alliances in the Indo-Pacific region.

COUNTERING CHINA’S INDUSTRIAL ESPIONAGE AND INTELLECTUAL PROPERTY THEFT

“The Chinese government is determined to acquire American technology, and they’re willing to use a variety of means to do that—from foreign investments, corporate acquisitions, and cyber intrusions to obtaining the services of current or former company employees to get inside information. If China acquires an American company’s most important technology—the very technology that makes it the leader in a

field—that company will suffer severe losses, and our national security could even be impacted.”

– FBI Director Christopher Wray

The CCP is undertaking a project of massive intellectual property theft and industrial espionage in an effort to surpass the United States technologically and economically. According to the 2017 Commission on the Theft of Intellectual Property, China is the world’s top intellectual property infringer. This problem was made worse by President Obama, who failed to respond forcefully to China’s hacking of the Office of Personnel Management network, which was the greatest theft of sensitive personnel data in history. In response to the cyberattack, President Obama refused to impose sanctions on China or publicly blame them for the attack, opting instead to negotiate a failed diplomatic agreement with Xi to end cyber espionage.

In recent years, Congress has taken a number of important steps to combat Chinese IP and technology theft. It has passed key statutes, such as the Defend Trade Secrets Act (DTSA), which allowed private rights of action against Chinese companies in certain circumstances; the Export Control Reform Act (ECRA), which gave the Committee on Foreign Investment in the United States (CFIUS) authority over “emerging” and “foundational” technologies; and the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), which expanded the scope of covered transactions in CFIUS’ jurisdiction.

The Trump administration has also made protection of American IP a high priority. For instance, it has elevated IP protection as a major issue in U.S.-China trade talks. Phase One of the Economic and Trade Agreement signed by the two nations forces China to make major IP-related concessions, including limiting its ability to require foreign companies to transfer intellectual property to Chinese entities as a condition for doing business. In February 2018, the Department of Justice (DOJ) also announced a “China initiative” to combat economic espionage through a number of new enforcement actions, including bringing more actions for theft of trade secrets and intellectual property. Thus far, this initiative has brought forth a spike in prosecutions, with over 1,000 investigations currently open, accord-

ing to FBI Director Wray. During the Obama administration from 2013-2016, the DOJ did not charge a single person with spying for China. In contrast, since announcing its China Initiative in 2018, the DOJ has filed over 20 criminal cases pertaining to economic espionage, trade secret theft, and export controls.

While these measures have been a good start, the Task Force believes that Congress can do a great deal more to combat China’s theft of intellectual property and industrial espionage. A number of reforms supported by the Task Force are listed below.

Congress should enhance the ability to bring cases for IP theft by ensuring the Defend Trade Secrets Act applies extraterritorially.

In 2016, Congress enacted the Defend Trade Secrets Act (DTSA) to create a new civil private federal right of action for companies to sue for trade secret misappropriation. Previously, trade secret misappropriation was handled through criminal enforcement under the Economic Espionage Act (EEA) of 1996. The EEA’s criminal penalties apply extraterritorially if “(1) the offender is a natural person who is a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State or political subdivision thereof; or (2) an act in furtherance of the offense was committed in the United States.” Congress, however, was silent on whether civil cases under the DTSA applied extraterritorially. Fortunately, some federal courts have recently ruled that the EEA’s extraterritoriality provisions also apply to private civil claims under the DTSA, allowing American courts to gain jurisdiction over overseas companies involved in trade secret theft.

The current ambiguity in the DSTA may create problems down the line if the statute is challenged by Chinese or other foreign companies. The Task Force, thus, believes that Congress should amend the DTSA to explicitly clarify that it applies extraterritorially to ensure that the DTSA remains an important tool for U.S. companies to protect their trade secrets from misappropriation occurring in China.

Congress should require Chinese businesses to assign an agent for service of process in the United States.

Kevin Rosier of the United States-China Economic and Security Review Commission (USCC) has argued that Chinese businesses participating in the United States can effectively operate behind a firewall that can keep them largely immune from the jurisdiction of U.S. courts and regulatory agencies. This can leave U.S. partners, competitors, and investors vulnerable. Rosier notes that if a U.S. plaintiff files a complaint against a China-based firm, the typical first response from the Chinese firm is that it is not subject to U.S. jurisdiction. Since China-based companies typically do not keep a representative of their company in the United States, domestic companies have little recourse to pursue complaints against China. Although international protocols, such as the Hague Service Convention and the Hague Evidence Convention, are supposed to facilitate the pursuit of claims brought by U.S. companies, in practice such litigation is costly, and China interprets its obligations in a way which protects its firms from litigation.

The Task Force recommends that Congress strengthen U.S. laws to ensure Chinese companies that have harmed U.S. citizens and businesses cannot evade accountability in U.S. courts. In particular, Congress should require companies from China, and other nations that skirt the rule of law, to assign an agent based in the United States to accept service of process as a prerequisite to access U.S. markets. By doing so, aggrieved U.S. entities will have an avenue for immediately establishing personal jurisdiction against a Chinese firm.

Congress should address sovereign immunity abuses to better enable private sector litigants to seek legal redress against Chinese companies for IP theft.

The 2017 U.S.-China Economic and Security Review Commission report noted that “The application of the sovereign immunity defense to commercial cases presents a potential risk for U.S. businesses and individuals, allowing Chinese state-owned enterprises (SOEs) to conduct unlawful activity in the United States without legal consequences. Some Chinese SOEs are evading [civil] legal action in the United States by invoking their

status as a foreign government entity under the Foreign Sovereign Immunities Act.” Thus, as the USCC notes, Chinese firms often disguise the actual or beneficial owner to make them appear as a Chinese SOE. This then places the burden on American firms to prove that one of the FSIA exceptions of sovereign immunity applies, such as the commercial activity exception.

Robert Spalding, President Trump’s former Director of Planning at the White House National Security Council has stated, “Typically, the first thing Chinese companies do is try to deploy the Foreign Sovereign Immunities Act to protect themselves against American companies.” Spalding described the Chinese approach as “lawfare,” a form of warfare that exploits U.S. law to deter private parties from exercising their rights. He explained that the CCP will use every obstacle necessary to hemorrhage the resources of American companies until they can no longer afford to do battle. American firms often do not have access to the same level of resources as their Chinese counterparts, which has a “chilling effect” that deters lawsuits.

The Task Force endorses the recommendation by the 2017 U.S.-China Economic and Security Review Commission report that Congress amend the FSIA to allow U.S. courts to hear cases against a foreign state’s corporate affiliates under the commercial activity exception. The Task Force also supports the Commission’s recommendation that the SEC require Chinese firms to waive any potential claim of sovereign immunity if they do business in the United States. This would force Chinese state-owned companies to play by the rules rather than continue to exploit U.S. law to get away with theft. It would also galvanize private sector litigants to go after Chinese companies that steal IP.

Congress should reform the evidentiary requirements of Section 337 of the Tariff Act to facilitate cases for cyber theft of trade secrets.

Section 337 of the Tariff Act of 1930 allows U.S. companies to protect themselves from imports that infringe on IP rights by filing a complaint with the International Trade Commission (ITC). While the ITC cannot award damages, it can direct Customs and Border Protection

(CBP) to block infringing products at the ports of entry. The ITC can serve as an important tool to protect U.S. companies from infringing foreign imports but it can be limited in its ability to sufficiently deter government-backed cyber theft of trade secrets. In particular, it is difficult to gather evidence in cyber theft cases when countries, such as China, direct state-sponsored hackers to steal IP from U.S. companies and then go on to pass that information to Chinese firms that then export products using the IP into the United States. Thus, companies may be unable to prove that products were developed as a result of theft from Chinese government-backed cyberattacks. This is compounded by the problem that the Chinese government entities that commit the cyberattacks are often different than the companies who end up benefiting from and using stolen IP.

The Task Force recommends that Congress should examine the feasibility of reforming the burden of proof in cases when an American company has been the victim of cyber intrusion, including by state-sponsored entities. In such cases, if the complainant can show that it was the victim of cyber theft that compromised a trade secret and that a subsequent import relies on fundamental elements of that trade secret, Congress could statutorily shift the burden of proof to the foreign importer to show that the product was developed independently. Most obviously, this could be accomplished by documenting its own research and submitting this evidence to the ITC. The ITC could also be allowed to consider patterns of behavior, in particular, if a sector has seen multiple findings of cyber theft in a short period of time. The Task Force is cognizant of the potential concern that shifting the burden in such a manner would encourage filing frivolous claims. Thus, Congress should also consider instituting reasonable penalties for the filing of claims with questionable merit, which may include increasing the availability of attorney's fees awards for an innocent defendant. These measures will help make it more difficult for Chinese firms to continue to export products developed with stolen IP as a result of cyber theft into the United States.

Congress should sanction companies that steal American IP and require an annual report identifying such companies.

The Trump administration has used tariffs as a tool to pressure China to stop its theft of IP. However, as Derek Scissors of the American Enterprise Institute has noted, "Tariffs hit all makers of selected products, not just bad actors. 'Snapback' tariffs if China keeps stealing IP would also punish everyone. The thieves at least might get what they're chasing; firms which obey U.S. laws just get the tariff. Tariffs are the wrong tool on IP."

Rather than use tariffs, the Task Force proposes introducing new legislation authorizing the Department of the Treasury to sanction foreign individuals, institutions, organizations, and companies that are involved in significant theft of IP or cyberespionage or that directly benefit from or use stolen IP. As Eric Lorber of the Foundation for Defense of Democracies (FDD) has noted, using targeted sanctions as a tool against China, especially on issues of intellectual property or cyberespionage, would signal to Chinese companies that engaging in such activity entails significant risks. The Commission on the Theft of American Intellectual Property has aptly stated, "No foreign entity that steals IP should be able to access the U.S. banking system."

The Task Force proposes first requiring an annual report by the Department of the Treasury identifying which companies have significantly stolen IP from U.S. companies or have directly benefited from the use of such stolen IP. Such a report could put Chinese companies on notice that their theft of IP and technology will no longer be tolerated and give Congress more insight into the scope of the problem. Treasury could then be required to warn these companies to stop. If they did not stop within six months, they would be sanctioned as Specially Designated Nationals (SDN) and cut off from the U.S. financial system. If a Chinese company was proven to have stolen IP at a later date, Treasury could immediately impose sanctions.

Congress should codify the Department of Commerce's Denied Persons List as well as other tools, short of sanctions, to punish foreign companies with a pattern of breaking U.S. laws.

The Department of Commerce's Bureau of Industry and Security's (BIS) Denied Persons List is a list of people

and companies whose export privileges have been denied. It is prohibited for American companies or individuals to participate in an export transaction with a person on the Denied Persons List. This is different from the Entities List, which identifies foreign parties that are prohibited from receiving some or all items subject to BIS' Export Administration Regulations (EAR) unless the exporter secures a license. Essentially, a denial order is a tool that is stronger than putting a person on the Entities List but weaker than sanctioning someone as a SDN. Denial orders create a formal option to prohibit doing business with a company that has a pattern of behavior with multiple occasions of breaking U.S. laws, such as ZTE, which regularly evaded export laws and sanctions for years. The Task Force believes that the Denied Persons List should be codified by Congress to formalize this important tool for the Department of Commerce.

Still, the Department of Commerce should have additional, more tailored authority to reprimand foreign companies displaying an egregious pattern of breaking U.S. laws. The current options at the Department of Commerce's disposal are not flexible enough. The Entity List and the Denied Persons List have serious drawbacks because they only restrict exports from the United States and not imports. On the other end, an SDN designation, which is enforced by the Department of the Treasury, more closely resembles criminal punishment and includes asset seizure. The Task Force believes that Congress needs to create another option giving the Department of Commerce new authorities to address foreign companies breaking U.S. laws, one that is more comprehensive than the Entity and Denied Persons Lists and less severe than the SDN list. In particular, such a new option should grant the Department of Commerce the ability to go after any business, especially two-way investment, rather than just exports. In this way, such a new option would fill the existing gap to give the Department of Commerce a range of choices to fit the situation.

COUNTER CHINA'S IP THEFT AT AMERICAN RESEARCH INSTITUTIONS AND ACADEMIA

In recent decades, China has utilized a number of underhanded methods to pilfer the IP of the United States

and other Western nations. The U.S. Senate's Committee on Homeland Security and Governmental Affairs noted the following in a November 2019 report:

American taxpayer funded research has contributed to China's global rise over the last 20 years. During that time, China openly recruited U.S.-based researchers, scientists, and experts in the public and private sector to provide China with knowledge and intellectual capital in exchange for monetary gain and other benefits. At the same time, the federal government's grant-making agencies did little to prevent this from happening, nor did the FBI and other federal agencies develop a coordinated response to mitigate the threat.

China's Thousand Talents Program (TTP) is one of the primary avenues by which the Chinese have sought to reap the benefits of Western research and innovation. Under this program, China induces international experts who are engaged in research and development, including in the United States, to take the knowledge and research to China in exchange for salaries, research funding, lab space, and other incentives. A report by the Hoover Institution found that, according to the Chinese government's own websites, more than 300 U.S. government researchers and more than 600 U.S. corporate personnel have accepted TTP money.

The FBI has also found that China sends student spies to the United States to obtain sensitive research and trade secrets. According to the FBI, the Chinese government has used some students and professors in science, technology, engineering, and math (STEM) fields as "non-traditional collectors of intellectual property." The Task Force understands, as the FBI has pointed out, that "the vast majority of the 1.4 million international scholars on U.S. campuses pose no threat to their host institutions, fellow classmates, or research fields. On the contrary, these international visitors represent valuable contributors to their campuses' achievements, providing financial benefits, diversity of ideas, sought expertise, and opportunities for cross-cultural exchange." Still, President Obama may have made the problem of student spies worse by extending Chinese student visas from one year to five years and by extending the

amount of time foreign STEM students could remain in the United States to work through the Optional Practical Training program. These two policies were reversed by the Trump administration.

The Task Force believes a number of measures should be taken to prevent China's IP theft from American universities and research institutions.

Congress should enact a visa disclosure requirement for foreign students receiving funding directly or indirectly from the Chinese government.

The Task Force believes that more needs to be done to ensure our vetting mechanisms are working properly to prevent technology and IP theft by China through foreign students. The 2019 U.S.-China Security and Economic Commission (USCC) report raised the idea of looking into the feasibility of a visa disclosure requirement for foreign students, indicating whether or not they are receiving funding from the Chinese government or an intermediary entity acting in support of China's government. The Task Force supports implementation of such a disclosure requirement.

Congress should require a report on the efficacy of the Department of State's visa screening mechanism to mitigate Chinese IP theft and require the creation of a list of research institutions associated with China's People's Liberation Army and Ministry of State Security.

The Department of Defense's Defense Innovation Unit Experimental (DIUx) noted in a 2008 report that the Department of State does not consider "the protection of critical technologies" when vetting visa applications. The Task Force, thus, supports the 2019 USCC Report's recommendation to have the Government Accountability Office (GAO) conduct an assessment on the efficacy of the Department of State's visa screening mechanism to mitigate the risk of IP and technology theft by China. This report should include the number of foreign students and researchers from China studying in STEM fields, past and current affiliations, primary areas of research, duration of stay in the United States, and subsequent employment. The report should also identify

whether federally funded university research related to emerging technologies may have been unlawfully appropriated by individuals acting on behalf of Chinese entities and identify the risks posed by China's efforts to co-opt U.S. researchers or students at U.S. universities for unlawful appropriation of IP. Finally, as Bradley Bowman of FDD has suggested, Congress should also require the production of a report containing a comprehensive, unclassified list of research, scientific, and engineering institutions associated with China's People's Liberation Army and Ministry of State Security to help prevent granting visas that will be used for exploiting U.S. universities and research centers.

Congress should require student visa holders to report to the Department of Homeland Security if they change majors and require periodic revetting upon reentering the United States.

Current visa screening mechanisms apply before a foreign student has entered the United States and end after the student has entered the country. This creates a vulnerability where students may come to the United States originally wanting to study in one field but then a few years later switch majors to STEM-related fields or may intern with a major U.S. company with technology-related trade secrets. To remedy this, the Task Force proposes that foreign nationals be required to self-report to the Department of Homeland Security under certain circumstances. These circumstances should include whenever the student changes field of study—notably the fields of robotics, aviation, and high-tech manufacturing—or undertakes research, employment, an internship, or volunteer activity with an American company significantly involved in one of these fields. Congress should also require the Department of Homeland Security (DHS) to undertake periodic revetting of students upon reentering the United States.

Congress should end visas, particularly student and tourist visas, for Chinese government officials, active duty members of the Chinese military, and senior officials in the CCP, as well as their immediate family members until China ends IP theft from American universities and research institutions.

A detailed report by the Australian Strategic Policy Institute found that since 2007, approximately 500 Chinese military scientists were sent to the United States to study. According to the report, China's People's Liberation Army (PLA) has been sending its soldiers to study science and engineering in Western universities, including in the United States, as part of a widespread effort to collect military technology.

It should go without saying that Chinese government officials and senior CCP officials and their family members should not be able to study in the United States while China undertakes a campaign of IP theft and economic espionage against the United States. The Task Force proposes that members of the Chinese cabinet, active duty members of the Chinese military, and senior officials of the CCP be prohibited from studying in the United States until the president certifies that the CCP has ceased its efforts to steal U.S. IP through American universities and research institutions. The CCP is a large organization of over 90 million members, which many Chinese citizens are forced to join. A blanket prohibition on visas to CCP members could lead to unintended consequences. However, it would be appropriate to include the senior leadership including the Politburo of 25 members, the Central Committee of 205 full members and 171 alternates, and all 2,280 delegates of the 19th National Congress of the CCP, and their spouses and children.

Congress should impose conditions on the ability of foreign students to be involved in sensitive federally funded research and enact the Protect Our Universities Act.

The Task Force recommends enactment of the Protect Our Universities Act, sponsored by Rep. Jim Banks (R-IN), which would address Chinese economic espionage in American universities by establishing an inter-agency task force led by the Department of Education to address the vulnerabilities present on college campuses. This task force would also manage a list of Sensitive Research Projects, which would be based upon the Commerce Control List, the U.S. Munitions List, and foundational principles developed for advanced military technologies. This would prohibit students from

China, as well as Russia, Iran and North Korea, from participating in sensitive research projects funded by the Department of Defense, the U.S. intelligence community, and the Department of Energy unless those students received a waiver from the Director of National Intelligence (DNI). In addition, this bill would prohibit the technology developed by the Chinese and Russian governments, including Huawei, ZTE, and Kaspersky, from being used in federally funded sensitive research projects.

Congress should require Department of Defense research grant applicants to certify that no recipients have ever participated in a Chinese talent recruitment program.

The Senate Homeland Security Committees' investigation into the TTP revealed the extent to which Chinese talent recruitment plan members "misappropriated U.S. government funding, provided early basic research ideas to their Chinese employers, stole intellectual capital from U.S. basic research before it was published, and engaged in intellectual property theft." Section 1286 of the Fiscal Year (FY) 2019 National Defense Authorization Act (NDAA) required the Secretary of Defense to undertake an initiative to support protection of national security academic researchers from IP theft, undue influence, and other security threats. The Task Force believes that U.S. law needs to go further and that applicants for Department of Defense research grants should be required to certify that no individuals who would be funded by the grant have ever participated in any talent recruitment programs operated by China. If funding recipients could not provide that certification, the Task Force believes the Department of Defense should deny such grants. This is similar to an amendment proposed, but not adopted, by Rep. Mike Gallagher (R-WI) to the FY 2019 NDAA.

Congress should require a report detailing the extent China has benefited from U.S. taxpayer funded research and from Chinese funding of U.S. research institutions.

According to the Senate Homeland Security Committee, in 2008, there were more than 35,000 foreign nationals, including 10,000 from China, conducting

research in the Department of Energy’s National Labs. According to the Department of Education, “one university received research funding from a Chinese multinational conglomerate to develop new algorithms and advance biometric security techniques for crowd surveillance capabilities,” while another “had multiple contracts with the Central Committee of the Communist Party of China.” The Task Force believes that Congress should require a report on: (1) the extent to which U.S. taxpayer-funded research has benefitted China; and, (2) the extent to which China’s funding of U.S. taxpayer-funded research institutions has benefitted China. This information could give Congress more insight into the issue.

Congress should enact the Safe Career Transitions for Intelligence and National Security Professionals Act.

A major threat to the security of state secrets is the recruitment of federal workers with newly acquired security clearances to work at private entities with questionable ties to nefarious governments. Security clearances are a state privilege, and many companies are seeking consultants with clearances under the guise of innocuous purposes in order to exploit their access to classified information. With the current debate raging over Huawei as an example, the threat of foreign government affiliated companies exploiting access to America’s secrets through individuals with limited experience cannot be overstated. In fact, President Obama’s Senior Director for Cyber Security Policy is now a lobbyist for a Chinese government shell company. The Safe Career Transitions for Intelligence and National Security Professionals Act, sponsored by Rep. Banks, is a leading proposal to address this issue. This legislation would ban companies that are barred from doing business with the federal government, such as Huawei and ZTE, from being able to hire former civil servants with security clearances. It would also give the DNI the ability to add companies to the list.

EXPOSING CCP-LINKED CORPORATE SUBTERFUGE

According to the American Enterprise Institute (AEI) and The Heritage Foundation’s China Global Invest-

ment Tracker, the United States received over \$180 billion in Chinese investment between January 2005 and December 2019. Chinese investment does support American jobs and has many benefits for the American economy. However, as the two think tanks have noted, “China is not a friend. The U.S. certainly should not ban Chinese investment, but, as Congress has directed, Chinese firms and individuals should not be permitted to buy advanced technology that could have military uses. Chinese firms that receive stolen intellectual property should be punished.” Moreover, Chinese SOEs are directly connected to the CCP, which uses investment as a tool to further Chinese national security interests.

The Task Force recommends the implementation of the following measures, which are designed to enhance the federal government’s ability to control technology transfer to China, as a means of addressing key challenges posed by Chinese investment in the United States without stymieing its domestic economic benefits.

Congress should establish an Office of Critical Technologies and Security to help prevent the transfer of critical emerging, foundational, and dual-use technologies to countries of concern.

The federal government currently lacks an office that can coordinate the whole variety of aspects of security policy related to preventing the transfer of critical emerging, foundational, and dual-use technologies to adversarial nations, including China. Instead, the responsibility overlaps between the National Security Council, the National Economic Council, and a multitude of federal agencies and state and local entities. As Sen. Marco Rubio (R-FL) has noted, establishing a central Office of Critical Technologies and Security would help protect the United States by streamlining efforts across the government. To that end, legislation, co-led by Sen. Rubio in the Senate and Rep. Mike Conaway (R-TX) in the House, has been introduced to establish the Office of Critical Technologies and Security. Under the bill, the office would be required to develop a long-term strategy for U.S. technological superiority; coordinate a whole-of-government response to protect critical emerging, foundational, and dual-use technologies; and effectively enlist the support of federal agen-

cies, the private sector, and other scientific and technical hubs, including academia, to support and assist with such response. The Task Force strongly endorses this legislation.

Moreover, the federal government should examine ways to emphasize the increasing importance of neuroscience and its application in the development of dual-use technology, including by better coordinating existing federal efforts to develop this emerging technology.

Congress should enact legislation requiring Chinese companies to disclose internal CCP committees and financial support provided by the Chinese government.

The Task Force supports the 2019 U.S. China Economic Commission’s recommendation to require Chinese companies to disclose any CCP committees within the company and disclose financial support provided by the Chinese government. American and European companies involved in joint ventures with state-owned Chinese firms have been asked to give internal CCP cells an explicit role in decision-making. As Ashley Feng of the CNAS has written, Western governments cannot tell if Chinese firms work for the CCP. Tech companies, such as Baidu, Alibaba, and Tencent, have police-embedded cells within them that hand over sensitive information to the Chinese government. Feng notes that “Chinese companies still have some autonomy. They’re able to direct their own research and development, decide where to expand, and have control over most everyday decisions. But when the party comes calling, they have almost no power to resist direct requests, lest they want to lose their privileged positions.”

Chinese companies that want to operate in the United States should have to disclose their ties to the CCP. Not only is such information material to American investors, it also affects the national security interest of the United States.

Congress should enact the Holding Foreign Companies Accountable Act to require Chinese companies to adhere to U.S. laws as a condition of being listed on American stock exchanges.

As of February 25, 2019, there were 156 Chinese companies listed on the NASDAQ, New York Stock Exchange, and NYSE American, with a total market capitalization of \$1.2 trillion. There were at least 11 Chinese state-owned companies listed on the three major U.S. exchanges. The Securities and Exchanges Commission (SEC) oversees the Public Company Accounting Oversight Board (PCAOB), which, in turn, is the principal U.S. regulator that oversees the audits of public companies and SEC-registered brokers and dealers. The PCAOB is required by U.S. law to conduct regular inspections of all registered public accounting firms, both domestic and foreign, that issue such audit reports or play a substantial role in the preparation of them. However, according to a joint statement by the SEC and PCAOB from December 2018, “China’s state security laws are invoked at times to limit U.S. regulators’ ability to oversee the financial reporting of U.S.-listed, China-based companies.”

On May 20, 2020, the Senate passed the Holding Foreign Companies Accountable Act by unanimous consent, legislation which would prohibit securities of a company from being listed on any of the U.S. securities exchanges if the company has failed to comply with the PCAOB audits for three years in a row. As Rep. Conaway—sponsor of a similar bill in the House—has stated, “Beijing shows no apprehension while obstructing attempts to audit Chinese companies or breaking U.S. law. Without the EQUITABLE Act, the Chinese government will only escalate this malicious pattern of conduct.”

Congress should enact the Promoting Secure 5G Act to establish a U.S. policy to oppose international financing for 5G networks that lack appropriate security measures.

5G is the newest generation of wireless networks to enable faster data speeds. Chinese company Huawei, the world’s biggest telecommunications equipment maker, is a leader in 5G equipment. In January 2009, Huawei was indicted by the DOJ for the theft of trade secrets. According to Ajit Pai, Chairman of the Federal Communications Commission, Huawei takes direction from the Chinese government in accordance with Chinese

law and could be compelled to spy on individuals and businesses or install malware or spyware on networks. If Huawei, a Chinese state-directed company with a history of IP theft, gains a foothold in global 5G networks, some fear China could have an unprecedented opportunity to attack critical infrastructure and compromise intelligence sharing with key allies.

To counter the threat of Huawei’s dominance in next generation 5G networks, the Trump administration has pressured U.S. allies to reject the use of Huawei equipment in developing 5G systems. Australia has already banned Huawei from supplying equipment for 5G networks as of 2018. Unfortunately, however, in January 2020, the European Union rejected an outright ban on Huawei equipment in developing its 5G networks. Furthermore, the United Kingdom granted Huawei a limited role in developing its 5G systems. However, on May 24, 2020, Britain’s National Cyber Security Centre (NCSC) announced it would conduct a new review into granting Huawei such a role.

The Promoting Secure 5G Act of 2020, sponsored by Rep. William Timmons (R-SC), would leverage U.S. aid to international financial institutions, such as the International Monetary Fund (IMF) or the International Fi-

nance Corporation, to discourage recipients from using Huawei in their 5G networks. The bill would specifically make it U.S. policy to only lend to such countries for infrastructure, wireless technologies, and policy reforms through multilateral organizations only when those countries take sufficient security measures in their networks. It would also encourage cooperation with U.S. allies to strengthen support for secure wireless technologies.

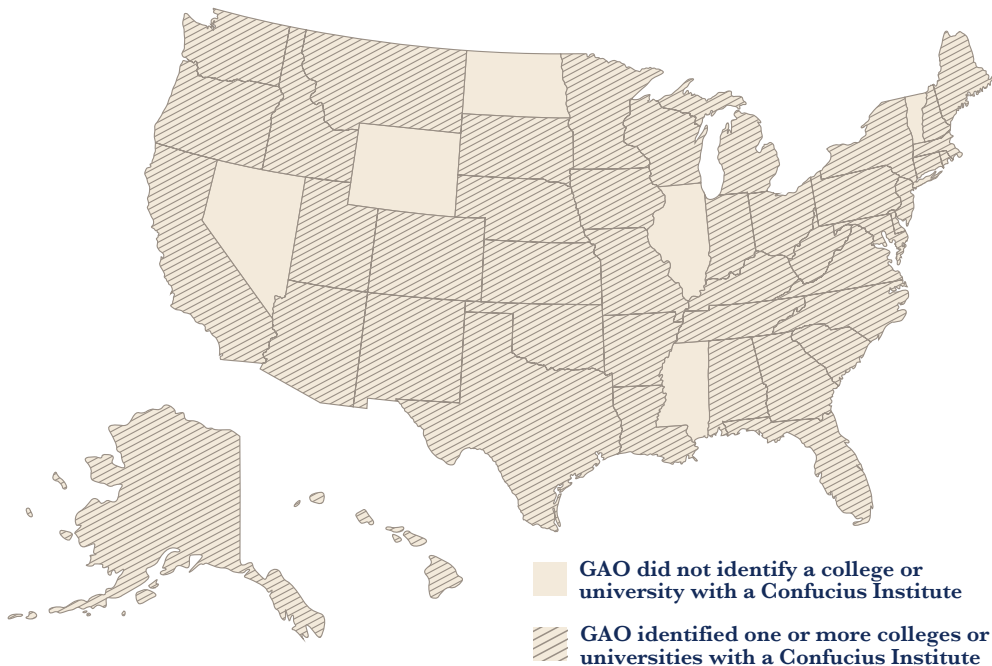
STOPPING CHINA’S MALIGN POLITICAL INFLUENCE AND DISINFORMATION CAMPAIGNS

“China conducts influence operations against cultural institutions, media organizations, and the business, academic, and policy communities of the United States, other countries, and international institutions to achieve outcomes favorable to its security and military strategy objectives... China harnesses academia and educational institutions, think tanks, and state-run media to advance its soft power campaign in support of China’s security interests.”

– Department of Defense,
Military and Security Developments Involving the People’s Republic of China 2019

CONFUCIUS INSTITUTES ACROSS AMERICA

All but Six U.S. States Have at Least One Confucius Institute on University Campuses



Source: GAO analysis, as of January 2019, of Confucius Institute agreements, school documents, and Department of Education National Center for Education Statistics data | GAO-19-278

China's spread of disinformation about the origins of COVID-19 and false accusations blaming the U.S. military for creating the virus in a lab have introduced many Americans to China's malign influence and political warfare operations. Yet, Chinese disinformation operations have long targeted multiple facets of American life to shape a narrative favorable to China and, in the process, have created a sophisticated network throughout the United States to spread its malign influence—a network which can be used at any time to shape public perception. China does this through building a presence in educational institutions, think tanks, media, and the business community. While the United Front Work Department, the CCP's agency in charge of the coordination of influence operations, directs most of these efforts, it is, according to Larry Diamond of the Hoover Institution, "one of many institutions within the Chinese party-state involved in influence operations." Other institutions include seemingly private civil society, academic, Hollywood, or even religious groups, that ultimately take direction from the CCP.

In recent years, Confucius Institutes have come to the forefront as one key tool used by the CCP to influence public perception. In April 2017, the National Association of Scholars (NAS) released a comprehensive report illustrating how Confucius Institutes infiltrated American colleges and universities to enhance China's image and educate a generation of American students to know nothing more of China than the regime's official history. The Chinese government approves all teachers, events, and speakers in the institutes. Since Confucius Institutes provide financial support for universities to run free Chinese language programs, colleges become hesitant to allow activities on campus that would draw the CCP's ire and engage in self-censorship. As Peter Mattis has said in testimony before the House Foreign Affairs Committee, "CCP programs, like the Confucius Institutes, are less important for their specific content in dealing with U.S. universities than for establishing a relationship. By facilitating U.S. universities investment in facilities, research collaboration, or programs, the CCP creates a vulnerable relationship that can be used to apply pressure to the university unless the latter is prepared to walk away."

Congress passed legislation in August 2018 as part of the NDAA to prohibit the Department of Defense from funding Chinese language programs at institutions that host Confucius Institutes except in cases in which the institutions have obtained a waiver. Since then, some universities have closed their institutes. According to the NAS, there are now 86 Confucius Institutes in the United States, with five more set to close in the summer of 2020. While this is a step in the right direction, more needs to be done to counter the threat that Confucius Institutes and other propaganda tools pose.

The Task Force believes that the following steps by Congress can enhance efforts to counter the CCP's malign political influence.

Congress should create new authority to sanction state-backed disinformation networks and mandate placing such sanctions on the CCP's United Front Work Department.

Congress should amend the Global Magnitsky Human Rights Accountability Act (Global Magnitsky Act), which authorizes the President to impose sanctions on individuals and entities engaged in gross violations of human rights and significant corruption, to also allow the President to designate state-backed networks purveying harmful disinformation campaigns.

The United Front Work Department is a fundamentally malign entity used to confront any source of potential opposition to the authority and policies of the CCP. Xi has even called the front a "magic weapon" for the "Chinese people's great rejuvenation." It is also used to harass, spy on, and co-opt Chinese citizens in the United States. According to the 2015 Central Committee, this is actually its primary mission. Confucius Institutes are funded by Hanban, an organ of the United Front, and were founded in 2014 by the former head of the United Front, Liu Yangdong. In countries like Australia and New Zealand, where the problem of CCP malign influence is much more pervasive, United Front affiliates have even held political office and controlled important media outlets.

Nevertheless, the United Front is highly active in the United States. Peter Mattis testified before the House Foreign Affairs Committee in 2019 that he could identify within a few hours “more than 250 organizations in the United States with individuals who actively and probably wittingly work to support the party’s united front activities.” Mattis also noted that the United Front has “sponsored dozens of visits by hundreds of local and state government officials, journalists and students to China” adding that such visits are “used to influence and evaluate the participants for their future usefulness.”

The Task Force believes that new sanctions authorities should be granted to the president under the Global Magnitsky Act to allow the targeting of state-sponsored propaganda and disinformation networks. Furthermore, the Task Force believes that Congress should mandate sanctions on the United Front Work Department, including its officials and their immediate family members under such new authorities, barring access to the U.S. financial system and U.S. visas. Despite the fact that the United Front is not a violent entity nor engaged in terrorist attacks, it is a wing of the CCP that is involved in activities that threaten the United States. Designating the United Front will make their ability to operate in the United States much more difficult and prohibit American institutions and organizations from dealing directly with them.

Congress should enact legislation to require Confucius Institutes to register as foreign agents under FARA, ensure they do not exert influence over host schools, and require reporting of foreign gifts to universities starting at \$50,000.

Task Force Chairman Joe Wilson (R-SC) is the sponsor of the Foreign Influence Transparency Act. This legislation would narrow an exception that currently exists under the Foreign Agents Registration Act (FARA) excluding foreign agent registration for “educational” institutions. This is an important exception that allows foreign educational institutions to operate in the United States. However, this bill would ensure educational institutions that promote a political agenda, such as Confucius Institutes, would be required to register under FARA and report their activities.

Rep. Wilson’s Foreign Influence Transparency Act and Rep. Kevin Hern’s (R-OK) America Foreign Influence Resistance Starts with Transparency (FIRST) Act both take another important step. They would amend the Higher Education Act to require universities to disclose donations, contracts, or the fair market value of in-kind gifts from any foreign source if the amount is over \$250,000. Reducing the reporting threshold to \$50,000 would allow more transparency into the Chinese government’s efforts to fund Confucius Institutes as well as other hostile efforts on American campuses.

The Task Force also supports current Department of Education efforts to enforce university reporting of foreign gifts. A 2019 report by the Senate Permanent Subcommittee on Investigations found that 69 percent of colleges that received \$250,000 or more in annual funding from Hanban, a Chinese government entity that funds the Confucius Institutes, had failed to report the funding.

Until the Task Force’s ultimate goal of severing the link between universities and the malign entities that exert control over Confucius Institutes is complete, steps can be taken to curb any coercive influence they may have on a host school. For instance, Rep. Chip Roy’s (R-TX) Transparency for Confucius Institutes Act would require universities that currently insist on hosting a Confucius Institute to at least adopt a program participation agreement that, among other things, would have to delineate distinct physical and authoritative roles between the school and Confucius Institute and ensure the school maintains final decision-making authority.

Congress should require think tanks and non-profits to disclose contributions from certain foreign entities over \$50,000 annually.

Part of the CCP’s disinformation operations in the United States include funding Washington D.C. think tanks. A report by the USCC noted that a number of Washington D.C. think tanks and universities have received funding from Tung Cheehwa, a vice chairman of the Chinese People’s Political Consultative Conference, which is a group that directs the United Front Work Department.

According to the CNAS Report “Rising to the China Challenge”:

A number of U.S. universities, academic departments, individual scholars, think tanks, and other civil society organizations receive substantial funding from Beijing that is often targeted at shaping views and discourse on China. Higher degrees of transparency can help to ensure that this funding is not generating hidden forms of foreign lobbying, self-censorship, or other activities that undermine core U.S. democratic principles.

Although universities are required to report foreign gifts above \$250,000 as part of the Higher Education Act, this requirement does not currently exist for think tanks and other nonprofit organizations that may operate under the pretext of educational activities. The Task Force therefore believes that think tanks and similar nonprofit institutions receiving significant funding, over \$50,000 a year, from foreign governments, foreign political parties or foreign military entities, should be required to disclose that information for purposes of identifying conflicts-of-interest. However, such disclosures should not be mandated for funding below \$50,000 a year, or from bona fide non-government entities, so as not to create overly burdensome requirements or hamper legitimate non-government apolitical foreign research funding.

Congress should enhance FARA to strengthen penalties for state-backed violators, require disclaimers on direct foreign government propaganda, improve its public database, and repeal exceptions for certain foreign private sector entities.

FARA was enacted in 1938 and requires certain agents of foreign principals who are engaged in political or other enumerated activities to make periodic public disclosure of their relationship with foreign principals, as well as activities, receipts, and disbursements in support of those activities. However, until recently, FARA was not frequently enforced. In September 2016, DOJ’s Office of the Inspector General issued a report that counted a total of only seven prosecutions under FARA since 1966. The report also found that many

aspects of FARA’s language are outdated, vague, and contain loopholes that may make criminal enforcement difficult. This assessment is shared by a number of analysts studying Chinese political warfare operations that note reporting requirements under FARA are quite minimal, among other criticisms.

The Task Force believes that an updated FARA is essential to give DOJ the tools it needs to counter political warfare operations from the Chinese and other nations. Specifically, the Task Force would make the following adjustments to FARA:

1. Exceptions from registration for foreign persons and entities in the private sector should be repealed. Currently, foreign entities who register under the far less stringent Lobbying Disclosure Act of 1995 are exempted from FARA. This and other important reforms were laid out in the Disclosing Foreign Influence Act, sponsored by RSC Chairman Rep. Mike Johnson (R-LA).
2. The maximum criminal fine should be increased from \$10,000 to \$200,000, and it should be unlawful for an agent of a foreign principal to willfully fail to disclose being a FARA-registered agent during a meeting with a Member of Congress, as is set out in Sen. Chuck Grassley’s (R-IA) Foreign Agents Disclosure and Registration Enhancement Act of 2019.
3. Reporting requirements should include more substance and specificity about the messages delivered between the foreign agent and principal as well as services provided to make the reporting mechanism more transparent, as recommended by Peter Mattis.
4. FARA’s public website should be simpler, easier to understand, and updated more frequently rather than on a quarterly basis as it is currently. This could be modeled after the Australian Foreign Influence Transparency Scheme (FITS) database, as recommended by Peter Mattis.
5. Chinese and other state media should be required to label their public productions with clear and prominent disclaimers that indicate their funding streams, particularly from foreign governments, as was recommended by the congressionally mandated report on China by CNAS.

Congress should enact the Countering the Chinese Government and Communist Party's Political Influence Operations Act.

This bill would direct the Department of State to devise a long-term strategy to counter the Chinese government's political influence operations and would require a report on the Chinese influence operations in the United States. Such a report would identify the key institutions, individuals, entities, and ministries that carry out malign influence operations, and distinguish them from the ongoing cultural, educational, and people-to-people exchanges which may benefit the people of both the United States and China.

HUMAN RIGHTS AND INTERNATIONAL INSTITUTIONS

"In China, the Chinese Communist Party uses high-tech surveillance systems to monitor potential dissidents. It's imprisoning religious minorities in internment camps—part of its historic antipathy to religious believers. As I've said before, the CCP's record in Xinjiang is the "stain of the century." It tries to hide what it's doing by intimidating journalists. Chinese citizens who want a better future are met with violence."

– Secretary of State Mike Pompeo

China's increasingly authoritarian regime under Xi is a threat to freedom and human rights not only inside China but around the world. The CCP's efforts economically, militarily, and through its influence operations all aim to promote an alternative form of governance under which our understanding of freedom and human rights would not exist. Chinese government leaders have called this vision "human rights with Chinese characteristics," rejecting the notion that all humans are endowed by their Creator with certain inalienable rights. This effort is best demonstrated by China's efforts to hijack and use international institutions to redefine human rights and promote a China-centric order. China's efforts to dominate international organizations were highlighted during the COVID-19 crisis when it used its influence over the WHO to mask China's role in exacerbating the global pandemic, eventually prompting President Trump to halt funding to the WHO.

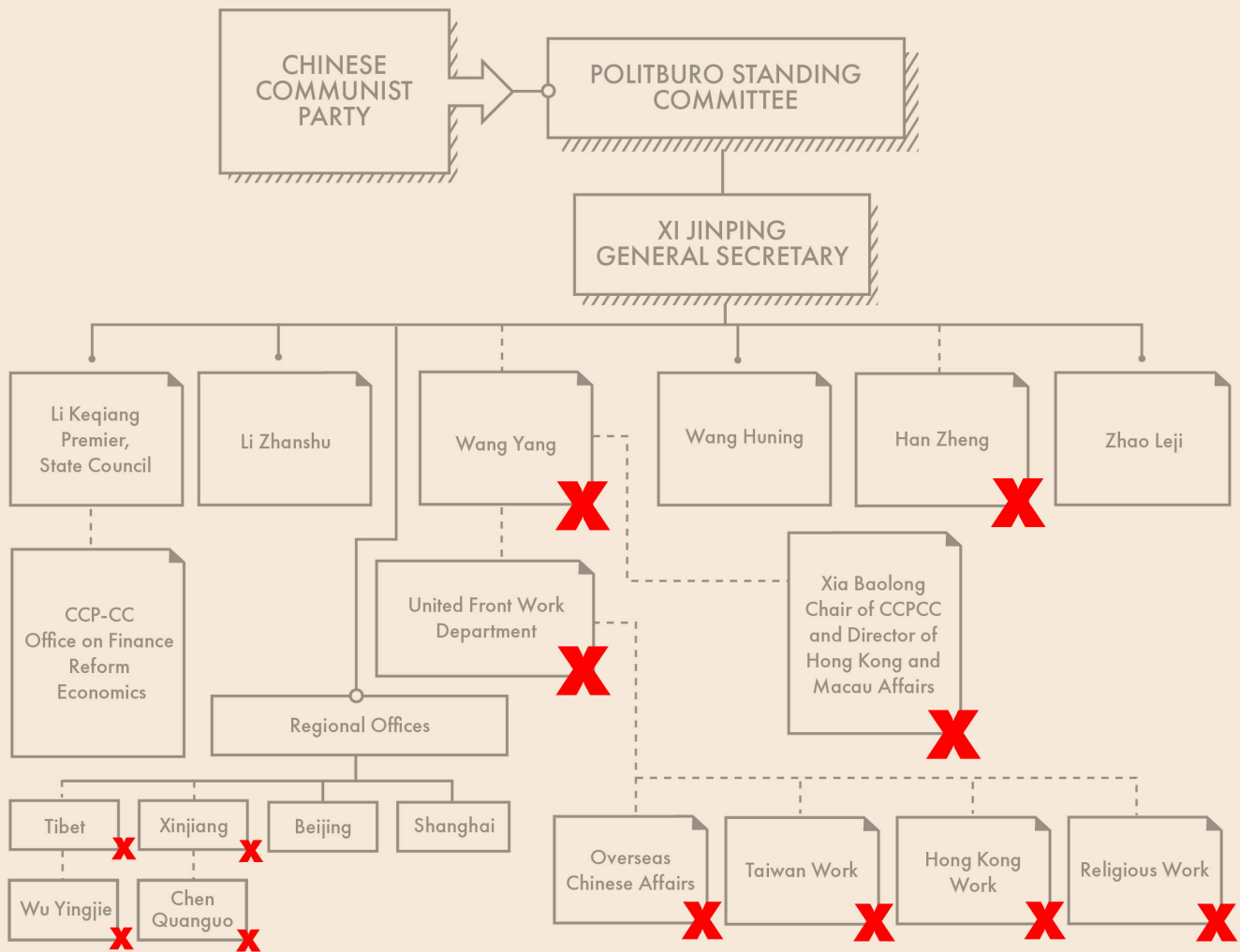
The United States has the support of millions of Chinese people who yearn for freedom and human rights and are aligned with American values. In June 2019, over two million people in Hong Kong protested against Chinese attempts to enact an extradition bill that would completely destroy rule of law and civil liberties in Hong Kong. China's latest bold actions to forcibly takeover Hong Kong undermine its autonomy and democracy and violate its past international agreements. The crisis in Hong Kong is a watershed moment in the battle between freedom and authoritarianism. As China attempts to promote an alternative theory of governance, the United States must double down on our values of freedom, democracy, and human rights as part of our strategy to counter China's threat. The Task Force believes a number of actions can be taken to counter China's violations of human rights and coercion of international institutions.

Congress should mandate sanctions on Chen Quanguo, Wu Yingjie, other senior CCP members, and other Chinese officials responsible for human rights abuses in Xinjiang, Tibet, and Hong Kong.

Chen Quanguo has been called the "architect of China's Muslim camps" and is the CCP Party Secretary for the Xinjiang region. Quango got his start in Tibet in 2011, where he created so-called "convenience police stations" and first began instituting an automated surveillance state while cracking down on the Buddhist population. Olivia Enos notes that "to date, no Chinese official has been sanctioned for his or her repression of Uighurs in Xinjiang." The House and Senate have passed different forms of the Uyghur Human Rights Policy Act of 2019 which would have required sanctioning Chen Quanguo if he met the criteria for sanctions. Unfortunately, this language was removed from the final form of the legislation that passed Congress. The Heritage Foundation has noted, the United States must make more active use of the Global Magnitsky Act to hold Chinese officials and entities responsible for their roles in undermining freedom and human rights in Xinjiang, Tibet, Hong Kong, and elsewhere." The Task Force supports new legislation that would mandate sanctions on Chen Quanguo using Global Magnitsky Act authorities for his gross human rights abuses. Furthermore, the Task Force believes that Congress



THE RSC NATIONAL SECURITY STRATEGY PRESENTS
THE TOUGHEST SANCTIONS ON CCP EVER PROPOSED



should also mandate that the Department of the Treasury impose sanctions on key CCP leaders involved in gross human rights violations in Tibet and Hong Kong using the Global Magnitsky Act's authorities. This should include CCP Party Secretary for Tibet Wu Yingjie, who oversees the brutal repression of Buddhists in the province, and who has openly called on Tibetans to fight the Dalai Lama and his followers. They should also include the director of the Hong Kong liaison office Luo Huining, and Han Zheng, a member of the

seven-person elite Politburo of the CCP, who has been called President Xi's "point man" on Hong Kong affairs. They should also include, Xia Baolong the head of the Hong Kong and Macau Affairs Office who previously oversaw a hardline crackdown against churches in eastern China. Finally, such a list should include the Minister of Public Security Zhao Kezhi who oversees the ministry responsible for storing the DNA of Uighurs and running many of the internment camps.

Congress should enact a statement of policy that responding to the human rights abuses in Xinjiang is a central aspect of U.S.-China relations.

As Olivia Enos has written, “China views Xinjiang as a core issue, central to its continued internal stability. Given the immense priority China places on Xinjiang, the United States should place responding to mass arbitrary internment in Xinjiang as a much higher foreign policy priority in its dealings with China than it currently does.” The Tibet Policy Act of 2002 set out a number of statements of policy and findings expressing that it was U.S. policy that Tibet was an “occupied country” and that the United States should pressure China to engage in meaningful negotiations with the Dalai Lama. The Task Force believes a similar statement of policy making Xinjiang a major issue in U.S.-China relations should be enacted to increase the pressure on China.

Congress should create a rebuttable presumption that goods originating in Xinjiang are products of forced labor for purposes of prohibiting their import under Section 307 of the Tariff Act.

According to Section 307 of the Tariff Act of 1930, goods produced in whole or in part with forced labor are barred from being imported to the United States. Such goods are subject to seizure and criminal investigations by the CBP. Under Section 321(b) of CAATSA, a rebuttable presumption was created by Congress that all goods originating in North Korea were the products of forced labor. The Task Force believes that Congress should pass similar legislation extending this rebuttable presumption to goods originating in the Xinjiang province. Sen. Rubio has introduced the Uyghur Forced Labor Prevention Act in the Senate containing similar provisions.

Congress should require the GAO to report on the effectiveness of current pro-democracy and human rights funding going to China through the Department of State and National Endowment for Democracy.

U.S. government programs funding pro-democracy and human rights efforts in China should be reviewed

to make sure they are achieving their desired effect. For example, since 2004, the American Bar Association’s Rule of Law Initiative has provided training to Chinese bar associations and judges. The CEEC has written about how Chinese judges are not independent and are hand selected by the CCP. The Chinese Bar Association is also closely affiliated with the CCP and, since 2012, all new lawyers have had to pledge allegiance to the party. Using funding on the CCP is not only ineffective but also deprives democratic activists inside China from those resources.

Congress should statutorily support the President’s effort to withdraw from the WHO and redirect support to other global health initiatives.

On May 29, 2020, President Trump announced that the United States would “withdraw” from the WHO after the organization failed to implement reforms demonstrating its independence and accountability. The United States is the largest donor to the WHO and contributes between \$400-500 million per year. Despite this, the WHO has apparently helped to cover up China’s mistakes in handling the COVID-19 pandemic, while criticizing President Trump for implementing a travel ban on China early on in the crisis. The Task Force recommends that Congress take action supporting the President’s announcement to withhold funding and withdraw from the WHO. In particular, Congress should enact clear statutory language directing the president to divert WHO funding to other deserving global health initiatives and withdraw from the WHO upon a certification that the WHO does not meet specific independence and accountability reforms. The Task Force also recommends that Congress direct the president to explore new mechanisms for multilateral cooperation among democratic countries, including for pandemic response.

Congress should require the Congressional Executive Commission on China (CECC) to report on China’s coercive influence over international bodies and its efforts to re-define human rights.

China’s appointment to an influential U.N. Human Rights Council panel that picks the world’s human rights

investigators is the latest example of the CCP's efforts to promote "human rights with Chinese characteristics" and re-define human rights. The Task Force believes that Congress should direct the CECC to report on China's undue influence of international bodies to redefine human rights and spread the CCP philosophy, especially in institutions receiving U.S. taxpayer dollars. Congress should then use this information to cut funding for such institutions until they demonstrate their independence.

Congress should require the Department of State to issue a strategy to counter Chinese efforts to control key international standard setting bodies and other multilateral organizations.

China's effort to control international standard setting bodies, such as the World Intellectual Property Organization (WIPO), are long-term economic and national security threats to the United States. Chinese control of the WIPO, for instance, could allow it to steal a great deal of U.S. intellectual property since this international organization is responsible for global technical infrastructure to connect IP systems and as a world reference source for IP information. As The Heritage Foundation's Brett Schaefer has written, "one of the most sensitive activities overseen by WIPO is maintaining the confidentiality of patent applications under the Patents and Technology Sector. Under the PCT international patent system, inventors apply for a patent with WIPO for a fee that allows them to file a single 'international' patent application that applies across all 153 contracting states. This application includes technical and confidential information relating to the invention." Schaefer has noted the director of WIPO could gain access to "proprietary information on all WIP patent applications, 18 months before they become public." In addition, Chinese attempts to control the WHO and other bodies allow them, rather than the United States, to shape key international norms in a way which is directly harmful to U.S. interests. The Task Force therefore recommends that the administration put together a strategy on how to counter China in this area. Such a strategy should include a description of how the United States plans to win upcoming multilateral agency campaigns at the Organization for Economic Cooperation and Development, the World Bank, the World Food Program, and key U.N. agencies.

Congress should enact legislation to direct the Secretary of State to develop a strategy to regain observer status for Taiwan in the WHO.

The Task Force believes one step that the WHO could take to illustrate its independence from China would be to admit Taiwan as an observer country. In 2015, China blocked a bid by Taiwan to join as a member country. Despite this, Taiwan actually attempted to help the WHO respond to the COVID-19 outbreak, while the WHO ignored Taiwan's warning that COVID-19 spread through human-to-human transmission. The Task Force endorses legislation, sponsored by Rep. Ted Yoho (R-FL), that would direct the Department of State to develop a strategy to regain observer status for Taiwan in the WHO.

COUNTERING CHINA'S GLOBAL MILITARY MODERNIZATION

Chinese leaders characterize China's long-term military modernization program as essential to achieving great power status. Indeed, China is building a robust, lethal force with capabilities spanning the air, maritime, space and information domains which will enable China to impose its will in the region. As it continues to grow in strength and confidence, our nation's leaders will face a China insistent on having a greater voice in global interactions, which at times may be antithetical to U.S. interests.

*- Defense Intelligence Agency
Director Lt. Gen. Robert Ashley Jr.*

China's military modernization has been one of the fastest in history. It is now the second largest military in the world behind the United States. According to the Department of Defense, the PLA Navy is, by some estimates, now the world's largest in terms of total assets. According to an analysis by Jane's, a military analysis company, by 2025, China seeks to possess strategic sealift and airlift capabilities to fight and win a high-tech limited maritime war; by 2030, to project power to [Belt and Road Initiative] countries and win overseas high-tech wars; and after 2030, to project power globally by relying on overseas bases. Jane's also

notes that “China is also rapidly developing capability in emerging defense technologies, including but not limited to unmanned and autonomous systems, artificial intelligence, cyber capabilities, quantum capabilities, hypersonic weapons, and directed energy weapons. These could allow China to impose significant costs on adversaries or deter adversaries disproportionate to the number of physical platforms it possesses.”

The Department of State’s Assistant Secretary of State for International Security and Nonproliferation Christopher Ford has stated that stealing IP and technology from the United States through a strategy of “military civilian fusion” is the “CCP’s blueprint for China’s global ‘return to military preeminence.’”

The Task Force has already set out many policies to counter China’s economic espionage and IP theft. The Task Force recommends the following additional steps for Congress to counter China’s military modernization.

Congress should require the Department of Defense to publish a list of Communist Chinese military companies operating in the United States.

Section 1227 of the 1999 NDAA required the Secretary of Defense to make a determination of those persons operating directly or indirectly in the United States that are Communist Chinese military companies and publish a list of those persons in the Federal Register. Congress passed this legislation, prior to Permanent Normal Trade Relations with China, to help ensure that the transfer of sensitive technology was not occurring.

The deadline to release this list was January 15, 1999. However, to date, this list has not been issued. Six months after the deadline had been missed, a number of members of Congress, including then-Rep. Dennis Hastert (R-IL) and Majority Leader Richard K. Armey (R-TX), sent a letter to President Clinton dated July 19, 1999 asking why the report had not been published. On September 21, 1999, after being unsatisfied by the Clinton administration’s continued delay, the group of members of Congress again wrote to President Clinton. Over 20 years later, Sen. Tom Cotton (R-AR) led a letter to the Department of Defense in September 2019

seeking an answer to this question. Congress should continue to push for publication of this list.

Congress should direct the Department of Defense to examine the feasibility of public-private partnerships for the secure development of hypersonic technology.

The United States is currently behind Russia and China in terms of operationally ready hypersonic weapons systems. Much of the problem can be attributed to the currently fragmented testing and prototyping process. Some of this lack of coordination will be alleviated by the establishment of a Joint Hypersonics Transition Office as authorized in the 2020 NDAA. However, there is still a need to accelerate development of these systems ahead of the current timeline of the mid-2020s. Strategic parity in this new field, particularly in scramjet vehicles, is imperative for retaining a balance of power in critical theatres of operations.

New government-owned and industry-operated manufacturing facilities near testing sites would significantly accelerate development of America’s hypersonic capabilities. The development of hypersonic weapon systems requires specialized testing equipment and facilities that can create prototypes as well. The creation of a secure location with access for industry and government oversight of classified and sensitive IP in a compartmentalized facility will increase recruitment and retention of top talent and crucial data while speeding up development.

The Task Force believes that Congress should direct the Department of Defense to examine the possibility of a public-private partnership to create a secure hypersonics research, development, and production facility. Some of these insights could potentially have dual-use applications creating a strong incentive beyond purely defense applications. Furthermore, the talent shortage in this area requires private sector expertise. However, the need for a highly secure facility also means the Department of Defense needs to ensure compartmentalization. American leadership in this field remains a paramount priority since this technology has the ability to change the pace and range of warfare.

STRENGTHENING OUR ALLIANCES AND PARTNERSHIPS IN THE INDO-PACIFIC AND BEYOND

“We are committed to upholding a free and open Indo-Pacific in which all nations, large and small, are secure in their sovereignty and able to pursue economic growth consistent with international law and principles of fair competition. We will compete vigorously against attempts to limit the autonomy and freedom of choice of Indo-Pacific nations.”

– U.S. Department of State, A Free and Open Indo-Pacific: Advancing a Shared Vision

The Trump administration has worked to strengthen our alliances in the Indo-Pacific as an essential aspect of the National Defense Strategy. This is probably best illustrated by the administration’s reactivation of the Quadrilateral Security Dialogue (or “the Quad”) among the United States, Japan, India, and Australia during the 2017 ASEAN summit after an eight-year hiatus. The Quad, which shares common values of liberal democracy and open markets, has been an important development for the security architecture of the Indo-Pacific. The Department of State has defined the Quad’s main mission as upholding rules-based order in the Indo-Pacific, including freedom of navigation and overflight. As The Heritage Foundation has noted, “the most important thing that unites the Quad countries, however, is an awareness that managing the rise of China is the defining challenge of our era.”

China continues its military buildup in the South China Sea threatening the United States as well as allies and partners by building runways and dozens of hangars for fighter aircraft on a handful of islands, as well as anti-ship cruise missiles, anti-aircraft batteries and missile defenses. China even put up two research stations and sank a Vietnamese fishing boat during the COVID-19 pandemic. The Obama administration largely ignored China as it militarized the South China Sea, even after China occupied an island belonging to the Philippines. Even when the Obama administration chose to conduct “freedom of navigation” operations in the South China Sea, it sent mixed messages, calling

them “innocent passages,” which actually strengthened China’s territorial claims. As a result, China grew more aggressive in its efforts to challenge U.S. interests. Unlike the previous administration, President Trump has shown leadership in boldly asserting the right for U.S. freedom of navigation in the South China Sea, approving 11 freedom of navigation operations and stepping up military support for countries that contest Chinese claims to the South China Sea.

Furthermore, despite the progress on security integration in the Indo-Pacific, more can be done to expand trade and economic cooperation with partner nations, especially Southeast Asian countries threatened by Chinese dominance. Expanding trade is essential to achieving a prosperous and free Indo-Pacific region as called for in the National Defense Strategy. As Michael Mazza of AEI has noted, “a broader and deeper embrace of free markets and of responsive and accountable government would undergird America’s pursuit of its security objectives in the region.” In September 2018, President Trump announced he had renegotiated the U.S.-South Korea Free Trade Agreement, which mostly consisted of minor tweaks. In September 2019, President Trump announced that he had signed limited trade agreements with Japan and was looking to negotiate a “more comprehensive” trade agreement in the future. President Trump has also expressed his interest in eventual free trade agreements with the Philippines and India.

Future free trade agreements with Japan, the Philippines, and India would be welcome developments. Yet, more can be done, particularly through concluding bilateral free trade agreements with other partners in the region. The United States must especially expand trade relations with democracies facing pressure from a rising China, such as Taiwan, Indonesia, Mongolia, and other nations. The Trump administration has already begun the building blocks of such an effort proposing to create a “Economic Prosperity Network” of free trade agreements with trusted partners to rely economically on China less. The Trump administration has also attempted to use trade as a tool to counter China’s predatory development finance practices in Africa, such as through the Prosper Africa initiative, which seeks to enter into a free trade deal with Kenya.

Additionally, the Task Force also believes that President should establish a free trade agreement with Brazil, a nation with a strong pro-American position.

As Cliff May of FDD has recently argued, trade agreements with our democratic allies would not only counter China but also strengthen the liberal world order and help enhance our economic prosperity. The Task Force believes that Congress can enhance the administration's efforts to strengthen our partnerships in the Indo-Pacific to counter China through the following security and economic measures.

Congress should pass the South China Sea and East China Sea Sanctions Act.

This bill, sponsored by Rep. Gallagher, would impose sanctions on Chinese persons and entities that participate in certain activities related to China's territorial disputes in the South China Sea and East China Sea. Specifically, it would require the president to impose property-blocking and visa-denial sanctions on Chinese persons and entities that: (1) contribute to

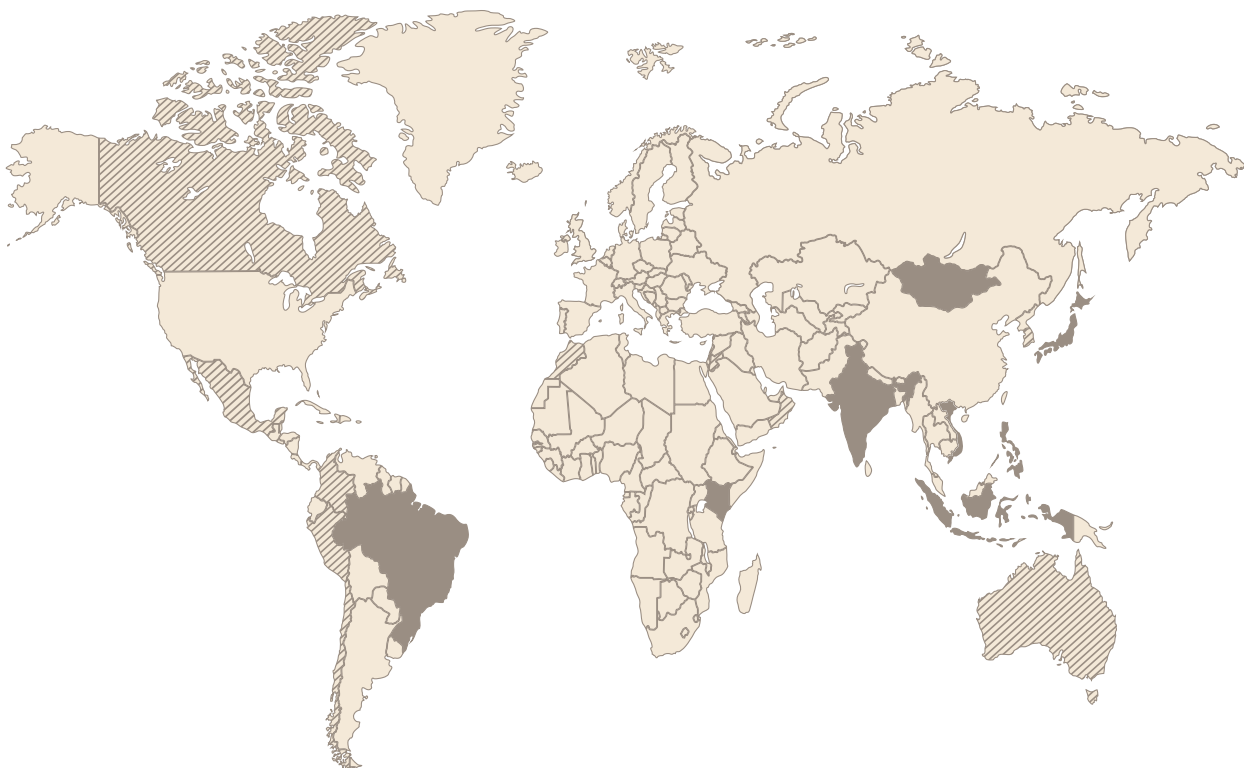
development projects in parts of the South China Sea contested by a member country of the Association of Southeast Asian Nations; or, (2) engage in actions or policies that threaten the peace or stability in disputed South China Sea areas or in an East China Sea area administered by Japan or South Korea. Finally, this bill would prohibit U.S. entities from investing in or insuring projects involving sanctioned entities in either sea.

Congress should encourage the Trump administration to explore expanded trade with India and enact the United States-India Enhanced Cooperation Act to reduce restrictions on arms sales to India.

The Trump administration has made India a cornerstone of its Indo-Pacific strategy. India is the largest democracy in the world and has taken small but important steps towards market liberalization in recent years. India has also consistently stood up to China, including through challenging its influence on the South China Sea and has worked closely with the United States to fight Salafi-jihadi terrorists in southeast Asia.

RSC'S BOLD FREE TRADE AGENDA

▨ These countries have free trade with U.S ■ Countries to expand trade with



Source: Office of the United States Trade Representative, combined with RSC recommendations.

The Task Force believes that expanding trade with India is in the United States' national security interest. Ken Juster, the U.S. Ambassador to Israel, noted in January 2018 that "a strategic view of our economic relationship could eventually lead to a roadmap for a U.S.-India Free Trade Agreement." As Raymond Vickery of CSIS has noted, the case for a free trade agreement with India is both economic and strategic, as the U.S. economy is the second-largest in the world on a purchasing power basis, while India ranks third. While India is not yet ready for a free trade agreement, President Trump has stated his willingness to strike a deal to ease some tariffs with India. However, negotiations during the president's visit to India in February 2020 failed to achieve a deal.

Furthermore, the Task Force endorses legislation introduced by Task Force Chairman Rep. Joe Wilson (R-SC), the U.S.-India Enhanced Cooperation Act, which would designate India as a Major Defense Partner to strengthen our alliance and enhance our security cooperation with India. This would grant India a status similar to that of U.S. allies, such as Australia and Japan, making it easier for the United States to export defense articles to India.

Nevertheless, the Task Force believes both increased economic and security cooperation with India should be conditioned on significant improvements in the human rights situation and economic freedom. In recent years, India has seen a sharp uptick of attacks on religious minorities, especially Christians and Muslims. The Department of State's 2019 Human Rights Report on India notes that the government "had detained thousands of residents" in Kashmir. Open Doors USA, a watchdog organization for persecution of Christians, has found that India is the 10th most dangerous country on earth to practice Christianity.

Congress should encourage the Trump administration to begin negotiations for a free trade agreement with Taiwan.

Taiwan was the United States' 12th-largest trading partner for goods and services, importing and exporting a total worth \$95.4 billion. In addition to

being a beacon of democracy in Asia, Taiwan is the 10th freest economy in the world, according to The Heritage Foundation, surpassing even the United States. In December 2019, Rep. Steve Chabot (R-OH) led a letter of 157 members of Congress pushing for a U.S.-Taiwan free trade agreement. The Task Force believes that now is the time for such an agreement, especially as China continues to exert massive pressure on Taiwan even during the COVID-19 pandemic.

As Riley Walters from The Heritage Foundation has noted, "previous administrations often cast aside the idea of a U.S.-Taiwan free trade agreement in favor of economic and strategic dialogues with China." A free trade agreement with Taiwan could reduce Taiwanese reliance on China's 5G telecommunications development, high-tech research and development, and other sectors, such as tourism, finance, and agriculture. It would also help Taiwan become a full participant in the international community. Taiwan's President Tsai Ing-wen has argued that a U.S.-Taiwan FTA would help promote the rules-based order in Asia, diversify the island's economy, and move it away from a reliance on production bases in China.

Congress should encourage the Trump administration to prioritize free trade agreements with the Philippines and Indonesia and explore trade with Vietnam.

The United States and the Philippines have had a mutual defense pact since 1951, yet in the past few years, the Philippines has moved closer to Russia and China. As Hal Brands has argued, the Obama administration's refusal to impose costs on China for its building and militarizing islands on the South China Sea and its inaction in the wake of the 2012 Chinese takeover of Scarborough Shoal—a ring of reefs less than 200 miles from the main Philippine island of Luzon—has pushed President Duterte to lose confidence in the United States as an ally and hedge his bets with China. President Duterte's human rights abuses during a brutal drug war and his regular anti-U.S. threats, including to pull out of the 1998 Visiting Forces Agreement (VFA), have also contributed to the deterioration of the relationship. At the same time, as Brands notes, this is no reason

to abandon the Philippines, who is still a treaty ally, as “Duterte’s anti-Americanism is not widely shared among Filipinos, and his successor will almost certainly be friendlier to Washington.”

In November 2017, after a bilateral meeting between President Trump and President Duterte in Manila, the White House stated the “United States welcomed the Philippines’ interest in a bilateral free trade agreement and both sides agreed to discuss the matter further through the United States-Philippines TIFA.” As Michael Mazza of AEI has argued, a U.S.-Philippines FTA should be a priority not only to counter Chinese influence with this U.S. ally, but also because the Philippines has already taken steps to reform its economy as part of Trans Pacific Partnership (TPP) negotiations, and would be able to move relatively swiftly to comply with provisions on State Owned Enterprises. The United States and the Philippines have had a very close trade relationship for more than a hundred years.

Indonesia is the world’s third largest democracy, the largest economy in southeast Asia, and a key security partner of the United States in the Indo-Pacific. Former Secretary of Defense James Mattis said that “we probably engage with the Indonesian military more than any other nation anywhere in terms of mil-to-mil engagements.” Indonesia has boldly stood up to Chinese claims in the South China Sea, including mobilizing fishermen to join warships in the Sea to help defend against Chinese vessels. In bilateral trade, since 1998, Indonesia and the United States have had a Trade and Investment Framework Agreement (TIFA). U.S. bilateral goods trade with Indonesia totaled more than \$29 billion in 2018, while bilateral trade in services totaled an estimated \$3.9 billion. Indonesia requires further economic reform to be ready for a full FTA. However, the Task Force believes a free trade agreement with Indonesia would promote a free and prosperous Indo-Pacific and encourages the Trump administration to begin negotiations leading to such an agreement.

Finally, China’s increasingly hostile aggression in the South China Sea has brought the United States and Vietnam closer together on security cooperation. In fact, in 2019, Vietnam stated in an official defense white paper that “depending on circumstances and conditions,” it was prepared to abandon its traditional

doctrine of neutrality and strengthen defense ties with the United States if China continued its hostile behavior in the South China Sea. Economic cooperation has also increased rapidly in the past 25 years since the normalization of relations. In 2019, the United States was Vietnam’s second-largest trading partner. A number of significant obstacles exist towards a U.S.-Vietnam FTA. State Owned Enterprises are still granted a large role in Vietnam’s economy. The country also lacks robust protection of IP. Vietnam also remains under the control of the Communist Party and has a terrible human rights record that includes wide-scale unlawful and arbitrary killings, torture, and the detention of many political prisoners. Nevertheless, the Task Force believes that, contingent on improvements in both human rights and economic freedom, the Trump administration should consider expanding the trade relationship with Vietnam at a future date.

Eventual progress towards a U.S.-Vietnam FTA would help enhance that partnership considerably and lead to ripple effects of more economic cooperation in the region in general. Michael Mazza of AEI argues “A successful U.S.-Philippines or U.S.-Vietnam FTA should encourage the region’s other (potential) economic dynamo, Indonesia—which had previously expressed interest in the TPP (although with some trepidation)—to reform and further open its own economy. Malaysia (already a CPTPP member) and Thailand might follow suit.”

Congress should enact the Mongolia Third Neighbor Trade Act.

Mongolia is an important democratic partner of the United States. It has deployed troops to both Iraq and Afghanistan, and could be a key strategic partner in countering both Russian and Chinese malign influence. Mongolia is currently economically reliant on China, with more than 80 percent of Mongolia’s exports flowing to China annually. On the other hand, U.S.-Mongolia trade is low and has been decreasing. Total U.S.-Mongolia trade in 2012 measured \$707 million and dropped to just \$91.6 million by 2017. This bill, sponsored by Rep. Yoho, would help expand trade with Mongolia by allowing duty-free entry of Mongolian cashmere into the United States. The cashmere industry is particularly important to Mongolia’s economy, but

while Mongolia produces over a third of the world's raw cashmere, it produces few finished products.

Congress should encourage the Trump administration to complete a free trade agreement with Kenya to counter China's growing influence in Africa.

The Trump administration announced the Prosper Africa initiative in December 2018 to expand trade with Africa and enable the United States to compete with China and other nations who have business interests in Africa. As Dan Runde of CSIS has noted, this initiative is "a compelling alternative to rivals like China and Russia." China has sought closer ties with Kenya in recent years working to build railways and infrastructure projects that have saddled Kenya with predatory levels of debt. The Task Force supports the Prosper Africa initiative, and the Trump administration's efforts to negotiate a bilateral free trade agreement with Kenya, which President Trump has said will "probably happen" in February 2020. Congress should encourage the Trump administration to get started on an agreement as an essential step towards countering Chinese influence in Africa and beginning to create deeper trade ties with many other African countries.

RUSSIA: ROLLING BACK AGGRESSION THROUGH A STRATEGY OF DETERRENCE

“China and Russia challenge American power, influence, and interests, attempting to erode American security and prosperity. They are determined to make economies less free and less fair, to grow their militaries, and to control information and data to repress their societies and expand their influence... China and Russia want to shape a world antithetical to U.S. values and interests.”

– President Donald J. Trump, National Security Strategy of the United States of America

The threat Russia still poses to our nation should not be underestimated. According to former Secretary of Defense Jim Mattis, Russia is “the principal threat” to our nation. As former Chairman of the Joint Chiefs of Staff Jim Dunford has explained, Russia is the most “militarily capable country” that threatens the United States and “from [an] aggregate capacity and capability perspective, Russia is the most capable state actor that we face.” The list of aggressive Russian behavior in recent years is long. For instance, under Vladimir Putin’s authoritarian regime, Russia has invaded and annexed parts of its neighbors (Georgia in 2008 and Ukraine in 2014), engaged in disinformation campaigns to undermine democratic elections in many Western democracies—including the United States, used military grade chemical weapons for assassination purposes, coordinated militarily in Syria with the Iranian Islamic Revolutionary Guard Corps and Hezbollah, and supported the Taliban in Afghanistan.

In the past decade, Russia has also reasserted itself as a destabilizing world power. In the Middle East, it has backed the murderous Assad regime in Syria while also strengthening its ties with traditional U.S. allies in the Gulf and with NATO ally Turkey. In Libya, it has supported General Khalifa Haftar’s destabilizing military campaign and maintained a presence some have said is worse than ISIS. Russia’s actions in Syria, according to Air Force Gen. Philip M. Breedlove, the former Supreme Allied Commander for Europe, are a

deliberate weaponization of migration into Europe with the goal of intensifying the refugee crisis “to overwhelm European structures and break European resolve.” In Latin America, Putin has deployed troops to Venezuela to prop up the socialist dictatorship of Nicholas Maduro. Russia has sold oil to North Korea, openly violating U.S. sanctions. And in the Balkans, Russia supported an attempted military coup of Montenegro as a last-ditch attempt to prevent that nation from joining NATO.

The Trump administration has identified the re-emergence of great power competition, namely with Russia and China, as the central challenge to U.S. national security rather than the threats posed by non-state actors. The National Defense Strategy acknowledges that “China and Russia want to shape a world consistent with their authoritarian model—gaining veto authority over other nations’ economic, diplomatic, and security decisions.” Adding to the challenge is Russia’s cooperation with China to undermine the United States. According to the Defense Intelligence Agency (DIA), “China and Russia are more aligned than at any point since the mid-1950s, and the relationship is likely to strengthen,” which will increase the risk of regional conflicts particularly in the Middle East and East Asia.

While China is a peer-competitor that is rising economically and poses a greater long-term challenge, the threat posed by Russia is more immediate. As James Dobbins of the Rand Corporation notes, “Both countries seek to alter the

RUSSIA'S EXPANDING AGGRESSION

▨ Areas Where Russia has Invaded



Source: Institute for the Study of War and Radio Free Europe

status quo, but only Russia has attacked neighboring states, annexed conquered territory, and supported insurgent forces seeking to detach yet more territory.”

Russia, like China, seeks to erode U.S. leadership in the world, reshape the international system, and undermine the world’s faith in the democratic form of government. According to former National Security Adviser Lt. Gen. H.R. McMaster, Russia “has used old and new forms of aggression to undermine our open societies and the foundations of international peace and stability.” Putin has severely increased restrictions on civil society organizations in Russia, arrested dissidents, shut down independent media, and especially cracked down

on U.S.-funded NGOs inside Russia out of fear that such pro-democracy organizations could help topple his regime. Putin’s regime is built on repression, as demonstrated by its violent reaction to protests in 2011-2013, 2017, and 2019.

As appealing as it might be to hope that the United States and Russia could find common ground and work together, this is highly unlikely under Putin’s regime. Much of Russia’s aggressiveness and anti-democracy efforts are rooted in Putin’s own desire to position himself as a power on the world stage in order to preserve his regime and iron grip on the Russian state. As Russian democracy activist Gary Kasparov has testified before

Congress, diplomatic engagement and appeasement do not work on Putin because he does not care about Russia's national interests or his image abroad. Instead, he and his small mafia-like group of elites only care for their own power and money.

In pursuit of his objective of undermining democracy and the U.S.-led international order, Putin has sought to divide and undermine NATO, which he views as an obstacle to achieving his goal. His regime has deployed disinformation campaigns, cyberattacks, political influence operations, and illicit financial flows in pursuit of the Kremlin's foreign policy agenda. In that regard, Russia's political warfare has led to immense success in Europe. The European Council on Foreign Relations found a large rise in pro-Russia, anti-American political parties, many with direct links to the Kremlin. According to 2019 Gallup poll, Russia's approval rating around the world has risen considerably in recent years and now ties its all-time high from 2008.

Putin has also sought to rebuild Russia's global military footprint while strategically deploying small units of Russian troops to hot spots around the world to constrain and shape America's actions. Fundamentally, as the Institute for the Study of War (ISW) has pointed out, Putin seeks to re-establish "spheres of influence" and get a "seat at the table" to transform himself into a mediator and convener in the international system while shaping outcomes toward Russia's interests.

The Obama administration never took Putin seriously despite warnings from its own Department of Defense. President Obama pushed an initiative to "reset" relations with Russia through a campaign of appeasement to Putin. For example, in September 2009, President Obama cancelled plans originating in the Bush administration to establish a missile defense shield in Poland and the Czech Republic. The Obama administration also lifted sanctions imposed by President Bush on Russians who had sold weapons to Iran and, in 2005, allowed Russia to sell Iran five S-300 surface-to-air missile systems despite a UNSC resolution barring such transactions. President Obama famously mocked Mitt Romney during a 2012 presidential debate for suggesting that Russia was the biggest geo-strategic threat that the U.S. faced. President Obama's campaign of appeasement yielded little results and instead emboldened Putin. In 2014,

the Obama administration found Russia in "serious violation" of the Intermediate-Range Nuclear Forces (INF) treaty over its testing of a medium-range grounded launched cruise missile (GLCM). These violations only worsened during Obama's presidency. Yet, he refused to impose sanctions on Russia for the treaty breach. Similarly, in February 2014, Russia illegally invaded and annexed Crimea in response to popular pro-Western protests that overthrew Ukraine's previous Russia-backed President Viktor Yanukovich. President Obama's weak response was illustrated in a speech one month later in Brussels where he stated, "This is not another Cold War that we're entering into. The United States and NATO do not seek any conflict with Russia." In April 2014, just one month later, Putin expanded his incursions into Ukraine, militarily supporting pro-Russia separatist insurgents in the eastern Ukrainian region of the Donbas. In September 2015, Russia intervened militarily in Syria targeting mostly U.S.-backed opposition groups. As the ISW has noted, this had the effect of "restricting the operations of the U.S. and the anti-ISIS coalition."

Despite Putin's escalating aggression, President Obama dismissed Russia as a "regional power." Rather than imposing penalties on Putin's regime, President Obama continued to laud Russia as a partner, even offering intelligence cooperation and military partnership with Russia in Syria. The Obama administration was also silent over chemical weapons attacks in Syria to assuage Russia. And, despite pleas and authorization from Congress, the Obama administration refused to provide Ukraine with Javelin anti-tank weapons to defend itself from Russian aggression out of fear that such assistance would provoke Putin into further escalating the conflict. In response to Putin's disinformation campaign during the 2016 election, President Obama rejected options to impose heavy costs on Russia and even failed to blame Putin directly, instead opting for mostly symbolic sanctions out of fear that it would provoke an escalation from the Kremlin.

In contrast, President Trump has increased the costs on Russia for its brazen behavior. In his first year as President, he provided Javelin anti-tank weapons to Ukraine, shut down Russian diplomatic facilities in response to their election interference, signed the Countering American

Adversaries Through Sanctions Act (CAATSA) into law—the toughest sanctions on Russia ever assembled, and empowered the Pentagon’s European Deterrence Initiative to support rotational combat forces in Europe to deter Russia. The Trump administration has also convinced NATO member states to agree to contribute their fair share of defense resources.

President Trump has also imposed unprecedented sanctions on Russia for its illegal annexation of Crimea, gross violations of human rights, poisoning of Sergei and Yulia Skripal in March 2018, and meddling in U.S. elections. President Trump also withdrew from the flawed INF treaty on August 2, 2019, following repeated Russian violations. In pursuing all of these actions, President Trump has made it clear that the United States seeks a good relationship with Russia if Russia changes its aggressive behavior. Simultaneously, congressional Democrats have peddled a false narrative that President Trump is weak on Russia while also criticizing his tough moves against the Putin regime, including withdrawal from the INF treaty.

Congress has played an integral role in confronting Russian aggression through funding the EDI, mandating sanctions in CAATSA, and supporting efforts to counter Russian disinformation and support democracy and human rights inside Russia. Yet, the Task Force believes that Congress can do much more to counter and prevent Russian aggression. Congress should work to strengthen President Trump’s hand against Russia by enhancing the tools the Executive Branch has available to fight malign Russian influence. The Task Force’s strategy to counter Russia involves the following three steps: first, enacting the toughest package of sanctions on Russia ever proposed by Congress; second, enhancing U.S. support of NATO and other allies and partners facing of Russian aggression; and, third, supporting the pro-democracy movement inside Russia and communicating directly with the Russian people.

ENHANCING SANCTIONS ON RUSSIA

“Russia has used old and new forms of aggression to undermine our open societies and the foundations

of international peace and stability. Estonia, Latvia, and Lithuania have all been targeted by Russia’s so-called hybrid warfare, a pernicious form of aggression that combines political, economic, informational, and cyber assaults against sovereign nations. Russia employs sophisticated strategies deliberately designed to achieve objectives while falling below the target state’s threshold for a military response. Tactics include infiltrating social media, spreading propaganda, weaponizing information, and using other forms of subversion and espionage. So for too long some nations have looked the other way in the face of these threats. Russia brazenly and implausibly denies its actions. And we have failed to impose sufficient costs.”

– Lt. Gen. H.R. McMaster

Since Russia’s illegal occupation and annexation of eastern Ukraine, the United States has imposed severe economic sanctions on Russia. Unfortunately, despite such sanctions, Putin continues his aggression against Ukraine and his malign efforts around the world. Russia has also expanded the theaters that it is operating in. In May 2020, Russia even deployed military aircraft to Libya, which was confirmed by U.S. Africa Command. It is clear that the current level of sanctions have failed to impose sufficient costs on Russia to change its behavior. At the same time, the Task Force believes that sanctions on Russia should not be seen necessarily as solely focused on behavior change, as Putin is unlikely to change his ways as long as he remains in power. Such an approach may eventually lead to a reduction in resolve in maintaining both U.S. and international sanctions against the Kremlin. This is a goal sought by Putin who has tried repeatedly and unsuccessfully to push Western countries to lift sanctions, including through electoral interference. If sanctions were not having an impact in imposing costs on Putin, he would not continue to attempt to push for their lifting. Rather, the Task Force believes that sanctions should be seen as a tool to both punish and counter Russian aggression and malign behavior. In this vein, the Task Force proposes the following steps, which would be the toughest package of sanctions on Russia ever proposed by Congress.

Designate Russia as a State Sponsor of Terrorism for its support of the Iranian Islamic Revolutionary Guard Corps, Hezbollah, the Taliban, and the Russian Imperial Movement.

Russia has sponsored terrorism throughout the world yet it paints itself as a counterterror partner. The top U.S. Commander in Afghanistan has stated that Russia is directly arming the Taliban. Russia has directly coordinated with and given air cover to the Iranian Islamic Revolutionary Guard Corps (IRGC) and Hezbollah in the war in Syria. Russian operations in Syria targeted mostly U.S.-backed rebel forces fighting ISIS. In one instance, in October 2015, Russian air strikes even provided air cover for ISIS positions against U.S.-backed groups. Russia also allows the neo-Nazi militia Russian Imperial Movement, recently designated as Specially Designated Global Terrorists, to operate freely within its borders and fight in eastern Ukraine against the Ukrainian government.

The Task Force recommends designating Russia as a State Sponsor of Terrorism for its support of the IRGC, Hezbollah, the Taliban, and Russian Imperial Movement. A State Sponsor of Terrorism designation imposes a number of sanctions by law, including controls over dual-use items, lifting diplomatic immunity to allow families of terrorist victims to file lawsuits in U.S. courts, and prohibitions on economic assistances and arms-related exports and sales. As a first step, however, Congress could enact the Stop Malign Activities from Russian Terrorism (SMART) Act, sponsored by Sen. Cory Gardner (R-CO), to require the Secretary of State to determine whether Russia qualifies as a State Sponsor of Terrorism. The bill also requires the Department of State to report to Congress as to whether the following armed entities qualify as foreign terrorist organizations: (1) entities in the Donbas region of Ukraine controlled or aided by Russia; and, (2) entities controlled by or associated with the Donetsk People's Republic or Lugansk People's Republic.

Congress should impose secondary sanctions on companies supporting special Russian petroleum and natural gas projects.

While traditional sanctions punish designated entities by cutting them off from business with the United States, secondary sanctions add another layer by cutting off designated entities and their third-party business partners from transactions with U.S. entities. This further insulates designated entities from gaining access to the resources they need to function. Congress should impose secondary sanctions against third parties helping Russian oil and natural gas projects, whether through providing technology, building the pipelines, or other types of assistance. Such sanctions should specifically include entities supporting the completion of the Nord Stream 2 project. Sen. Ted Cruz (R-TX.) has recently led the effort to bolster existing sanctions in this way to block completion of the project.

It should be clear to any company or entity engaging in such projects with Russia that they will lose access to tangible financial benefits for assisting in such projects. Such sanctions would more aggressively curtail Russia's ability to extract its energy resources, export those resources, and increase its influence abroad.

Congress should sanction the purchase of new Russian sovereign debt.

Sanctions on Russian sovereign debt are intended to make it more difficult for Russia to finance its aggressive and destabilizing behavior. Existing sanctions on Russian sovereign debt prohibit lending "non-ruble denominated funds to the Russian sovereign" or taking part "in the primary market for non-ruble denominated bonds issued by the Russian sovereign." These existing sanctions do not affect the purchase of ruble-denominated Russian sovereign or to debt issued by state-owned enterprises. CNAS has pointed out that an analysis by Citi estimated "foreign owners of Russian ruble-denominated debt make up more than 20 percent of total holders." Additionally, "Russia has been able to continue borrowing at a sovereign level while providing assistance to state-owned and independent companies affected by sanctions." Therefore, the Task Force recommends that Congress require the President to close these gaps on the purchase of Russian sovereign debt if Russia does not cease its destabilizing activities.

Congress should enact the Defending American Security from Kremlin Aggression Act.

Sen. Graham's Defending American Security from Kremlin Aggression Act (DASKAA) of 2019 would create new sanctions on Russia for its election interference and aggressive behavior. The Task Force supports enactment of DASKAA. As Clay Fuller and Nate Sibley of AEI and Hudson have argued, DASKAA could be an "effective deterrent to Russia's bad behavior." DASKAA is a multifaceted bill which would, among other things, require the President to impose sanctions on "Russian individuals and entities that facilitate or benefit from Russian President Vladimir Putin's corruption," as well as those who "knowingly engage in significant financial transactions with individuals that support or facilitate Russian malicious cyber activities." The bill would also impose sanctions on Russian interference in democratic processes. The bill would also prohibit funding from being used to withdraw the United States from NATO unless the Senate passes a resolution consenting to the withdrawal.

Congress should require the Department of the Treasury to place Vnesheconombank on the Specially Designated Nationals and Blocked Persons (SDN) list.

Vnesheconombank (VEB) is a state-run development bank that Putin used to finance the Sochi Olympics, provide export financing for a range of Russian exports, and serve as the payment agent for Russian payments on existing sovereign bonds. VEB Chairman Igor Shuvalov is a close associate of Putin and was formerly the Deputy Prime Minister of Russia. In January 2014, the Department of the Treasury prohibited U.S. persons from providing new financing to VEB as part of sanctions imposed on Russia for its annexation of Crimea. These sanctions, however, did not place VEB on the SDN list. In January 2018, the Department of the Treasury, in a report mandated by Sec. 241 of CAATSA, identified Shuvalov as a senior Russian political figure and oligarch. The Task Force supports placing VEB on the SDN list as an important first step in tightening sanctions on the Russian financial sector.

Congress should mandate sanctions on Russian propaganda chiefs and those undermining U.S. partners from the former Soviet Union and direct the Department of State to produce a report on Kremlin-connected oligarchs who finance Russian military aggression.

Sanctions on Russia should be extended to the leaders of its disinformation campaigns. The same new sanctions authority on propagators of state-backed disinformation that the Task Force has proposed regarding China could also be used on Russian propaganda chiefs and Russian proxies in other countries acting on Putin's behalf. For example, this would entail legislation mandating sanctions under such new authorities on Vladimir Yevtushenkov, a Russian billionaire oligarch. Additionally, current sanctions have not sufficiently addressed Putin's foreign cronies who undermine the sovereignty of former-Soviet countries. Bidzina Ivanishvili, the richest man in Georgia, is a close ally of Putin and involved in destabilizing Georgia on Russia's behalf. Viktor Medvedchuk is a pro-Russian oligarch and proxy in Ukraine who has used his media empire to actively assist Russia's efforts to spread harmful disinformation within the country. Furthermore, the Department of State should produce a report listing Kremlin-connected oligarchs who help finance Russian military aggression through proxies and mercenary armies. Such a report would be useful for Congress to determine the necessity of future sanctions and would deter individuals and entities from working with the Kremlin.

Congress should require an interagency report on Russian influence in key domestic sectors.

Understanding the full depth of Russia's impact on key domestic sectors is key in assisting Congress to address gaps in our current legislative architecture that allow detrimental Russian influence. Such a report should, for example, examine Russian influence on industries, such as energy extraction (estimated field deposits, ownership structure and licensing agreements, corporate and subsidiary leadership, prime and second-tier contractors, pipelines system and supporting infrastructure), ferrous and non-ferrous

metallurgy; logging and paper industry, electrical power networks; natural gas distribution networks and their management companies; banking, the high-tech sector, wholesale and retail commerce, agriculture and agricultural land market, and railroads.

Congress should mandate sanctions on the Society for Worldwide Interbank Financial Telecommunication (SWIFT) until it expels Russia from the international SWIFT code system.

SWIFT is a unified international financial transaction messaging service that allows a financial institution in one country to communicate with its branches or correspondent institutions. The United States does not control SWIFT, but it can use its influence to remove Russia from SWIFT through legislation authorizing sanctions on SWIFT itself if it does not expel Russia. The United States has effectively used this strategy with Iran. The Iran Threat Reduction and Syria Human Rights Act authorized the president to impose such sanctions, and its passage ultimately led to the removal of Iranian banks from the system. In 2014, then-British Prime Minister David Cameron proposed kicking Russia out of the international SWIFT code banking system after its illegal annexation of Crimea and eastern Ukraine. Six years since this suggestion was made, Russia has continued its illegal annexation and has grown even more aggressive throughout the world. Legislation mandating sanctions would effectively cut off Russian businesses from the global financial system because most international payments flow through SWIFT. It would also make it harder for Russian oil companies to process their U.S. dollar payments for oil. The Task Force recommends that legislation draw out a process wherein such sanctions are only lifted if the Secretary of State can certify that Russia is in compliance with the Minsk Agreement, a ceasefire agreement entered into by Russia and Ukraine calling for a withdrawal of Russian forces from Ukrainian territory, and full Ukrainian government control over its border.

Congress should mandate regular public “financial exercises” that demonstrate the United States and its allies would seize and freeze assets in the event of Russian aggression.

While the United States and its allies often undertake military exercises to show readiness in the event of Russia aggression, the same is not the case for the imposition of financial sanctions despite the fact that such sanctions are being used more and more as a response to military aggression. “Financial exercises” could show Russia how quickly the United States and its allies—primarily in Europe—could come together to enact major sanctions and freeze assets in the event of Russian aggression. Such exercises could act as a deterrent for future Russian aggression and would improve the readiness of the United States and its allies. They would ensure that such measures could be imposed quickly in the event of a further Russian invasion of Ukraine or Russian aggression in the Baltics or Georgia.

IMPROVING RUSSIAN CONTAINMENT BY SUPPORTING NATO AND OUR ALLIES

“NATO’s 29 member states encompass almost a billion people, who together produce almost half of the world’s GDP. This extraordinary alliance is facing the next 70 years with 70 years of hard-won experience, success, and strong relationships. And so while the challenges before us loom large, with renewed American leadership on the world stage, together we’re demonstrating every day that we can make the future of the free world brighter than ever before... For seven decades, the United States has stood with our European allies to defend our way of life against an array of threats large and small. When the ravages of war left a continent in ruins, we worked together to rebuild Europe. When the specter of communism was at Europe’s door, we stood arm-in-arm against the Soviet menace. When the Berlin Wall fell and the old Soviet empire crumbled, we welcomed new democracies of Eastern Europe into our ranks.”

– Vice President Mike Pence

President Trump has worked to strengthen NATO by encouraging our allies to meet their commitments to spend two percent of GDP on defense. In countering Russian aggression, working with our allies and

partners is essential. The NATO alliance has been the cornerstone of transatlantic relationships and United States and European security since its inception in 1949. The Task Force has laid out a number of measures to support NATO, strengthen our alliances, and support democratic partners, such as Ukraine and Georgia that have been victims of Russian aggression.

Congress should require the Secretary of State and Secretary of Defense to make deterring Russian aggression a top agenda item at all NATO summits.

NATO was founded with the explicit objective of protecting its members and, if necessary, defeating the Soviet Union. Yet, despite its original focus on Russia, NATO has veered from its primary mission, becoming involved in military operations in Bosnia and Kosovo, Afghanistan, and Libya. As Luke Coffey of The Heritage Foundation has noted, "Russia represents a real and potentially existential threat to NATO members in Eastern and Central Europe, and a significant threat and challenge to the rest of the Alliance. As NATO continues its transition back to collective defense, now is not the time to be coy about why defense is necessary. Allies should talk openly and frankly about the threat from Russia, and which steps are being taken to deter Russia, and bolster defensive capabilities." Congress can help ensure that NATO remains focused on its primary and original mission by passing legislation requiring that the Secretary of State and Secretary of Defense advocate for deterring Russia as an explicit and top agenda item at all NATO summits.

Enact the Crimea Annexation Non-Recognition Act to enhance opposition to Russian annexation of Crimea.

The Welles Declaration was a public diplomatic statement made in July 1940 by then acting Secretary of State Sumner Welles that established the official position that the United States did not recognize the Soviet annexation of the Baltic states. This statement of policy lasted for 50 years until the Baltic states declared their independence from the Soviet Union. Similarly, the Crimea Annexation Non-Recognition Act would codify existing U.S. policy that the United States

will not recognize the Russian annexation of Crimea and will forbid any federal agency from recognizing it in the future. The Crimea Non-Recognition Act passed the House on March 12, 2019 but has yet to pass the Senate. The Task Force supports its enactment

Strengthen Georgia's readiness and defense capabilities by enacting the Georgia Support Act.

Georgia is a democratic U.S. ally that has sent troops to both Iraq and Afghanistan. In fact, as Alexis Mrachek of The Heritage Foundation notes, at the time of Russia's invasion of Georgia in 2008, Georgia's troop numbers were second to the United States' in Iraq, and Georgia suffered the most per capita loss in Afghanistan of any nation. Georgia is the largest non-NATO troop contributor to the NATO Resolute Support Mission. In 2017, the United States launched a three-year bilateral Georgia Defense Readiness Program. The Task Force believes that Congress should continue to work to strengthen Georgia's readiness and defense capabilities by approving arms sales to Georgia in support of its efforts against Russian aggression, offering military assistance, and improving Georgia's interoperability with NATO. The Georgia Support Act, which has passed the House but not the Senate, mandates a report on how the United States can work with Georgia to counter Russian disinformation and ensure Georgian security needs. It also requires the president to impose sanctions against foreign persons responsible for or complicit in serious human rights abuses in the Russian-occupied Georgian regions of Abkhazia and Tskhinvali.

Congress should continue to renew the Ukraine Security Assistance Initiative and expand it to include anti-ship weapons.

As mentioned above, the Obama administration refused to provide Ukraine with Javelin anti-tank weapons to aid in its defense against Russian aggression, fearing what Russia would do in response. In contrast, President Trump—in March 2018 and October 2019—approved the sale of Javelin anti-tank missiles and launchers to Ukraine. The Task Force believes that Congress should continue to authorize this lethal aid

for Ukraine in the NDAA, including anti-tank, anti-ship, and anti-aircraft defense systems. The Task Force also believes that Congress should pass the U.S.-Ukraine Security Cooperation Enhancement Act, which would also require the Secretary of State to submit a report to Congress that reviews U.S. security assistance to Ukraine, including areas of need for Ukraine to effectively deter Russian aggression.

Congress should continue to support the European Deterrence Initiative.

As stated in the RSC's 2019 Budget "A Framework for Unified Conservatism," continued support of the Department of Defense's European Deterrence Initiative (EDI) is essential to deterring future Russian aggression into Europe. The European Deterrence Initiative—originally the European Reassurance Initiative (ERI)—began in 2014 in response to Russia's annexation of the Crimean Peninsula and its ongoing support for separatist rebels in Ukraine's eastern reaches. The EDI was expanded significantly by the Trump administration. It supports American and allied operations in other parts of Europe to deter Russian aggression, including battalions of troops in Poland and the Baltic states. The EDI's main points include exercises and training, enhanced pre-positioning, infrastructure improvements, and partnership capacity building. The Task Force recommends continuing this important support for the EDI.

COUNTERING DISINFORMATION AND SUPPORTING DEMOCRACY ACTIVISTS WITHIN RUSSIA

"Of our friends in democratic countries, we ask only one thing: please stay true to your values. We are not asking for your support—it is our task to change Russia, and we will do it ourselves. The only thing we ask from you is that you stop supporting Mr. Putin by treating him as a respectable partner on the world stage and by allowing his cronies to use your countries as havens for their looted wealth. Please don't enable corruption and human rights abuses in our country by welcoming their perpetrators on your soil and in your banks... And, above all, please stop falling for that tired and dishonest stereotype that Russians are somehow uniquely "unsuited" or "not ready" for freedom. We are suited. We are ready. And we will get there, just like you."

— Vladimir Kara-Murza

Finally, the Task Force believes that any strategy to counter Putin's regime must ultimately work to support democratic activists in Russia and the thousands of Russians who are victims of this authoritarian regime. As Russian pro-democracy activist Vladimir Kara-Murza has pointed out, despite the prevalent notion in the West that Putin is supported by a majority of Russians, his regime refuses to allow free and fair elections to test this proposition. Protecting democracy requires more than just countering Russian disinformation in the United States. Rather, it is essential to bring a voice to pro-democracy activists in Russia and also bring the truth to the Russian people about the reality of Putin's regime. In this vein, the Task Force recommends the following measure.

Congress should direct the Department of State to assemble a strategy to communicate information directly to the Russian people.

As Tom Hill of the U.S. Institute for Peace has noted, the Obama administration was reluctant to directly challenge Moscow by providing news and information directly to the Russian people. He feared that communicating directly to the Russian people "would be an escalation and therefore should be avoided." The Task Force believes that directly supporting the Russian people—especially pro-democracy activists—with the truth must be part of any strategy to counter Russian disinformation. Such facts could, as Hill has suggested, aim to provide accurate information about the human rights abuses of the Putin regime and eventually lead the Russian people to "pressure behavior modification of their own regime" or at least pressure Putin to "divert resources away from his efforts to subvert sovereign states to pacify domestic unrest." The Task Force recommends that Congress enact legislation directing the Department of State to deliver a strategy to Congress on how it will message pro-democracy messages to the Russian people inside Russia.

Finally, the Task Force also recommends a wholesale overhaul of U.S. public diplomacy and counter-disinformation efforts in the world more broadly through reconstituting the U.S. Information Agency later on in the final section of this report. disinformation efforts in the world more broadly through reconstituting the U.S. Information Agency later on in the final section of this report.

ADVANCING AMERICAN INTEREST IN THE MIDDLE EAST: CONFRONTING IRAN & THE JIHADI TERRORIST MOVEMENT

[Iran] remains the world's leading state sponsor of terrorism, and provides assistance to al Qaeda, the Taliban, Hezbollah, Hamas, and other terrorist networks. It develops, deploys, and proliferates missiles that threaten American troops and our allies. It harasses American ships and threatens freedom of navigation in the Arabian Gulf and in the Red Sea. It imprisons Americans on false charges. And it launches cyberattacks against our critical infrastructure, financial system, and military...The regime violently suppresses its own citizens; it shot unarmed student protestors in the street during the Green Revolution. This regime has fueled sectarian violence in Iraq, and vicious civil wars in Yemen and Syria. In Syria, the Iranian regime has supported the atrocities of Bashar Al-Assad's regime and condoned Assad's use of chemical weapons against helpless civilians, including many, many children...The regime's two favorite chants are "Death to America" and "Death to Israel."

– President Donald J. Trump³⁰²

Iran is not a great power or strategic competitor, but it still presents a significant challenge as a rogue regime backed by a military and intelligence apparatus while being the world's leading state sponsor of terrorism. It has given aid and comfort to Hamas, Hezbollah, Al Qaeda, and the Taliban, as well as other Iranian-backed terrorist militias. It has supported groups that have killed and targeted Americans and seeks to destroy Israel. Iran and its leadership see the United States as an enemy. It promotes a radical revolutionary ideology that "blends Marxism with Shiite millenarianism and imagines a world without the West." They seek, in the words of Iran's own Supreme Leader, to bring about "death to America" and "wipe out Israel."

Contrary to the myths propagated by the Obama administration, Iran's statements are not words "intended for a domestic political audience" but the driving force behind all of the regime's malign activity. We only have to take the words of Iran's supposedly "moderate" President Hassan Rouhani who explained "Saying 'Death to America' is easy. We need to express 'Death to America' with action."

According to the Defense Intelligence Agency (DIA), Iran's military has two main immediate goals: (1) ensuring the survival of its regime; and, (2) achieving a dominant position in the Middle East to threaten the United States and its allies. In pursuit of its aims, Iran has attempted to use traditional means to develop its military capacity through seeking a nuclear weapon and developing ballistic missiles. It has also used what Lt. Gen. McMaster calls the "Hezbollah model"—creating weak governments in the region through supporting terrorist militias and making those governments dependent on Iran to reduce U.S. influence in the region.

The Iranian Revolutionary Guard Corps (IRGC) has created, sponsored, and commanded a worldwide legion of tens of thousands of militia fighters. They come from as far as Afghanistan and Pakistan to create a "land bridge" where Iranian-backed militias now control territory from Tehran through Iraq, Syria, and Lebanon to the border of Israel. Maj. Gen. Mohammad Ali Jafari, the commander-in-chief of the IRGC, confirmed in 2019 that the IRGC commands 100,000

militiamen in Syria and Iraq alone. Iran has also armed and trained the radical Houthi militia in Yemen and given it ballistic missiles that were used to attack Saudi Arabia. Iran expert Nader Uskowi calls this the largest Shi'a militant force ever assembled. By comparison, ISIS commanded only 33,000 fighters at its peak.

President Obama never understood the threat from Iran, even stating that Saudi Arabia and other Gulf states needed to "find an effective way to share the neighborhood" with Iran. The Obama administration adopted an overly restrained approach in dealing with Iran's aggression. In doing so, it sacrificed its entire Middle East policy while attempting to reach a nuclear agreement with Iran. It abandoned pro-democracy "Green Movement" protests in 2009 fearing how Iran's totalitarian rulers would respond. The Obama administration later attempted to extricate itself from supporting the rebellion in Syria. Despite public statements from Gen. Mattis that the fall of Syrian President Bashar al-Assad would be "the biggest strategic setback for Iran in 20 years," the administration even refused to enforce its own "red line" after Assad's use of chemical weapons. Yet, it was the war in Syria, as Hanin Ghaddar has observed, which gave Iran the "unmatched opportunity to expand its 'foreign legion' and first laid the seeds for its land bridge."

The Obama administration negotiated the Joint Comprehensive Plan of Action (JCPOA) with Iran as its attempt to prevent Iran from developing a nuclear weapon. However, the JCPOA failed to block Iran's path to nuclear weapons. In fact, it actually created a legal path for Iran to develop one within a decade. The deal gave Iran over \$100 billion in frozen assets, which former Secretary of State John Kerry admitted would be used by the regime to fund terrorism. President Obama also, at the same time as the deal was being carried out, secretly flew \$400 million to Iran as ransom for Iran's release of five captured Americans. Iran then doubled down on its destabilizing behavior in the region, using its newfound cash to fund tens of thousands of terrorist militias to support the Assad regime, fund Hezbollah, and support Iranian-backed militias in Iraq and the Houthis in Yemen.

The Obama administration's backwards approach to Iran did not stop at the JCPOA. President Obama also saw Iran and its proxy militias as potential partners in the war on ISIS, even going so far as to write a letter to Iranian Supreme Leader Ayatollah Khamenei arguing that the United States and Iran had "shared interests" in fighting ISIS in Iraq and Syria. Under the leadership of then-Special Envoy in the Counter-ISIS Campaign Brett McGurk, the Obama administration armed and trained Iranian-backed militias in Iraq as part of the fight against ISIS.

President Trump has worked to reverse these harmful policies, treating Iran as the adversary and rogue nation it is. He has pulled out of the flawed JCPOA and imposed unprecedented sanctions on Iran as part of a campaign of "maximum pressure." Secretary of State Pompeo has laid out 12 points which Iran must fulfill for a new agreement. In summary, Iran must begin to act like a normal nation. Overall, Iran must stop their support of terrorism, destabilizing behavior in the region, development of ballistic missiles, and nuclear program forever. As part of his approach to rein in Iran's domination of the region, President Trump has increased pressure on Iraq and Lebanon and increased support to Israeli operations against Iran in Syria as well as the Saudi-led coalition in Yemen. Moreover, President Trump ordered the operation that killed Specially Designated Global Terrorist Iranian Quds Force leader Qassem Soleimani, taking him off the battlefield and saving countless lives.

President Trump's approach has begun to yield real success. Iran is weaker economically than ever before, starved of revenue from oil sales, and struggling to pay its terrorist militias in the region. In recent years, Iran has begun to witness real backlash at home with large-scale anti-regime protests breaking out throughout the country. At the same time, major pro-democracy protest movements that have developed in Iraq, Lebanon, and Syria have demanded an end to Iranian domination of their countries.

The Task Force believes conservatives in Congress can work with President Trump to support his Iran strategy in a number of key ways. Congress can strengthen a number of economic sanctions to enhance the

maximum pressure campaign. President Trump has continued to enhance this campaign himself, and the Task Force is strongly supportive of his May 27, 2020 decision to end Iran’s civil nuclear waivers—an action conservatives in Congress had long pushed for. Yet, despite the strides made under President Trump, the Task Force believes more needs to be done. The package of sanctions that the Task Force has put forward would be the toughest package of sanctions on Iran ever proposed by Congress. The Task Force also believes that conservatives must reject efforts to end U.S. support for Saudi operations in Yemen and to prevent the president from future defensive actions to kill Iranian terrorist leaders like Soleimani or fighters in the proxy militias he led. Such efforts only increase the likelihood of war between the United States and Iran by undermining deterrence and incentivizing Iranian aggression. Finally, the United States must end support and funding for countries under Iran’s control to counter Iran’s influence in the region. U.S. taxpayer dollars should not go to Iranian-backed terrorist militias or military forces in the region which work with them. The United States should also stand with protesters in those countries, as well as in Iran itself, to push back against Tehran’s influence.

ENHANCING PRESIDENT TRUMP’S MAXIMUM PRESSURE CAMPAIGN ON IRAN

“President Trump is really the first administration in 39 years to be on the strategic offensive with the Iranians. The maximum pressure campaign is absolutely first rate if you get into the specifics of it, it is designed to change Iran’s behavior in the region and designed to change how Iran treats its own people. That has got to be our strategic focus.”

– Gen. Jack Keane

As FDD has detailed and Rouhani has admitted publicly, the Iranian regime—which has a history of diverting resources meant for humanitarian purposes—has attempted to inappropriately leverage the present COVID-19 pandemic to convince the United States to lift sanctions imposed through its maximum pressure campaign.

Lifting sanctions is unnecessary because U.S. sanctions exempt humanitarian assistance, medicine, medical devices, and food. Moreover, in January 2020, the United States completed a shipment of medicine through a special U.S.-Swiss channel for humanitarian trade with Iran. It also has roughly \$90 billion, and its Supreme Leader controls funds worth tens of billions of dollars, all of which could be spent on medicine and healthcare. In the words of Mark Dubowitz and Richard Goldberg, “Iran has millions of dollars to spend on supporting terrorism, but when it comes to COVID-19 they claim that cash is ‘nowhere to be found.’” Finally, President Trump has offered to send medical devices to Iran to respond to COVID-19 on many occasions. Nonetheless, Iran’s Supreme Leader has rejected aid and promoted Chinese government conspiracy theories that the United States created the virus and that American medical devices would only spread the virus in Iran.

Instead, Iran has argued the United States should lift sanctions so it can gain access to fungible cash, which could be used to spread terrorism rather than medical care. The Task Force thus rejects calls to weaken sanctions on Iran in response to COVID-19. Rather, Congress should act to expand sanctions on Iran significantly and help enhance the President’s maximum pressure campaign. The Task Force recommends the following measures.

Congress should limit executive waivers that lift sanctions on Iran.

The Task Force believes that Congress should prohibit the lifting of sanctions on Iran without approval from the House and Senate. Similar provisions were enacted in the last Congress in CAATSA, which narrowed the waivers that allow the president to lift sanctions on Russia. This could be the model of legislative restrictions on the lifting of sanctions on Iran.

Congress should urge the Trump administration to trigger snapback sanctions against Iran.

According to the International Atomic Energy Agency (IAEA), since November 2019, Iran has tripled its

stockpile of enriched uranium in clear violation of the JCPOA. The JCPOA's "snapback mechanism" says that any signatory can raise an issue of Iranian noncompliance and demand that Iran resolve it within 30 days. Otherwise, U.N. sanctions would snap back into force. This mechanism gives the United States the ability to invoke a mechanism to restore international restrictions against Iran's ballistic missile program, uranium enrichment, and plutonium-related work.

In January 2020, the U.K., France, and Germany invoked the dispute resolution mechanism of the JCPOA after Iran announced it would no longer abide by the deal. That put into effect a 65-day period where Iran could come back into compliance with the deal or face snapback U.N. sanctions if any one of those three countries found Iran in noncompliance. After talks with Iran, the U.K, France, and Germany decided to extend this period rather than pursue snapback sanctions. While the United States is no longer a party to the JCPOA, the Department of State confirmed its opinion that the United States, as a member of the UNSC, retains the right to demand snapback sanctions pursuant to UNSC Resolution 2231. As Richard Goldberg, President Trump's former Director of Countering Iranian WMD at the White House National Security Council, has noted, "if America snaps back sanctions at the Security Council, all restrictions on Iran return indefinitely: the arms embargo, missiles, nuclear restrictions, and the demand that Iran halt all enrichment activities on its own soil." Secretary Pompeo has said that the United States is strongly considering pushing for snapback sanctions on Iran at the UNSC.

The Task Force believes that triggering snapback sanctions on Iran is essential to achieving maximum pressure on Iran. The Task Force supports passing legislation directing the United States to use its voice, vote, and influence in the UNSC to trigger snapback sanctions. Furthermore, the Task Force believes that the United States has key leverage on the post-Brexit U.K., which seeks a free trade agreement with America. The United States should use this leverage to push the U.K. to invoke snapback sanctions on Iran. Even though the United States retains the legal right to impose snapback sanctions based on UNSC Resolution 2231, the U.K.'s imposition of snapback would be less controversial internationally because it remains part of the JCPOA.

Congress should proactively prepare for the expiration for the U.N. arms embargo on Iran and direct the Department of the Treasury to sanction IRGC Aerospace Force commander Amir-Ali Hajizadeh under Weapons of Mass Destruction (WMD) authorities.

Seeking snapback sanctions becomes even more important given the October 2020 expiration of the U.N. arms embargo on Iran. Congress should support efforts by the Trump administration to seek an extension of the embargo through a new UNSC resolution. However, in the event that the embargo expires and snapback sanctions are not triggered, the Task Force believes that Congress must be proactive in preventing countries, such as Russia and China, from entering new weapons deals with Iran or assisting Iran with its ballistic missile program. Ideally, the United States would lead a wider multilateral attempt to effectively rebuild the embargo by comprehensively sanctioning weapons transactions. Such an effort with like-minded countries would underscore the fact that an Iran flush with new weapons will bring more war and destruction to the Middle East, not less. Specifically, Congress should consider new sanctions on the arms industries of countries like Russia and China that return to selling weapons to Iran, the banks facilitating any sale of weapons to Iran, and the companies shipping weapons.

The Task Force also recommends Congress direct the Department of the Treasury to sanction IRGC Aerospace Force commander Amir-Ali Hajizadeh under Weapons of Mass Destruction (WMD) authorities. Hajizadeh was sanctioned in 2019 under counterterrorism authorities for his unit's role in shooting down a U.S. drone in international waters. However, he has provided extensive support for Iran's ballistic missile ambitions, including helping to increase their range and accuracy. His unit is tasked with overseeing Iran's ballistic missile arsenal, the largest in the Middle East. He has also bragged about Iran's growing space capabilities, particularly a potential multi-stage solid fuel satellite launch vehicle, which many in the West fear could be indicative of Iran moving toward a potential ICBM.

Congress should impose sanctions on Iran’s petrochemical, financial, automotive, and construction sectors.

As Iran tries to evade the full range of penalties tied to the transfer, sale, shipment, and storage of oil, its non-oil industries—which continue to generate funds for the regime— should not be forgotten. Tightening the noose on Iran’s non-oil sector would increase Iran’s macroeconomic contraction and could create further financial and political instability. Congress has imposed sectoral sanctions on Iran’s energy, shipping, and shipbuilding sectors as mandated by the IFCA. Congress should expand the IFCA to go after the petrochemical, financial, and automotive sectors of the Iranian economy.

The petrochemical sector is Iran’s second-largest export industry after oil. The petrochemical and financial sectors of Iran’s economy also have strong ties to the IRGC. As United Against a Nuclear Iran (UANI) has suggested, a first step could be mandated sanctions on Tamin Petroleum & Petrochemical Investment Co. (TAPPICO), a subsidiary of state-owned Social Security Investment Company (SSIC) and a major investment vehicle holding majority stakes in multiple petrochemical plants, projects, and companies. The automotive sector is also a concern because, as Dubowitz has noted, “technology and raw materials for car production can be dual-use.” Dubowitz has cited a number of examples of Iran using carbon fiber, hardened steel, and other sophisticated machinery to manufacture centrifuges. Finally, Iran’s construction sector should also be the target of sanctions. The IRGC’s engineering and construction arm, Khatam al-Anbiya Construction Base (KCB), allows the IRGC to solicit foreign investment. As UANI has noted, “as Iran’s largest contractor for industrial and construction projects with hundreds of satellite firms under its control, KCB is the most critical element in the IRGC’s economic dominance over the Iranian economy.”

Congress should sanction the Instrument in Support of Trade Exchanges and its Iranian counterpart, the Special Trade and Financial Institute.

The Instrument in Support of Trade Exchanges (INSTEX) is a European special-purpose vehicle established in January 2019. Its design facilitates non-USD and non-SWIFT transactions that shield European companies from U.S. sanctions on Iran. In April 2019, Tehran created the Special Trade and Finance Instrument (STFI) as a counterpart to INSTEX. As Dubowitz and Ghasseminejad have found, the seven banks that hold shares in the STFI are regime-controlled entities that are already subject to U.S. sanctions. On March 31, 2020, the first transaction between the EU and Iran through INSTEX was successfully concluded in response to the COVID-19 pandemic. If the EU is able to directly enter into transactions with sanctioned entities, U.S. sanctions on Iran have no meaning. Task Force member Rep. Brian Steil (R-WI) introduced the Stop Evasion of Iran Sanctions Act, which would grant the Secretary of the Treasury the explicit authority to sanction a financial institution operating outside the United States that knowingly conducts a significant sanctionable transaction related to INSTEX. The Task Force endorses this legislation and further recommends mandating such sanctions on INSTEX.

Congress should require the Office of Foreign Assets Control to broaden the scope of activities constituting “significant support” to Iran’s shipping sector.

According to Deputy Assistant Secretary of State for Counter Threat Finance and Sanctions David Peyman, Iran has evaded sanctions through the use of ship-to-ship transfers and shippers turning off their transponders. The Trump administration has promised to sanction oil that is in “bonded storage” in Chinese ports. As United Against Nuclear Iran has noted, a web of maritime firms, including “port authorities, importing agents, management firms, charterers, operators, marine insurers, classification societies, and all other ‘maritime services providers,’” are allowing Iran’s 200-strong fleet of sanction-designated vessels, as well as non-Iranian vessels carrying sanctioned Iranian goods, to dock and unload cargo at ports all around the world. The United States should aggressively target all businesses and countries engaged in storing Iranian oil regardless of the location. Congress should direct the Office of Foreign Assets Control (OFAC) to broaden the scope of sanctionable maritime services by expanding the list

of services constituting “significant support” to Iran’s shipping sector services.

Congress should codify and expand current human rights sanctions on Iran.

Presently, three Executive Orders (EO) address the human rights situation in Iran. They are not, however, codified in statute. EO 13553 targets serious human rights abuses by the government of Iran; EO 13606 targets grave human rights abuses by the governments of Iran and Syria using information technology; and EO 13628 targets those who prohibit the freedom of expression or assembly by the Iranian people. The Task Force recommends that these three EOs be codified to support human rights in Iran.

Furthermore, the Task Force recommends that Congress enact legislation targeting a number of individuals and entities involved in human rights abuses in Iran, including those contained in the following list, which has been highlighted by UANI:

Iran’s Justice Minister Alireza Avaei, given his role in the 1988 massacre of thousands of Iranian dissidents; Iran’s Attorney General Mohammad Jafar Montazeri, Secretary of Iran’s Supreme Council of Cyberspace Abolhassan Firouzabadi, and Iran’s entire Ministry of Information and Communications Technology and National Information Network for their role in enabling the internet blackout during the November 2019 protests. Interior Minister Abdolreza Rahmani-Fazli, Deputy Interior Minister Hossein Zolfaghari, the Ministry of the Interior, as well as Tehran Revolutionary Court head Mousa Ghazanfarabadi should also be considered for designation for their roles in suppressing the protests and threatening protesters with grave consequences; and the Tehran Revolutionary Court’s head Mousa Ghazanfarabadi, as well as its infamous “hanging judge,” Abolqassem Salavati, for the harsh sentences they have leveled on protesters in the past and will inevitably hand down this time as well.

Congress should also require the Trump administration to use Global Magnitsky Act authorities to sanction the Iranian heads of foundations and holding groups constituting the Iranian Supreme Leader’s financial empire. These entities include the Execution of Imam Khomeini’s Order (EIKO), the Mostazafan Foundation, and the Razavi Economic Organization, which together hold up to \$200 billion in assets. As Dubowitz and Saeed Ghasseminejad have noted, the Mostazafan Foundation, and the Razavi Economic Organization have not been sanctioned by the United States, and sanctioning these two entities would help prevent sanctioned entities from reemerging under new names.

While the Trump administration has sanctioned EIKO as part of the withdrawal from the JCPOA, such sanctions should be codified into law using Global Magnitsky Act authorities that target significant corruption. A 2013 investigation by Reuters found that EIKO’s massive financial empire is taken mostly from property seizures. According to Reuters, EIKO “holds stakes in nearly every sector of Iranian industry, including finance, oil, telecommunications, the production of birth-control pills and even ostrich farming.”

Congress should also sanction the Islamic Republic of Iran Broadcasting (IRIB). A study by Toby Dershowitz and Talia Katz of FDD found that, in addition to spreading disinformation and regime propaganda, IRIB regularly aired forced confessions by political prisoners who were victims of torture.

Finally, Congress should enact House Foreign Affairs Committee Ranking Member Rep. Michael McCaul’s (R-TX) Iran Human Rights and Hostage-Taking Accountability Act, which would require sanctions on senior regime officials and others responsible for hostage-taking and other human rights abuses.

Congress should enact the Stop Corrupt Iranian Oligarchs and Entities Act to report on corrupt Iranian oligarchs and state-affiliated entities.

Rep. David Kustoff (R-TN) has introduced the Stop Corrupt Iranian Oligarchs and Entities Act, which requires the Department of the Treasury to report on

Iranian oligarchs, including their net worth, sources of income, and levels of corruption. Treasury would also be required to report on the role of key state-affiliated entities in the Iranian economy. In the past year, protestors in Iran have highlighted the corruption of Iranian officials as part of their demands for reform. This bill would give more insight into corrupt Iranian oligarchs who have stolen the money of the Iranian people.

Congress should support and expand Secretary of State Pompeo's twelve points for the removal of sanctions on Iran in a statement of policy.

Secretary of State Pompeo outlined the goal of the maximum pressure campaign in a May 2018 speech at The Heritage Foundation. He outlined twelve points Iran had to meet in order act like a normal country and be a responsible member of the international community. His twelve points focus on Iran's destabilizing behavior toward the international community through its nuclear weapons and ballistic missiles program, support of terrorism, and malign regional presence in Syria and Iraq. They lay the foundation for what a future agreement with Iran should look like. Congress should endorse and appropriately update these points in legislation as a statement of policy to make clear they are the official policy of the United States.

Despite being painted as the "Great Satan" by Iran's radical rulers, the Iranian pro-democracy movement has looked towards the United States as the leader of the free world for leadership and support. President Trump has responded to their call by tweeting in Farsi about the need for human rights inside Iran in what was the most-liked Farsi language tweet in history. President Trump's maximum pressure campaign on Iran has created new leverage that can be used to improve human rights for the Iranian people. Therefore, the Task Force supports UANI's recommendation that a thirteenth point should be added in recognition of the Iranian people's desire for freedom. This additional point should demand that Iran allow peaceful protests, release political prisoners, and end its human rights abuses.

PROTECTING AMERICA BY SOLIDIFYING THE PRESIDENT'S WAR AUTHORIZATION

"It is impossible to overstate the importance of this particular action. It is more significant than the killing of Osama bin Laden or even the death of [Islamic State leader Abu Bakr] al-Baghdadi. [Soleimani] was the architect and operational commander of the Iranian effort to solidify control of the so-called Shia crescent, stretching from Iran to Iraq through Syria into southern Lebanon. He is responsible for providing explosives, projectiles, and arms and other munitions that killed well over 600 American soldiers and many more of our coalition and Iraqi partners just in Iraq, as well as in many other countries such as Syria. So his death is of enormous significance."

– Gen. David Petraeus

Congressional Democrats have tried on numerous occasions this Congress to handcuff the President's ability to respond to Iran-backed aggression. In 2019, Congress—led by Democrats—passed a resolution directing the removal of U.S. Armed Forces from hostilities in the Republic of Yemen. The resolution also would have prohibited the United States from participating in arms sales with the Saudi Arabian-led coalition supporting the legitimate U.N.-recognized government of Yemen in its fight against radical, Iran-backed Houthi militias. President Trump vetoed the measure. Also, in the wake of the operation that killed Soleimani, Congress—again led by Democrats—passed measures opposing the strike and limiting the President from future military action against both the IRGC and its proxy militias in Iraq. The House also voted to repeal the 2002 Authorization for Use of Military Force (AUMF), which authorized the U.S. military presence in Iraq.

Although some conservatives may be concerned with increasingly degraded congressional war powers, these politically driven resolutions were overly prescriptive in the limits they placed on executive power to defend the United States. They created a blanket prohibition on the President's ability to respond to Iran's increasing aggression against U.S. forces and allies in the Middle

East. Placing excessive constraints on the President's war powers to respond to Iranian attacks only increases the likelihood of war and escalates hostilities with Iran by removing the President's ability to enhance our deterrent capability. The Task Force therefore proposes the following as one possible option to consider to both reassert Congress' role and stand against efforts by House Democrats to limit the President's war powers on Iran.

Congress should enact a new AUMF to ensure the President has clear authority to keep the country safe from Foreign Terrorist Organizations.

The 2001 and 2002 AUMFs are both outdated and not ideally structured to serve the purposes for which they are currently used. Still, attempts to repeal such resolutions without replacing them with adequate authority to respond to today's threats would be disastrous to our national security and embolden our enemies. Doing so would unduly limit the President's ability to keep the country safe from terrorist groups including ISIS, Al Qaeda, or Iranian backed militia groups in Iraq.

The 2001 AUMF gave the president authority to go after any group responsible for the 9/11 attacks and countries that harbor such groups. Yet it is currently being used to go after groups like ISIS, which did not exist at the time. ISIS has even engaged in combat with Al Qaeda, the group actually responsible for 9/11. The 2002 AUMF, which authorized the War in Iraq, grants the President the authority to use force to defend the United States from the "threat posed by Iraq." It is currently being used to authorize the U.S. presence in Iraq and military strikes against Iranian-backed terrorist militias. These stretched meanings have caused a conundrum for many conservatives who want to grant the President authority to keep the country safe while, at the same time, want the President to act consistently with authorizations passed by Congress.

The Task Force urges lawmakers to consider replacing the outdated 2001 and 2002 AUMFs to clearly allow the President to respond to both Iranian-backed aggression and terrorist threats such as ISIS and Al Qaeda. One option lawmakers could pursue would

be to design an AUMF that authorizes the President to engage in operations against any currently designated Foreign Terrorist Organization (FTO) that is on the Department of State's list at the time of enactment. Such an AUMF would be similar to the amendment to S. J. Res. 68 offered by Sen. Tom Cotton (R-AR) which would have allowed the United States to engage in military operations directed at designated FTOs. However, unlike the Cotton Amendment, such an AUMF could be limited to only those FTOs on the list at a certain point in time to avoid granting the President unfettered authority to add groups to the FTO list to unilaterally expand war powers. This would mean that a President could not designate a new group as an FTO and gain the same AUMF authority. Rather, Congress would have to act again to update the AUMF to include the additional group. A new AUMF should also contain a sunset requirement to ensure Congressional evaluation in the future.

The process of designating an FTO is laid out by the Antiterrorism and Effective Death Penalty Act of 1996. The process involves the Secretary of State finding that a foreign organization engages in terrorist activity that threatens U.S. national security. Current law requires the Secretary of State to consult with Congress one week before a designation is final and grants designated parties the ability to seek judicial review in the U.S. State Court of Appeals for the District of Columbia. The current list of Department of State designated FTOs includes many groups the United States has already engaged in combat with since 9/11, including ISIS, Al Qaeda, Kata'ib Hezbollah, and the IRGC.

The Task Force believes granting the President the explicit authority to engage in military operations against terrorist threats is common sense. It would also better align the letter of the law with current U.S. military operations around the world. A properly structured AUMF would balance giving the President sufficient authority to go after terrorist organizations for a definitive length of time without granting vague and indefinite war powers.

COUNTERING IRAN'S REGIONAL ROLE

“Iran’s effort to establish a land bridge across Syria and Iraq is connected to a four decade-long proxy war that Iran is waging to pursue its revolutionary agenda... The IRGC grows militias like Hezbollah in Lebanon that lie outside those governments’ control, which Iran can use to coerce those governments into supporting Iran’s designs in the region and reducing U.S. influence. Iran has that coercive power in Lebanon, Syria, and Iraq. The IRGC is also pursuing control of strategic territory in Yemen through its support of Shiite Houthi militias engaged with forces supported by the Saudis and Emiratis in that devastating civil war. The chaos that Iran’s strategy promotes sets conditions for the establishment of its land and air bridge across the region.”

– Lt. Gen. H.R. McMaster

Iran’s regional role—especially its malign behavior in Iraq, Syria, Lebanon, and Yemen— poses a direct threat to the United States, Israel, and Gulf allies such as Saudi Arabia. The Task Force believes that any set of policies to counter Iran cannot ignore its malign regional role. In this vein, the Task Force recommends the following collection of policies which aim to go after Iran and its proxies in the region and cut U.S. taxpayer funding to governments which have been hijacked by Iran and its militias.

IRAQ

Congress should require the Department of State to designate a number of Iranian-backed proxy militias in Iraq and Syria as FTOs and maintain a watchlist of future Iranian-backed proxy militias.

The IRGC has created, armed, trained, and commanded a number of proxy militias in Iraq and Syria that have yet to be designated as terrorist organizations. These militias include groups such as the Badr Corps, Iran’s oldest proxy in Iraq, which fought on Iran’s side during the Iran-Iraq war. Badr’s leader, Hadi Al-Ameri, was involved in the December 2019 terrorist attack on the U.S. Embassy in Baghdad. After pressure from

Congress following the House’s passage of several bills in the 115th Congress, the Trump administration began to designate a number of Iranian-backed proxy militias, including Fatemiyoun, Zainabiyoun, Harakat Hezbollah al-Nujaba, and ‘Asa’ib Ahl al-Haq. Still, many of these groups have still not been designated as terrorist organizations despite being backed by the IRGC-Quds Forces (IRGC-QF), which is an FTO. In fact, the Badr Corps, led by al-Ameri, continues to dominate the Iraqi Interior Ministry and Federal Police, which receive U.S. assistance in the fight against ISIS.

The Task Force recommends that Congress should require the president to designate Ameri, the Badr Corps, along with other Iranian backed militias in Iraq, such as Kata’ib Imam Ali, Suraya al-Khorasani, Kata’ib Sayyid al-Shuhada, Liwa Abu Fadl al-Abbas, Harakat al-Awfiya, Harakat Jund al-Imam, and Sarayya Ashoura. These militias are not only Iranian proxies but have also signed a statement in April 2020 vowing to confront the United States.

Furthermore, Congress should require the Department of State to issue an annual report regarding new entities owned or controlled by the IRGC and IRGC-QF in Iraq. The Pre-venting Destabilization of Iraq Act, which passed in the House in the 115th Congress, contains language mandating such a report. This report would keep up with Iran’s shell game of creating new splinter militias in Iraq that go unsanctioned for years. Finally, Congress should expand the Act to require the President to identify foreign persons that knowingly assist or support Iran’s new proxy militias.

Congress should require a report on the long-term threats posed by backing the Iraqi Popular Mobilization Forces and other Iranian-backed militias in the war on ISIS.

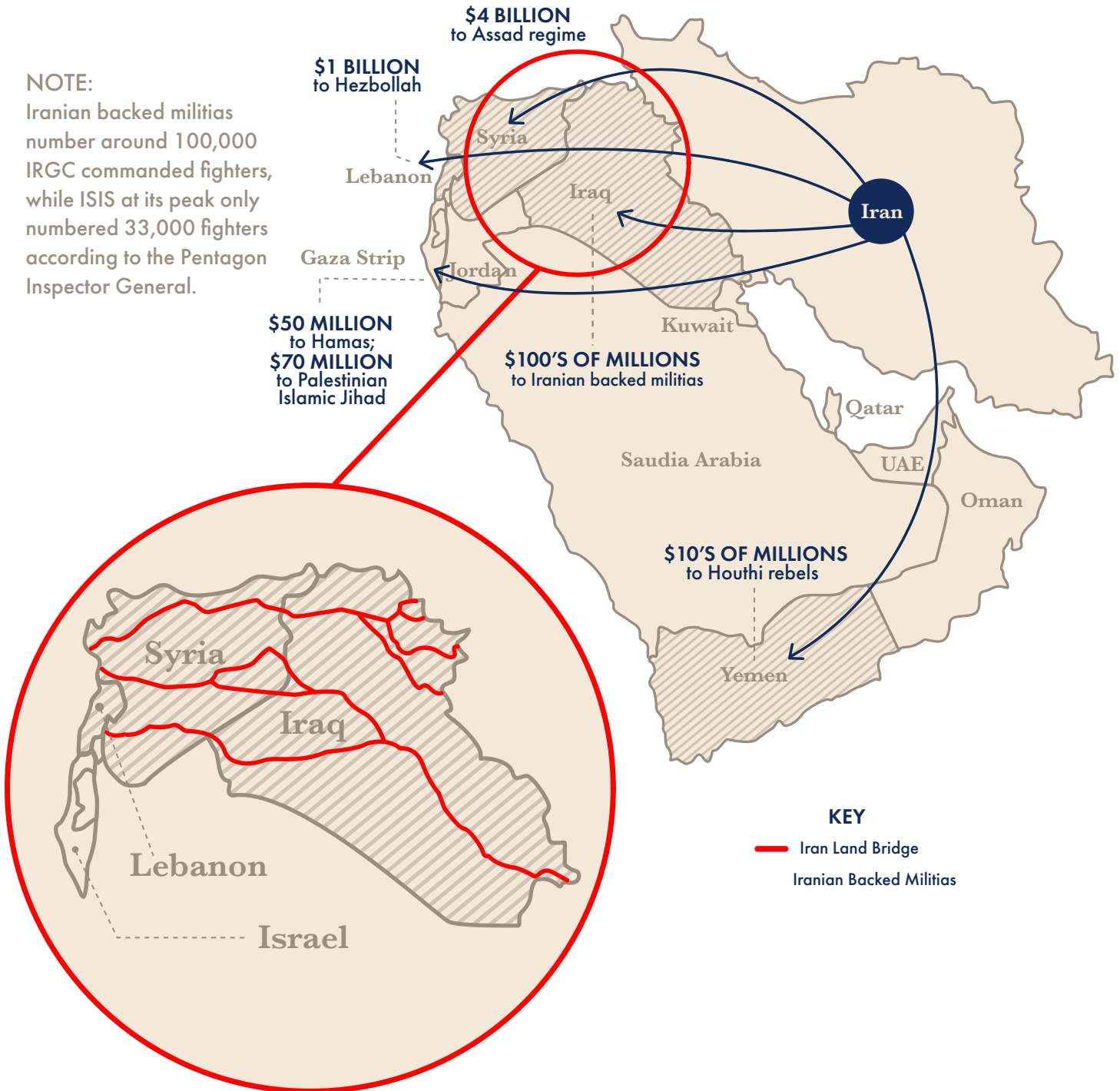
The Obama administration’s decision to work with Iranian-backed militias to fight ISIS has led to catastrophic results. This strategic mistake has empowered Iran—now a greater threat than ISIS—and increased the sectarian polarization in Iraq and Syria, which creates conditions ripe for the re-emergence of ISIS and other Salafi-jihadi terrorist

IRAN'S LAND BRIDGE

Iranian Backed Militias are Now Greater in Number & Geographic Area than ISIS at It's Peak

NOTE:

Iranian backed militias number around 100,000 IRGC commanded fighters, while ISIS at its peak only numbered 33,000 fighters according to the Pentagon Inspector General.



Source: Data collected from Michael Pregent, Senior Fellow Hudson Institute and the Israeli Foreign Ministry

groups. The Iraqi Popular Mobilization Forces (PMF), a group of mostly Shiite Iraqi militias that are disproportionately made up of IRGC-backed proxy groups, was funded and supported by the Iraqi state during the counter-ISIS campaign. Congress must understand the full nature of this problem and undertake a full audit of how Iranian-backed groups in the PMF took advantage of U.S. assistance to the Iraqi government in the anti-ISIS campaign.

The Trump administration has pushed the Iraqi government to exert control of these militias and bring them into the military and under state control. This, unfortunately, has not happened yet. In fact, as Lt. Gen. McMaster has noted, Iran has used the “Hezbollah model” to make these militias stronger than the state itself, with the objective of capturing the state and bringing it under Iranian domination. Despite the PMF’s increasing strength, Congress has continued to fund the Iraqi security forces. It is important that Congress require a report regarding Iranian penetration in Iraq as a way to enhance President Trump’s maximum pressure campaign, exercise oversight over U.S. funding to Iraq, and attempt to find new solutions to counter Iran in Iraq.

Such a report should include the following information: (1) The number of Iranian backed militias in Iraq that benefited directly or indirectly from U.S. security assistance during Operation Inherent Resolve; (2) which Iranian backed militias in Iraq benefitted from U.S. security assistance; (3) whether such militias have threatened the United States or worked with any designated FTO; (4) the long term counterterrorism risks created by the strategy of working with Iran to fight ISIS; (5) the connections the PMF has with Iranian-backed militias and terrorist organizations; (6) the threat the PMF poses to the U.S. homeland, Israel, the Kurdistan Regional Government (KRG), Saudi Arabia, Jordan, Turkey, Egypt, and other regional partners; and, (7) the extent to which Iran and its militias benefited from U.S. security assistance during the war on ISIS.

Congress should block funding for the Iraqi Ministry of Interior and Federal Police until certain safeguards are met.

Since the emergence of ISIS in 2014, the Department of State has provided Iraq with \$1.2 billion in Foreign Military Financing (FMF) to fund the Iraqi Security Forces (ISF). In that same time period, the Department of State provided Iraq with \$4.2 million for International Military Education and Training (IMET). Additionally, the Department of Defense provided \$4.0 billion for the fight against ISIS to the ISF through the former Iraq Train and Equip Fund (ITEF) and the current Counter-ISIS Train and Equip Fund (CTEF).

During most of this period, the Iraqi Ministry of Interior (MOI) was under the control of the Iranian proxy Badr Corps through Interior Minister Qassem Al-Araji. Although the Badr Corps no longer formally runs the Ministry, it still plays a leading role there, where senior leaders in the Federal Police are Badr Corps operatives. As Mike Pregent, a senior fellow at the Hudson Institute and former Army Intelligence Officer in Iraq has testified, Badr Corps’ leader Hadi Al-Ameri and his associates “facilitate IRGC-QF militia activities, procure U.S. M1 Abrahams tanks, have access to U.S. intelligence through [former Interior Minister] Qassem al-Araji’s MOI, and have access to funds through the Prime Minister’s security budget.”

The origins of this partnership date back to the flawed policies of the Obama administration. According to a 2015 report by Norman Cigar for the U.S. Army War College Strategic Studies Institute, at that time, the U.S. military was “operating in the same battlespace as the [Iranian-backed] militias, whether with air operations, training missions, or even providing unwilling support, as in arming the militias, even if only indirectly.” Moreover, as Cigar explained, U.S.-supplied arms that have been transferred by Iraq to Iranian-backed militias making the United States a de facto collaborator in “combined” operations with some militias.

Pregent described the strategy used by Iran to exert control over Iraqi entities and its effects as follows:

Qassem Soleimani used the Hezbollah model to create loyal IRGC-QF proxies in Iraq and the Badr model

to infiltrate the Iraqi Ministry of Interior and Ministry of Defense. The Hezbollah model replaced ISIS with IRGC-QF militias throughout Iraq, and the Badr model is now being used in Lebanon to co-opt the Lebanese Armed Forces (LAF). The “building institutions to counter Iran” strategy we hear from academics, diplomats, and national security officials, is actually building institutions for Iran to co-opt, to infiltrate, and to saturate. IRGC-QF proxies have access to U.S. funds and equipment in the Iraqi MOD and MOI and Hezbollah has access to the same with the LAF.

Moreover, both the MOI and Federal Police have committed gross violations of human rights in their violent crackdowns against anti-Iran Iraqi protesters. It is unconscionable that U.S. taxpayer dollars continue to flow to the Iranian co-opted Iraqi MOI and Federal Police.

Congress should enact the Iraq Human Rights and Accountability Act to support the Iraqi pro-democracy protesters standing up to Iranian domination.

The Iraq Human Rights and Accountability Act, sponsored by Task Force Chairman Rep. Wilson, supports democracy and human rights in Iraq. It also demonstrates solidarity with the Iraqi protest movement that has openly called for the end of Iranian domination over their country. The bill requires the Department of State to determine if senior Iraqi officials involved in the attacks on protesters, including senior leaders in the PMF, meet criteria for the imposition of sanctions pursuant to the Global Magnitsky Act. It also encourages government reform to combat corruption and strengthen the rule of law and transparency in Iraq, condemns attacks against peaceful protesters, and demands accountability for those involved in perpetrating human rights violations against protesters in Iraq.

Congress should require Iraq to comply with sanctions on Iran.

The Department of State has granted Iraq waivers from complying with sanctions on Iranian energy imports.

Secretary of State Pompeo has stated that while the United States continues to periodically renew the waiver extensions, it will assess whether to provide future waivers based upon the makeup of the next Iraqi government. The Department of State has noted that the purpose of this waiver “is to meet the immediate energy needs of the Iraqi people.” Yet, granting these waivers has not changed the Iraqi government’s behavior nor stopped Iraq from doing Iran’s bidding. Rather, the opposite has happened. Iran has used Iraq as a channel to bypass U.S. sanctions. Also, Iraq has only grown more dependent on Iran’s energy imports, contrary to a primary objective of the waivers. The Task Force recommends that Congress pass legislation terminating these waivers to exert pressure on Iraq and make it harder for Iran to use Iraq as a channel to bypass sanctions.

LEBANON

Congress should cut off U.S. security assistance funding to the Lebanese Armed Forces and prohibit an IMF bailout of Lebanon.

Countering Iran’s regional domination must address Lebanon where Iranian-proxy Hezbollah lays right on Israel’s doorstep. The United States grants the Lebanese Armed Forces (LAF) \$160 million a year in taxpayer-funded support. The purpose of such assistance, according to U.S. law, is to “professionalize the LAF to mitigate internal and external threats from non-state actors, including Hizballah.” Despite this noble goal, U.S. funding of the LAF has been largely counterproductive. In fact, the LAF has not acted against Hezbollah. The Israeli Defense Forces (IDF) have noted Hezbollah’s “increasing influence” over the LAF. According to the IDF, Hezbollah exercises a great deal of power within LAF decision bodies. As the IDF points out, the Hezbollah aligned coalition has a majority inside the body in charge of managing the state’s most sensitive security matters.

As Tony Badran of FDD has noted, the misguided U.S. policy of strengthening so-called state institutions in Lebanon has only worked to the advantage of Hezbollah, which controls these institutions. According

to Badran, the LAF has been deployed alongside Hezbollah, looked the other way while Hezbollah built cross-border tunnels into Israel, and even “allowed the import through Lebanon’s international airport of technology, flown in by Iranian planes, to upgrade Hizballah’s projectiles into precision-guided missiles.” Furthermore, with the Lebanese government now under the control of Hezbollah and its allies, which hold a solid majority in the parliament, it is even harder to argue that funding the LAF is achieving anything other than propping up the Iranian order maintained by Hezbollah.

These realities have led to a renewed debate about the wisdom of funding the LAF. The Trump administration instituted a hold on \$105 million in security aid to Lebanon in October 2019, but it was eventually released in December. Sen. Ted Cruz (R-TX) and Rep. Lee Zeldin (R-NY) have introduced the Countering Hezbollah in Lebanon’s Military Act to withhold 20 percent of U.S. military assistance to the LAF unless the President can certify it is taking necessary steps to end Hezbollah and Iran’s influence over the LAF. The Task Force recommends going further and completely cutting taxpayer funding to the LAF.

Moreover, Lebanon is currently seeking an IMF bailout because of its dire economic situation. Due to Hezbollah’s control over Lebanon, the Task Force believes Congress should pass legislation prohibiting any taxpayer money to the IMF from going to a bailout of Lebanon. Such a bailout would only reward Hezbollah at a time where protesters in Lebanon are demanding an end to corruption and standing against Hezbollah’s rule.

Congress should expand sanctions on Hezbollah and its allies in Lebanon.

Both Congress and the Trump administration have steadily increased sanctions on Hezbollah in recent years with the enactment of the Hezbollah International Financing Prevention Act of 2014 and the Hizballah International Financing Prevention Amendments Act of 2018. These sanctions have had a real impact on the organization by drying up the funds it can access, especially from Lebanese banks. However, more can be done to enhance sanctions on Hezbollah.

The Task Force recommends new sanctions legislation on Hezbollah to plug existing loopholes. First, such legislation could, as UANI has suggested, sanction all current or future parliamentarians and government ministers who are direct members of Hezbollah. It could also sanction so-called independent cabinet members who are actually Hezbollah supporters, including current Health Minister Hamad Hassan, MP Jamil Al-Sayyed, and former Foreign Minister Fawzi Salloukh. In addition to sanctioning Hezbollah itself, such legislation should also go after Hezbollah’s strongest allies from outside of the organization for their support of Hezbollah, such as former Foreign Minister Gibran Bassil and head of the Amal Movement and the Speaker of the Lebanese Parliament Nabih Berri. New legislation could require the President to examine whether these two individuals and other strong allies of Hezbollah within their March 8th Movement political bloc—especially those in the Free Patriotic Movement and Amal Movement political parties—meet the criteria to be sanctioned under the Hezbollah International Financing Prevention Act of 2015, the Hezbollah International Financing Preventing Amendments Act of 2018, and the Caesar Syria Civilian Protection Act of 2019. Such legislation could also mandate that such authorities be used to sanction Hezbollah linked entities in Latin America.

The Task Force also recommends Congress pass legislation targeting Hezbollah’s vast economic holdings in Lebanon as well as its offshore companies. The Task Force applauds President Trump for sanctioning Atlas Holding—a holding company which is partially owned by Hezbollah’s Martyr Foundation—and its subsidiaries, including Amana Fuel Co. and Amana Plus Co., which own a chain of gas stations and trade in fuel and oil derivatives and Shahed Pharm, which is a pharmaceutical drug company in Lebanon, and MEDIC, which imports and sells pharmaceuticals, cosmetics, and medical equipment. In addition, new sanctions legislation on Hezbollah could target Iranian religious endowments that provide Hezbollah with funding, including the Astan Quds Razavi (Imam Reza Shrine Foundation), the Bonyad-e Mostazafan va Janbazan (Foundation of the Oppressed and Disabled), Bonyad-e Panzdah-e Khordad (15 Khordad Foundation), and the Bonyad Maskan (Housing Foundation). Finally, such

legislation could require the Treasury Department's Financial Crimes Enforcement Network (FinCEN) to determine whether under Section 311 of the Patriot Act south Lebanon should be designated as a primary money laundering concern, particularly in areas where Hezbollah is dominant. This would prohibit opening or maintaining correspondent accounts in the United States for, or on behalf of, south Lebanese financial institutions as well as the use of foreign financial institutions' correspondent accounts at covered U.S. financial institutions to process transactions involving south Lebanese financial institutions. Notably, FinCEN used this authority to designate Iran as a primary laundering concern in November 2019.

SYRIA

Congress should support the Trump administration's push for a political transition and withdrawal of all Iranian forces from Syria and require the Department of Defense to produce a feasibility assessment for a no-fly zone in Idlib, Syria.

As Ken Pollack of the American Enterprise Institute noted, "If the United States is going to push back on Iran, Syria is the best example of the first category—a place where Iran is vulnerable and where we can do more harm to them than they can to us." The brutal Assad regime and Iran have enjoyed a close alliance since the Iranian Revolution in 1979. Iran relies on Assad as the heart of its land bridge so it can project the power of its militias on the border of Israel. The Iranian regime views the potential removal of Assad as an existential threat and has sent tens of thousands of its proxy militias, as well as Hezbollah, to Syria to fight to maintain the regime. In doing so, it has committed war crimes, such as starvation sieges, sectarian cleansing in the Damascus suburbs, and supporting the regime's ruthless campaign that has killed over half a million people. Iran's backing of Assad has perpetuated a refugee crisis that has overrun Europe and created the sectarian polarization and vacuum that led to the emergence of ISIS. The recent assault by Hezbollah and other Iranian-backed militias from the ground,

backed by Russian and Assad air cover, on Idlib in northern Syria created the largest wave of refugees in the history of the Syrian conflict.

Congress last year passed the Caesar Syria Civilian Protection Act of 2019, which calls for a political transition to a government that respects human rights and enacts tough sanctions on the Assad regime and its supporters. The Task Force recommends that Congress go further and make a statement of U.S. policy supporting a free and democratic Syria and stating that there can be no solution to the conflict in Syria if the Assad regime remains in power. It should also support President Trump's demand that all Iranian-commanded forces withdraw from Syria. Such a statement would illustrate Congress' commitment to pushing back against Iran in Syria.

Furthermore, the Task Force calls upon the Department of State and Department of the Treasury to aggressively enforce the Caesar Act and use its authorities to sanction Iranian, Russian, and Hezbollah entities supporting the Assad regime. Congress should consider additional legislation requiring the Department of State and the Department of the Treasury give extra scrutiny to countries that are exploring or expanding economic relations with the Assad regime such as the UAE, Oman, Lebanon and Jordan, as well as other jurisdictions known for sanctions evasion. The departments could achieve this through an annual report that examines whether or not the criteria for Caesar Act sanctions are met by government officials and businessmen in such countries.

Furthermore, due to the dire situation in Idlib, the Task Force recommends that Congress require production of a report examining the feasibility of a no-fly zone "on humanitarian and counterterrorism efforts in Syria and the surrounding region." Such a report would have been required by Sec. 303 of the House passed Caesar Syria Civilian Protection Act of 2016. This report has become more pressing as there have been renewed calls for a no-fly zone in Syria, including by U.S.-ally Germany. A no-fly zone in Syria, as Task Force Chairman Rep. Wilson has noted, would be essential to both counter the Iranian expansion in northwest Syria and help stem the tide of refugees overrunning Europe.

YEMEN

Congress should sanction the Houthis in Yemen as a Foreign Terrorist Organization and codify sanctions on those supporting the Houthis and destabilizing Yemen.

The Iranian-backed Houthi rebel group in Yemen took power in a military coup in September 2014, ousting the legitimate government that sought assistance from a coalition of countries led by Saudi Arabia. Unlike Iranian-backed militias in Iraq, like Kata'ib Hezbollah or the Badr Corps, the Houthis are not directly commanded by the IRGC. They are a homegrown Yemeni group that was once somewhat independent of Iran. Still, the militia, whose slogan is "Death to America" and "Death to Israel," receives significant support from Iran and has launched ballistic missile attacks against Saudi Arabia, attacking its military bases, civilian airports, and oil infrastructure. Yet, it has not been designated as an FTO.

The Task Force recommends that Congress pass legislation requiring the examination of whether the Houthis meet the criteria to be designated as an FTO due to its ties with other terrorist organizations, such as the IRGC, and its terrorist attacks against Yemeni civilians and Saudi Arabia. Furthermore, the Task Force recommends that Congress sanction those who support the Houthis as well as those who the President determines knowingly provide support to those who are in violation of UNSC Resolution 2216.

Congress should refrain from cutting arms sales to Saudi Arabia and the UAE.

Cutting arms sales to Saudi Arabia in Yemen would, as The Heritage Foundation has noted, strengthen the Houthis and make a peace agreement to end the war in Yemen less likely. This would undercut Saudi Arabia, give Iran a green light to expand its support to the Houthis, and allow the Houthis to gain momentum on the battlefield and expand even further. Allowing the Houthis to grab a permanent foothold on Saudi Arabia's border in Yemen would create a situation similar to Hezbollah's on the border with Israel, granting Iran even more extensive strategic depth in the region.

Congress should direct the Department of Defense to provide a comprehensive assessment of U.S. capabilities to defend against Iranian ballistic missiles, cruise missiles, and unmanned combat aerial vehicles.

As The Heritage Foundation has noted, Iran and its proxies, including the IRGC, the Houthi rebels of Yemen, and Iranian-backed militias in Iraq, are increasingly carrying out attacks using drones, ballistic missiles, and unmanned aerial vehicles (UAVs) on U.S. forces in Iraq and on critical infrastructure in Saudi Arabia. The Task Force recommends the Department of Defense assess the threat U.S. forces face from Iranian missiles and drones in addition to our relevant defenses, including soft-kill and hard-kill options.

THE SALAFI-JIHADI MOVEMENT

"ISIS and Al Qaeda deny the worth and dignity of the individual. Here's how Osama bin Laden once put it: "We love death. The U.S. loves life. That is the big difference between us." ... Our enemies reject religious liberty—indeed all liberty—as they seek to rule by constant bloodshed. They reject equality and seek to empower themselves at the expense of those they regard as their inferiors. And they reject pluralism because they regard any other religion—indeed, any other tradition within Islam itself—as a crime punishable by death. And so, as we confront terrorists on the battlefield, in courts of law, and in other theaters, we also must confront the twisted ideas they use to justify their barbarism."

—Amb. Nathan Sales

The focus on great power competition should not blind us to the threats faced by Salafi-jihadi organizations. These groups, such as ISIS and Al Qaeda, and the barbaric ideology that animates them, are enemies of liberty and humanity. President Trump's National Security Strategy states that "Jihadist terrorist organizations present the most dangerous terrorist threat to the Nation," and notes that "even after the territorial defeat of ISIS and Al-Qa'ida in Syria and Iraq, the threat from

jihadi terrorists will persist.” The Institute for the Study of War (ISW) has pointed out that despite the fact that Salafi-jihadi military organizations—especially ISIS and Al Qaeda—“lack the ability to destroy us militarily, the danger they present is no less existential.”

In the last decade, ISIS and Al Qaeda have killed thousands in overseas terrorist attacks around the world, and tens of thousands within conflict zones in Iraq, Syria, Afghanistan, Mali, and Yemen. An analysis by CNN found that from June 2014 to February 2018, ISIS conducted more than 140 terrorist attacks outside of Iraq and Syria that killed at least 2,043 people around the world. The death toll from conflict zones in which ISIS operates has been much higher. According to the Institute for Economics and Peace, between 2014 and 2019, ISIS has been responsible for 27,947 deaths. ISIS’s chapter in Afghanistan is responsible for 2,800 deaths, with most of these victims being Muslims themselves. Last year, under President Trump’s leadership, ISIS was no longer the deadliest terrorist group in the world for the first time since 2014.

The defeat of ISIS’s territorial caliphate does not eliminate its threat or that from Al Qaeda and other Salafi-jihadi groups. In fact, ISIS still has an estimated 18,000 fighters left in Iraq and Syria, albeit that figure is down from over 70,000 in 2014. A 2020 Department of Defense Inspector General report notes that ISIS remains cohesive even after the 2019 killing of its leader Abu Bakr al-Baghdadi by U.S. forces.

Moreover, policymakers often focus on specific organizations, like ISIS, or the nebulous specter of “terrorism” rather than the underlying Salafi-jihadi movement and its ideological foundation. The Salafi-jihadi movement, as described by Katherine Zimmerman of AEI, is “the ideological movement that holds that it is a religious obligation for individual Muslims to use armed force to cause the establishment of true Muslim state governed under a Salafi interpretation of shari’a [Islamic law].” In understanding the ideological underpinnings of this movement it is important to understand the meaning of the terms Salafi and jihadi. As Zimmerman has explained:

Salafi because its adherents believe they must return all Muslims to the beliefs and practices of the time of the Prophet Mohammad and the early generations of Muslims (the salaf). Jihadi because they claim that every individual Muslim has a religious obligation to wage violent war in pursuit of this aim. The overwhelming majority of Muslims reject these beliefs. Salafi-jihadis seek to impose them on all.

The number of Salafi-jihadi groups has skyrocketed since 1980, with the vast majority in the Middle East, North Africa and South Asia—specifically Syria, Libya, Afghanistan, and Pakistan. This expansion is due primarily to the increasing number of conflicts available for Salafi-jihadi groups to inject themselves. All together, these groups consist of 100,000 to 230,000 fighters, the highest number in the past 40 years. Salafi-jihadi groups thrive on conflicts. They position themselves as the savior of local people to gain their support. Zimmerman points out that the power vacuum created by a collapsing government, such as in Iraq, Syria, Yemen, Libya, Somalia, Mali, Nigeria, Afghanistan, and parts of South Asia, was the single biggest factor in the rise of Al Qaeda and ISIS. Salafi-jihadi groups exploit these distressed populations to spread their violent ideology.

In addition to Syria and Iraq, where ISIS first emerged, ISIS and Al Qaeda have established footholds in ongoing conflicts in Libya, Yemen, the Sahel, eastern Africa, and Afghanistan. These footholds threaten to be magnets of a new Salafi-jihadi resurgence. In Mali, years of instability and conflict has allowed Salafi-jihadi groups such as Al Qaeda and Ansar al-Islam to grow. A shift toward great power competition with China and Russia does not mean that these potential future safe havens can afford to be ignored. Strategic competitors, such as Russia, have often raced to fill vacuums before the United States, destabilizing areas and often making the terrorism problem worse. For example, as Emily Estelle of AEI has pointed out, Russian intervention in Libya exacerbated that country’s underlying civil war and has been a key driver to the resurgence of both Al Qaeda and ISIS.

The Salafi-jihadi ideology has been indirectly fueled by state-sponsored educational systems and the media in many Muslim-majority countries. These tools have been used by authoritarian regimes to spread hatred and intolerance, deemphasize critical thinking, and directly promote radical ideologies, even in children. A detailed review of Arab educational curriculum in the Middle East by the think tank IMPACT-SE found textbooks—even in supposedly secular Arab governments such as Syria—have promoted anti-Semitism, Holocaust denial, and terrorism. Meanwhile, Palestinian textbooks glorify suicide bombers and the murder of Jews. IMPACT-SE found that, despite some improvement over time, Saudi Arabia's textbooks continue to teach Salafi ideology and enmity toward Jews and Christians. ISIS even adopted official Saudi textbooks until it could publish its own. Gulf state-funded satellite media channels often promote radical clerics that preach intolerance and hatred. Qatar, Saudi Arabia, and the UAE, for example, aired a firebrand cleric who calls for the destruction of Shiites, Alawites, Christians, and Jews. Qatar-backed Al-Jazeera, in particular, has worked to promote anti-Semitic and anti-American voices.

Countering this movement's ideology or messaging alone will not defeat it. Nor will the United States be able to "kill its way out of this war." Rather, according to Zimmerman, to win, the United States must also focus on the people in order to break the existing ties between Sunni populations and Salafi-jihadi groups, on whom Sunnis have relied to survive.

The success of the Iraq surge during the Bush administration illustrates the best example of a policy that acknowledged these realities. Under the leadership of Gen. David Petraeus, the United States moved to a population-centric counterinsurgency strategy. The United States addressed the grievances of Iraqi Sunnis and increased support to moderate Sunni tribal leaders to keep them from siding with extremist forces. The result was a massive reduction in casualties from the 2007 peak and the temporary defeat of Al Qaeda in Iraq.

Pregent and Derek Harvey, two former military intelligence officers who served in Iraq, believe that Al Qaeda franchises, including new ones that have emerged in Syria, cannot be defeated without putting

together a coalition of local Sunni Arabs (such as the Sunni Awakening) to fight against the group, and such coalitions of locals cannot happen without U.S. support. Additionally, allowing the local government or outside powers such as Iran to drive forward sectarian policies will only strengthen groups like Al Qaeda and ISIS. As Lt. Gen. McMaster has noted, brutal regimes such as the Assad regime in Syria or the sectarian policies of Iran only fuel a cycle of violence and sectarian polarization which strengthens groups such as ISIS.

The Obama administration's weak foreign policy reversed all of the gains of the Iraq surge. Additionally, it was under President Obama's watch that ISIS first emerged and Al Qaeda grew rapidly in the Middle East. At the end of 2011, President Obama prematurely withdrew from Iraq, refusing to leave a residual force behind. Soon thereafter, sectarian violence sparked back up as former Iraqi Prime Minister Nouri al-Maliki began an authoritarian campaign of arrests of Sunni politicians. These led to protests by Sunnis that were later shot at by the Iraqi government. As Harvey and Pregent noted, Maliki "proceeded to methodically undermine reconciliation and reintegration programs... brick by brick," which caused "the Sunni Arabs who were most important to the defeat of Al Qaeda in Iraq to switch sides."

Similarly, the ongoing civil war in Syria, fueled by Assad's Iran-backed crackdown on the civilian population, created what Gen. Petraeus called a "geopolitical Chernobyl of extremism." This atmosphere of sectarian polarization ultimately led to the rise of ISIS, Al Qaeda, and other Salafi-jihadi groups. On the Syrian side of the border, Assad dealt brutally with the Syrian rebellion, using barrel bombs and chemical weapons against his own people. This caused an influx of Salafi-jihadi groups and foreign fighters into the country, numbering over 25,000 from over 100 nations, according to U.N. estimates. Al Qaeda reemerged in Iraq, established a presence in Syria, and declared an Islamic State in Iraq and Sham (Greater Syria) or ISIS. Then, in June 2014, it declared a "Caliphate" in eastern Syria and western Iraq. At its peak, ISIS held a land area the size of Indiana, which it used to launch attacks against the West. ISIS also undertook a campaign of genocide against Yazidis, Christians, and other minorities in Iraq.

It also took thousands of sex slaves, destroyed ancient historic sites in a “cultural genocide,” and killed tens of thousands of Sunni Muslims.

President Obama dismissed the growth and lethality of ISIS and never took the reemergence of Al Qaeda in Iraq seriously. He famously dismissed ISIS as a “JV team.” Salafi-jihadis and ISIS thrived when he avoided taking real action against both Maliki’s crackdown in Iraq and the Assad regime’s brutality in Syria. He was late intervening militarily against ISIS during its creation, and his subsequent attempts to train and equip Syrians failed. In Iraq, President Obama worked closely with Iranian-backed militias in the fight against ISIS, which often just led to land being swapped between Salafi-jihadis and Shiite jihadis. President Obama also refused to call out the Salafi-jihadi movement and ideology directly, instead condemning “violent extremism.”

Under President Trump’s watch, ISIS’s physical caliphate has been defeated. Abu Bakr Al-Baghdadi, the brutal leader of ISIS, has been killed by U.S. forces. Early on in his administration, President Trump worked closely with Muslim countries to combat the radical Salafi-jihadi ideology. For example, at the 2017 Arab-Islamic American Summit, he boldly called upon Muslim nations to take steps to counter extremist ideology and terrorist financing, and he established the Global Center for Combating Extremist Ideology. The Trump administration has also, according to Amb. Nathan Sales, worked to win the battle of ideas by, partnering with forces in the Muslim world to push American values, such as “the inherent worth and dignity of every human being,” the inalienable rights to liberty—including religious liberty—and equality in front of the law. And finally, President Trump enacted the most significant update to counterterrorism sanctions authority since September 2001 with new executive orders making it easier to sanction terrorists and cut off the financing for their violent actions.

Although much still needs to be done, President Trump’s ideological outreach strategy has already shown tremendous results as Saudi Arabia, Morocco, Jordan, and a number of different governments have begun to take steps to promote religious scholarship with a message of tolerance and religious freedom. Egypt’s Al-Azhar, traditionally the most respected seat of

learning in Sunni Islam, has signed a historic agreement with the Vatican on the importance of upholding human dignity and rejecting the use of violence for religious ends. The Saudi Arabian-led Muslim World League, traditionally a purveyor of Salafi ideology, has even issued an unprecedented statement acknowledging the Holocaust and led a trip to Auschwitz.

The Task Force believes that Congress can play an important role in countering the Salafi-jihadi movement. Specifically, the Task Force supports a three-part strategy that includes: countering Salafi-jihadi ideology, eliminating safe havens, and working to block funding and state support for extremists. Countering the ideology will involve direct efforts to work with the Muslim world to discredit the ideology and enhance counter-disinformation efforts. Eliminating safe havens can ensure that fragile and failed states suffering from human rights violations are addressed before they become the site of an outbreak of Salafi-jihadi organizations. Countering financing and support for extremists involves strengthening our sanctions policy to ensure that such organizations do not get the financing that allows them to carry on their brutal activities.

COUNTERING SALAFI-JIHADI IDEOLOGY

“Unfortunately, transnational networks of salafi-jihadist terrorists, including ISIS, Al Qaeda, and regional affiliates, continue to wage war—by their own choice—on the United States, its civilians, and its allies. The challenge is not violent extremism, per se. Rather, it is specific groups of human beings with hostile intent toward the United States. We cannot develop satisfactory strategies to counteract these enemies if we cannot bring ourselves to identify them.”

– Prof. Colin Dueck

The Task Force recommends more precisely countering the Salafi-jihadi ideology and movement rather than simply its terrorist activities. This will require efforts to respond to the ideology itself and its underpinnings directly. In this vein, the Task Force recommends both more accurately defining the enemy and pushing back against the indoctrination of this radical ideology.

Congress should more accurately define its goals of countering ISIS and Al Qaeda as countering the global Salafi-jihadi movement.

As AEI and the ISW noted in a seminal report:

“Al Qaeda and ISIS are Salafi-jihadi military organizations seeking to impose their vision of radical, intolerant, and violent Islam upon the entire world by force of arms... Al Qaeda and ISIS are not simply terrorist organizations and never have been. Terrorism is but one weapon they deploy in pursuit of their much larger objectives... It was a mistake to define the fight against Al Qaeda as a war on terror, and it is a mistake to try to parse the terrorism and the individuals who perpetrate it from the larger organizations that employ it along with many other instruments of warfare.”

To more precisely match U.S. policy means and objectives, Congress should enact a state-ment of policy declaring that it is U.S. policy to counter the Salafi-jihadi movement. As part of this approach, U.S. efforts to address ISIS and Al Qaeda disinformation should holistically respond to the Salafi-jihadi movement rather than just the efforts of terrorists. This effort should be undertaken with our allies including those in the Muslim world.

Until the United States focuses on the hateful and violent principles of the Salafi-jihadi ideology, efforts to promote U.S. values of democracy, human rights, religious freedom, and rule of law will not be effective. The Trump administration has already shown real leadership in working with Muslim allies to support such initiatives. However, more should be done in this respect.

Congress should enact the Saudi Educational Transparency and Reform Act to require reporting on violent educational materials published by Saudi Arabia’s Ministry of Education.

The Saudi Educational Transparency and Reform Act, sponsored by Task Force Chairman Rep. Wilson, would direct the Department of State to report to Congress

annually on educational materials published by Saudi Arabia’s Ministry of Education. The report would detail whether such educational materials include content that could encourage violence and intolerance toward religious groups, including Muslims who hold dissenting views. The report would also discuss related subjects, including the extent such materials are exported and efforts by the Saudi government to remove the intolerant content.

ELIMINATING SAFE HAVENS AND BREEDING GROUNDS OF THE SALAFI-JIHADI MOVEMENT

“If countering jihadism is the American priority in the Middle East, this requires strengthening relations with neighboring Sunni powers—Saudi Arabia, the UAE, and Turkey in particular—and working with them to create better, more durable political conditions in the Sunni areas of Iraq and Syria. The perception is widespread in these areas, and in the broader Sunni Arab community, that Iran’s growing influence in the Middle East—in Iraq, Syria, Lebanon, and Yemen—constitutes a bid for regional hegemony at the expense of Sunni power. The jihadis have done well to exploit this sense of disenfranchisement; incidentally, the recently struck nuclear deal with Iran confirms Sunni perceptions of an American tilt in Iran’s favor.”

– Dr. Cole Bunzel

The Task Force believes that political instability—including authoritarian repression, civil war, and sectarian or ethnic violence—are all factors which help to create safe havens that allow Salafi-jihadi movements to emerge and thrive. Preventing such conditions from existing in the first place is a cheaper, more efficient, and more lasting way to defeat and stop expansion of Salafi-jihadi movements throughout the world. Therefore, the Task Force recommends the following policies to help eliminate such safe havens and promote building more durable political conditions.

Congress should create a strategic office designed specifically to defeat the Salafi-jihadi movement and strongly consider granting short-term stabilization authorities to the Department of Defense.

As Zimmerman has noted, no strategic planning or coordination office for countering the Salafi-jihadi movement exists in the U.S. government. Instead, “for foreign assistance program managers in State Department regional and functional bureaus and at USAID, strategic clarity on how to align these programs with an effort to counter the Salafi-jihadi movement is... absent.” The Task Force supports creating a strategic planning or coordinating office to defeat the Salafi-jihadi movement as a whole, rather than solely from a counterterrorism approach, as one step toward solving this problem.

The Task Force also supports developing an expeditionary civilian capacity, as recommended in the Stabilization Assistance Review (SAR) to better enable the United States to counter the Salafi-jihadi vanguard’s efforts. The SAR recommends the Department of State, USAID, and the Department of Defense work together to build stabilization, transition, and response teams to support the chiefs of mission and Combatant Commands in their efforts. The Task Force endorses this recommendation as well.

Congress should address growing ISIS and Al Qaeda safe havens by requiring a report assessing the risks of a premature U.S. withdrawal from the Sahel region of Africa and enacting the Trans-Sahara Counterterrorism Partnership Act.

Salafi-jihadi groups, including both ISIS and Al Qaeda, have been rapidly reconstituting themselves in the Sahel. They have been gaining control over large swaths of territory in Mali, Burkina Faso, and Niger by capitalizing on ethnic and tribal tensions. Gen. Stephen Townsend testified to Congress this year that “ISIS and Al Qaeda are on the march in West Africa,” increasing their terror activity fivefold in the past year alone.

The Task Force believes that Congress can play a key role in pushing for a continued U.S. presence in the Sahel. It should start by requiring a report assessing the long-term costs and risks of a premature U.S. withdrawal from the Sahel. The goal of this report would be to ensure that the United States does not repeat its mistake in Iraq where U.S. withdrawal was

quickly followed by the reemergence of ISIS and an even costlier U.S. intervention.

Furthermore, the Task Force also supports enactment of the Trans-Sahara Partnership Act. This bill, sponsored by Rep. McCaul, would codify the Department of State’s Trans-Sahara Counterterrorism Partnership (TSCTP), which coordinates all federal support for counterterrorism activities undertaken by foreign military and law enforcement entities in North and West African countries. It has already been passed by the Senate, but has not been considered in the House.

Congress should reject partnering with Russia to combat ISIS in Libya and enact the Libya Stabilization Act.

Russia’s intervention in Libya seeks to undermine NATO and challenge American leadership. By backing warlord Khalifa Haftar, Russia has escalated the Libyan civil war, fostered the Salafi-jihadi presence in the country and created the conditions that will allow Islamic State and Al Qaeda-linked militants to regain strength there. The Task Force supports the Libyan Stabilization Act, legislation co-led by Task Force Chairman Rep. Wilson. This legislation would require a report on the activities of ISIS and Al Qaeda in Libya. It would also impose mandatory sanctions on those supporting Russian military intervention in Libya, as well as persons threatening the peace or stability of Libya or perpetrating human rights abuses.

Congress should support the ceasefire in Yemen and a resolution to the Yemeni civil war to help defeat Al-Qaeda in the Arabian Peninsula.

Al Qaeda’s Yemen branch, known as Al Qaeda in the Arabian Peninsula (AQAP), has been responsible for a number of terror attacks around the world, including the January 2015 attack against French magazine Charlie Hebdo. AQAP used the Yemeni civil war to expand and strengthen its safe haven within Yemen, where it has continued to plot attacks against the West. According to Zimmerman, without a solution to the underlying civil war, AQAP cannot be defeated. The November 2019 Riyadh Agreement and the proceeding ceasefire

between the Yemeni government and Houthi rebels was a good first step, but unfortunately, that effort has experienced a number of recent setbacks as the Houthis have violated the agreement on numerous occasions. Congress should continue to push back on the attempts by congressional Democrats to end both military support and arms sales to Saudi Arabia and the UAE in Yemen as a means of increasing their leverage for a settlement. Congress should also continue to support the Riyadh Agreement and push for a political settlement that would allow all parties to concentrate on fighting and defeating AQAP and other Salafi-jihadi groups.

Congress should enact a statement of policy to support human rights in Iraq and reject partnering with the Assad regime in Syria or Iranian militias in Iraq.

There is a major risk of an ISIS resurgence in Syria and Iraq. According to Jennifer Cafarella, ISIS “is stronger today than its predecessor Al Qaeda in Iraq (AQI) was in 2011, when the U.S. withdrew from Iraq,” and its next iteration could be even more devastating. CENTCOM warned in February 2019 that if Sunni Arab “socio-economic, political, and sectarian grievances are not adequately addressed by the national and local governments...it is very likely that ISIS will have the opportunity to set conditions for future resurgence and territorial control.”

Iran’s exploitation of the anti-ISIS fight has sustained a cycle of sectarian violence, which according to Lt. Gen. McMaster, creates an atmosphere which may lead to ISIS’s reemergence. Cafarella argues that “the U.S. must acknowledge that its local partners are not going to address these grievances without substantial outside help, while other factions—such as Assad, Russia, and, Iran—will exacerbate them.” The Task Force recommends that Congress pass a statement of policy rejecting the idea of working with Russia, Iran, or the Assad regime in the fight against Salafi-jihadism. Congress should also make clear that it believes the Iraqi government must respect the human rights of its own citizens. Congress should also declare its support for a political solution in Syria that transitions away

from the Assad regime and a withdrawal of all Iranian forces from the country.

Congress should enact a statement of policy supporting the use of U.S. intelligence, reconnaissance, and air strikes to aid local Iraqi and Syrian forces fighting ISIS, prevent the rise of other Salafi-jihadist terror groups, and, in Syria, prevent oil resources from being taken by Iran.

As the RSC’s Budget for FY 2019 noted, “U.S. policy should not repeat the mistakes of the previous administration in precipitously withdrawing from the region without ensuring that our interests and security are guaranteed and secured.” Although the Trump administration has drawn down our troop presence in Syria and Iraq throughout 2019-2020, U.S. forces remain in eastern Syria to “keep the oil” and protect oil resources from being taken over by a resurgent ISIS or by the Assad regime and Iranian-backed militias. U.S. forces also remain in the al-Tanf garrison, a strategic area on the borders of Syria, Iraq, and Jordan, blocking both ISIS and Iran’s attempts to create a “land bridge.” The U.S. presence in these areas is essential to prevent a resurgence of ISIS, Al Qaeda, or other Salafi-jihadi groups. Congress should enact a statement of policy supporting these efforts.

Congress should enact the Ensuring a Secure Afghanistan Act.

ISIS and Al Qaeda remain significant threats in Afghanistan, where Osama bin Laden originally organized and planned the 9/11 terrorist attacks. The Ensuring a Secure Afghanistan Act, sponsored by Rep. Banks, would confirm that any withdrawal from Afghanistan would be done in a secure way. Specifically, it would prohibit the Department of Defense from using funds to reduce the number of U.S. Armed Forces personnel deployed in Afghanistan to below 10,000 unless the Office of the Director of National Intelligence certifies that Taliban leaders have: (1) rejected Al Qaeda by name; (2) committed to not fight alongside or have any affiliation with Al Qaeda; and, (3) agreed to protect the rights of women and girls and support the Afghan Constitution. This would

ensure peace with honor in Afghanistan and that any future peace agreement would meet American national security needs.

BLOCKING FUNDING AND STATE SUPPORT OF THE SALAFI-JIHADI MOVEMENT

“Treasury is a leading actor in the U.S. Government’s counterterrorism effort, focusing on bolstering the counterterrorism finance laws of our partners and international regimes, while working closely with those same partners to disrupt global terrorist finance and facilitation networks. In 2018, OFAC designated more terrorists than in any one of the last 15 years, causing significant financial impact to terrorist networks worldwide by targeting leadership, operatives, facilitators, financiers, investors, and key global procurement networks.”

– Former Under Secretary of Treasury for Terrorism and Financial Intelligence Sigal Mandelker

The Task Force believes that halting terrorist financing and drying up their resources is an essential element in countering the Salafi-jihadi movement. As Col. Joel Rayburn has pointed out in his seminal study of the U.S. Army in the Iraq War, one of the major lessons drawn from the United States in Iraq was that counterterrorism and counterinsurgency activities are made much more difficult when external state actors give sanctuary, funding, or strategic assistance to terrorist and insurgent groups. The Task Force endorses the following measures to block funding and state support for Salafi-jihadi terrorists and insurgent groups.

Congress should codify EO 13224 with enhancements made by President Trump to ensure the President has adequate statutory authority to target and designate terrorist organizations.

EO 13224 has been, according to the Department of the Treasury, the “cornerstone of Treasury’s efforts to prevent terrorist attacks by cutting off sources of funding and denying access to the international financial system.” This EO, issued after the 9/11 terrorist attacks, declared a national emergency and authorized the

Department of the Treasury to designate Specially Designated Global Terrorists (SDGTs) and impose sanctions on such entities. This authority is in addition to the State Department’s authority to designate entities as FTOs. The Department of the Treasury has this authority through the International Economic Emergency Powers Act (IEEPA) of 1997. The Trump administration expanded and modernized EO 13324 on September 10, 2019. He granted the Department of the Treasury and Department of State new tools to designate terrorists, making it easier to sanction terrorist organizations by streamlining the designation of affiliate groups. He also established secondary sanctions prohibiting foreign financial institutions that have “knowingly conducted or facilitated a significant transaction with any” SDGT from opening or maintaining a correspondent account in the United States. The enhancements also consolidated counterterrorism authorities into a single sanctions program, eliminating two other redundant EOs.

Nevertheless, these important authorities have never been codified by Congress. Congress should codify these EOs to prevent a future president from rolling back such authorities. This will help ensure that the president continues to have the tools necessary to go after the financing of terrorist organizations which seek to harm our country.

Congress should take bold steps to pressure Pakistan to cease its support of terrorist groups.

President Trump noted in an August 2018 address that the “next pillar” of the United States’ new strategy on Afghanistan is changing our approach to dealing with Pakistan. He said, “We can no longer be silent about Pakistan’s safe havens for terrorist organizations, the Taliban, and other groups that pose a threat to the region and beyond.” President Trump followed up with action and cut \$300 million in aid to Pakistan in 2018. Yet, despite these early steps, more needs to be done.

Pakistan has had a long-term relationship with the Taliban, the Haqqani Network, and other terrorist groups connected to Al Qaeda. As Bill Roggio of FDD has testified before Congress, “we can list dozens or scores of groups that Pakistan supports in India, in Afghanistan, groups that are designated terrorist

organizations, groups that provide aid and support for Al Qaeda.” The Taliban continues to work closely with Al Qaeda in Afghanistan and Pakistan, even supplying the terrorist group with explosives and other weaponry. Al Qaeda has even openly praised the Taliban and called upon Afghans to support and join the group.

There can be no political solution to Afghanistan that defeats the Salafi-jihadi movement without stopping Pakistan’s continued support for the Taliban. The Task Force supports Hussain Haqqani and Lisa Curtis’s recommendation that the United States cut security and economic assistance to Pakistan until it upholds its commitments to stop support for the Taliban and Haqqani Network. It should also consider sanctioning senior officials in the Pakistani defense and intelligence apparatus if they continue to support terrorism and efforts to destabilize Afghanistan. The United States should also examine whether or not Pakistan meets the definition to be a State Sponsor of Terrorism.

Congress should increase resources to OFAC and grant it direct-hire authority to increase the speed and effectiveness of sanctions implementation.

OFAC administers and enforces sanctions against foreign regimes, terrorists, transnational criminal organizations, and other national security threats. Since 9/11, sanctions have increasingly been used as a fundamental national security tool to cut off terrorist financing. In recent years, the use of sanctions has only grown, especially with respect to terrorism, human rights abuses, and transnational criminal networks. Nevertheless, as many analysts, including former OFAC officials have noted, OFAC is understaffed and underfunded. A recent report by the GAO found that “At the start of fiscal year 2020, 21 percent of OFAC’s authorized sanctions investigator positions (13 of 62) were not filled.” According to the GAO, these unfilled positions were due primarily to three factors: competing with other agencies which have “direct-hire authority,” not being able to compete with private sector salaries, and the long period of time required to complete the security clearance process.

The Task Force recommends that Congress consider possible options to increase resources to OFAC and grant it “direct-hire” authority to allow it to quickly hire unfilled sanctions investigators. As the GAO has explained, such authority—in conjunction with OPM approval and public notice—allows an agency to hire “any qualified applicant without regard to certain competitive hiring requirements” and “expedites the typical hiring process.”

MAINTAINING AN INTERNATIONAL ORDER BASED ON AMERICAN VALUES

Above all, we value the dignity of every human life, protect the rights of every person, and share the hope of every soul to live in freedom. That is who we are, Americans, Poles, and the nations of Europe value individual freedom and sovereignty. We must work together to confront forces . . . that threaten over time to undermine these values.

– President Donald J. Trump

PROTECTING AN AMERICAN VISION OF HUMAN RIGHTS

The United States is an exceptional nation, conceived in liberty and rooted in the basic truth that all men are created equal and endowed by their Creator with certain inalienable rights. As the President’s National Security Strategy states, America’s founding principles have made the United States “among the greatest forces for good in history” and a superpower. This was “neither inevitable nor accidental” but the result of millions of Americans fighting and dying to defend liberty from the tyrannical forces of Nazism, imperialism, fascism, and communism.

America’s global leadership has produced a world order based on freedom, human rights, and open markets. These fundamental principles have benefited not only Americans, but also helped spread freedom, security, and prosperity throughout the world. In the aftermath of World War II, the U.S. led the world in creating the U.N., the Universal Declaration of Human Rights (UDHR), and the international economic system based on freer and more open trade at Bretton Woods. Yet some of these same international organizations which the United States helped build are posing an increasing threat to American security, sovereignty, and human rights. They have become corrupted by dictatorial regimes and aided by global bureaucrats that seek to distort the meaning of human rights to serve their own purposes.

Conservatives have always understood that the battle between those governments that promote freedom and human rights and those that promote tyranny and human subjugation is key to our national security. China, Russia, Iran, North Korea, Venezuela, Cuba, and Syria are all authoritarian regimes and all fail to respect freedom and traditional notions of human rights. They often support each other, and by doing so collectively support terrorism, transnational criminal networks, and nuclear proliferation. China and Russia have also worked to spread their authoritarian model of governance through a development policy which props up burgeoning tyrannical regimes.

This ideological struggle is critical to understanding our great power competition with China and Russia, or with rogue states like Iran and North Korea. Dan Twining, of the International Republican Institute has noted, “[Americans] define our peer competitors with reference not to their material power—otherwise, Germany and Japan would have been adversaries not allies for the past 70 years, and India would be seen as a rising challenger—but with respect to the nondemocratic values that make us suspicious of their power, as can be seen with China, Russia, and Iran today.”

Today, aggressive authoritarian regimes like China and Russia and rogue states like Iran and North Korea increasingly seek to undermine the American-led international order, delegitimize the very concept of democracy and human rights, and, in the words of the National Security Strategy “exploit” the very

international institutions that the United States helped build. It would be a mistake to ignore the role of values in foreign policy. As Twining has also observed, "If our great power competitors understand the contest underway as an ideological one pitting free societies against authoritarian state capitalists, why would we in the United States shy away from describing the challenge in similar terms?"

After World War II, and in the face of the Soviet Union, the United States took up the mantle of global leadership and sought to establish an international order based on American values of freedom, human rights, and open markets. This represented a major break from the *realpolitik* of the previous eras, when nation states ignored the role of values in foreign policy and prioritized only their own security and economic interests. This was a uniquely philosophical moment in history and rare moment of human clarity. As Margaret Thatcher put it, "No other nation has been built upon an idea – the idea of liberty. While other nations are 'the product of history,' America stands alone as the 'product of philosophy.'"

The United States played an integral role in the drafting of the UDHR in 1948. Even though the declaration is a non-binding statement, it is still remarkable the United States was able to obtain unanimous support. Many conservatives, such as Piero Tozzi, Joseph Loconte, and Tom Finegan, have noted that the UDHR, while imperfect, nevertheless grounded human rights in objective and fixed truths resembling the U.S. Constitution's Bill of Rights. As Tozzi has noted, "the UDHR's chief draftsmen, such as (Orthodox) Charles Malik and (Catholic) Jacques Maritain, were very much attuned to the importance of the Natural Law as a bulwark against State tyranny."

The UDHR's thirty provisions mostly reflected the American tradition of political and civil rights. They included mandatory protections on the freedoms of speech and religion as well as prohibitions on cruel and unusual punishment. A number of economic, social, and cultural provisions were considered aspirational. Later, two separate treaties made many of these principles into binding international law—the International Covenant on Civil and Political Rights

(ICCPR), which focused on "negative rights" in line with the principles of the American constitutional tradition, and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which was promoted by the Soviet Union and is rooted in "positive rights" provided by the state. It is critical to understand that so-called 'social and economic rights' have their roots in Marxism and socialistic ideas. While the name social and economic rights to some Americans may sound like the right to economic liberty, the freedom to contract, and civil rights, such so-called rights as proposed by international organizations actually have the opposite meaning. They refer to rights to socialist-inspired, state-supported entitlements like free education, employment, housing, and public health care. The United States ratified the ICCPR, but wisely not the ICESCR, even though President Carter signed the ICESCR and submitted it to the Senate for ratification.

As Hillel Nuer of U.N. Watch has noted, "Russia, China, Saudi Arabia, Pakistan and Syria [are] the main proponents of these 'third-generation' utilitarian rights because they help them hide behind their authoritarian regimes and are used as a weapon to attack the very idea of human rights." Human rights scholar Aaron Rhodes has observed that countries like Russia and China "often boast about their often illusory economic and social programs as evidence of human-rights compliance and their own legitimacy."

What began as an attempt to stand for natural rights rooted in America's constitutional tradition has been replaced by a human rights system today which, in the words of Jim Kelly, President of the Solidarity Center for Law and Justice, is "in danger of becoming a global technocracy led by Geneva-based bureaucrats who believe they can best manage civil, political, economic, social, and cultural outcomes for individual nations." Unelected human rights experts in the Office of the U.N. High Commissioner for Human Rights (OHCHR), according to Kelly, ignore how American exceptionalism "inspired some drafters of the UDHR and positively influenced the development of the international human rights agenda." They are creating new rights out of thin air through commentaries, general comments, and observations. Such "human rights inflation" is also aided by frequent votes in the U.N. General Assembly,

where a majority of countries are dictatorships. Human rights treaty monitoring bodies, such as the Human Rights Committee, also have increasingly rewritten international human rights instruments through interpretations which are outside of their mandate.

Peter Meyers of The Heritage Foundation has also noted such an “unsustainable proliferation of rights... endanger the overall cause of human rights.” Along those same lines, Rhodes has argued that states that actually honor human rights should resist the bureaucratization of human rights in multilateral institutions like the U.N. because authoritarian regimes have used such institutions to delegitimize the very idea of human rights.

The U.N. Human Rights Council regularly serves as the home for some of the worst human rights violators, including China, Cuba, and Venezuela. Former Ambassador Richard Williamson testified to the House Foreign Affairs Committee over a decade ago that “Ultimately, the fact that democracies and non-democracies have equal status and the fact that oppressors, as well as those who respect human rights, have common status creates fundamental weaknesses in the U.N.’s ability to address some of these serious [human rights] concerns.” In 2011, the U.N. General Assembly even held a moment of silence for the brutal North Korean dictator Kim Jong Il after his death. Russia and China regularly use their veto in the UNSC to protect authoritarian regimes and even block humanitarian aid from going to those who most need it. The U.N. Development Program (UNDP) has been found funding terrorist organizations like Hamas. In Syria, the U.N. has even given tens of millions of dollars in humanitarian assistance to the brutal Assad regime.

Constantly changing notions of human rights robs the concept of rights of their very meaning and is a threat to liberty at home and around the world. The Left has resisted fixed notions of human rights and instead embraced either a constantly changing notion of human rights, or, even worse, a sinister moral relativism that believes that the United States standing up for human rights and democracy overseas is “neo-imperialist” for telling other countries how to live their lives. Coupled with a lack of self-confidence in America’s very own ideals, this has created a toxic combination, which has given comfort to dictatorial regimes around the world.

President Obama’s legacy was one of coddling dictators and authoritarian regimes. During the Green Revolution, as the Iranian regime cracked down on protesters chanting “Obama, Obama, are you with them or with us,” President Obama went silent, believing America’s word would hurt the protesters. In Burma, the Obama administration lifted all sanctions on the country in 2016, only one year after the U.S. Holocaust Memorial Museum had warned there was a risk of genocide against Rohingya Muslims in the country.

The Obama administration also promoted the idea that so-called social and economic rights were valid international human rights despite the United States not having ratified the ICESCR. In June 2011, the Obama administration supported a resolution at the U.N. Human Rights Council endorsing the U.N. list of Guiding Principles on Business and Human Rights, which included references to social and economic rights. In September 2014, President Obama declared that he would put together a National Action Plan to promote business conduct consistent with the U.N. Guiding Principles on Business and Human Rights. President Obama reestablished ties with the communist Castro regime and, during a historic trip to the island, praised the country’s socialist system as evidence of their “human rights” record.

The Obama administration also lacked the courage to call out authoritarian regimes for their human rights violations and frequently exhibited the belief that freedom was not universal. Vice President Biden even praised China’s one child policy saying, “Your policy has been one which I fully understand—I’m not second-guessing—of one child per family.” When it came to pro-democracy protesters in Syria who were slaughtered by the brutal Assad dictatorship, Vice President Biden dismissed the idea that democracy could work in that country, stating that no “moderate middle” existed and that there was “no Thomas Jefferson behind the sand dune.” This notion was rooted in a soft-bigotry of low expectations that Vice President Biden held for years. In 2006, with regard to Iraq, he said, “I think the President thinks there’s a Thomas Jefferson or Madison behind every sand dune waiting to jump up. And there are none.”

These radical ideas persist with congressional Democrats. Last year, Rep. Alexandria Ocasio-Cortez (D-NY), a self-declared “democratic socialist,” introduced legislation instructing the President to reinstate the ratification process for the ICESCR, the treaty which upholds so-called social and economic “rights.” Sen. Bernie Sanders (I-VT) has defended the human rights record of some of the worst dictators and human rights abusers, such as the Castro regime in Cuba, the Ortega regime in Nicaragua, and Maduro in Venezuela. Rep. Ilhan Omar (D-MN) has put together a “Pathway to Peace,” a collection of six pieces of “human rights” legislation that would, among other things, require the United States to implement the U.N. Convention on the Rights of the Child, and sign up for the anti-American International Criminal Court. The Heritage Foundation has pointed out how the U.N. Convention on the Rights of the Child would undermine parenting authority, expand abortion rights, and even promote prostitution.

The Trump administration has reemphasized human rights as part of its foreign policy and pushed back on efforts to redefine them. In July 2019, Secretary of State Pompeo put together the Commission on Unalienable Rights, composed of human rights experts and philosophers. The Commission’s goal is to conduct a thorough review of the philosophical underpinnings of human rights according to American First principles in order to push back against the distortion of the concept of human rights by authoritarian regimes within the U.N. The Trump administration also pulled out of the U.N. Human Rights Council. Under the leadership of former Amb. Nikki Haley, the United States has spoken out against tyranny at the U.N. President Trump has used human rights sanctions as a tool in an unprecedented fashion. President Trump, according to Mengqi Sun of the Wall Street Journal, “has designated more than 700 individuals and entities linked to corruption or human rights abuse under a variety of sanctions programs, including the Global Magnitsky authorities.” These include war criminals, such as Dan Gertler, who the Obama administration refused to sanction despite his involvement in human rights abuses in the Congo.

President Trump has also fiercely advocated for human freedom against totalitarian socialism, condemning the Maduro regime in Venezuela and ending President

Obama’s normalization of ties with Cuba. Finally, the Trump administration has stood up strongly for religious freedom and called out China for its atrocities against Uighur Muslims.

The Task Force believes that Congress should take additional steps to stand up for human rights and democracy. Congress should pressure international organizations and their bureaucracies pushing for a distorted vision of human rights that conflicts with the principles of the American founding. Congress should also build on the work of the Commission on Unalienable Rights. Accordingly, the Task Force urges congressional action on the following recommendations.

Congress should elevate global human rights as an issue effecting U.S. national security.

Congress should consider supporting the forthcoming recommendations of the Trump administration’s Commission on Inalienable Rights, including holding hearings on the Commission’s findings. Furthermore, Congress should host an annual hearing on the state of democracy and human rights in the world, as has been recommended by Nicole Bibbins-Sedaca of the George W. Bush Presidential Center. Such a hearing could ensure a continual focus on democracy and human rights by Congress and keep the issue in the public eye. Finally, Congress should enact a statement of policy that standing for democracy and human rights is in the U.S. national security interest and is a core foreign policy objective of the United States. Such a clear and concise statement of policy coming from Congress and signed by the President will reaffirm the importance of democracy and human rights.

Congress should lower the threshold under the Global Magnitsky Act from “gross” violations of human rights to “serious” violations of human rights.

The Global Magnitsky Act authorizes the President to impose sanctions on foreign persons “responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights.” In EO 13818, President Trump declared a national emergency as part of an effort to fight back on international human

rights abuses. In doing so, he ordered the imposition of financial sanctions on any individual “responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse.” Congress should codify EO 13818 as an amendment to the Global Magnitsky Act to ensure the President maintains the ability to sanction serious human rights violations. Congress should also authorize using the authorities in the Global Magnitsky Act for serious human rights violations which occurred in the past 10 years, as currently the President will not designate individuals or entities which committed the serious human rights abuses prior to the past five years. Congress should also reauthorize the Global Magnitsky Act before its expiration in 2022. This will preserve an essential tool for the President to go after human rights violators around the world.

Congress should remove references in U.S. law that rely upon the UN or other international organizations for human rights determinations.

Moving forward, statutory references to human rights should be limited to the U.S. Constitution, the UDHR, treaties that the United States has ratified, such as the ICCPR, or to those specifically enumerated by lawmakers in legislation. U.S. laws should not rely on the constantly evolving definitions of human rights provided by international organizations, such as the U.N. Congress should also endeavor to change references in existing law that already rely on definitions from international organizations. In particular, Congress should amend the Foreign Assistance Act of 1961 by striking references to the U.N. and the Organization of American States in defining whether or not a country has violated internationally recognized human rights.

Congress should prohibit the State Department from using federal funding to report on violations of social and economic rights.

The State Department’s Country Reports on Human Rights Practices are mandated by Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961. These essential reports are required to consider country violations of both the UDHR, as well as worker rights, both of which are in line with U.S. law and traditions.

Congress should make clear that only these two sources can be used in preparing the State Department’s reports. It should also prohibit references to so-called “social and economic rights,” which have often been mentioned or referenced in their reports, and which may be misinterpreted to legitimize new human rights the United States does not recognize.

Congress should prohibit the use of federal funding for promoting international guidelines and standards obligating businesses to protect and fulfill social and economic rights.

The U.N. Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, which were promoted by the Obama administration, are not treaties and were never ratified by Congress. These principles, which include references to so-called “social and economic rights,” could be interpreted in ways which undermine U.S. sovereignty and impose requirements on the U.S. government to undertake certain regulations of business. As Kelly has noted, these “soft law norms” have been created “to hold multinational business enterprises accountable for protecting and fulfilling economic rights.” Congress should require a GAO audit of any and all programs which use federal taxpayer dollars to promote these international guidelines and standards and eliminate funding for such purposes.

Congress should direct the Department of State to report on human rights inflation, including efforts of the U.N. bureaucracy to bypass normal procedures for recognizing universal human rights.

Newly manufactured human rights by U.N. organizations undermine the legitimacy of the international human rights system. Yet some of these efforts may be directly or indirectly funded by U.S. taxpayer dollars through contributions into the U.N. system or democracy and human rights programming abroad. A report from the State Department could give Congress more insight into the efforts and strategies of the U.N. bureaucracy and international NGOs into manufacturing new human rights, and illustrate where funding could be cut to stop this practice. It should

include a list of U.N. agencies, international non-profit organizations, and other activist groups which have received funding to create “soft law” to manufacture new human rights.

Congress should codify the Ministerial to Advance Religious Freedom as an annually held, U.S.-led forum.

The Ministerial to Advance Religious Freedom (MARF) began in 2018 as an effort by the Trump Administration to encourage the promotion of religious freedom around the world. The Ministerial has been a key platform by the Trump administration to speak out against China for its violations of religious freedom against Christians, Uighur Muslims, and Tibetan Buddhists. Codifying the ministerial would ensure that it continues beyond the Trump administration.

PROMOTING ACCOUNTABILITY AND REFORM AT THE U.N.

“The United Nations was founded for a noble purpose—to promote peace and security based on justice, equal rights, and the self-determination of people. But it has many member nations whose leaders completely reject that purpose. When that happens, many well-meaning countries adopt a position of neutrality in the hope of coming to agreement with these nations. They effectively allow dictatorships and authoritarian regimes to control the agenda... Moral clarity becomes a casualty of the need to placate tyrants, all in the name of building consensus. In such a situation it is imperative for the United States to use the power of our voice to defend our values. That’s as true today as it was during the Cold War, maybe even more so.”

– Amb. Nikki Haley

As Dan Runde, who also served at USAID during the Bush administration, has noted, “the multilateral system, for all its faults, is an effective vehicle for collective action and burden-sharing. The U.S. created the World Bank, regional development banks, the UN, and other multilateral organizations to advance broad

U.S. interests.” The U.N. has noble aims, including preserving global peace, promoting international cooperation, encouraging respect for democracy and human rights, supporting international development, and the self-determination of peoples. However, as Runde has observed, the U.N. system faces many practical problems: it has become unaccountable, corrupt, and often empowers anti-American dictatorial regimes. As became clear in the WHO’s response to COVID-19, authoritarian regimes like China have seized control of a number of multilateral organizations under the U.N. umbrella, often at the expense of U.S. interests, despite receiving a majority of their funding from U.S. taxpayers.

One of the reasons the U.N. is hard to reform is because many countries pay a tiny fraction of dues to the organization compared to the United States, and thus, have little skin in the game. The United States, as Schaefer has noted, contributes 19 percent of all U.N. revenues alone. The next closest contributors are Germany, Japan, and the U.K., all of whom pay around 6 percent of U.N. revenues. The United States pays seven times the amount China does to the U.N. system.

Despite the massive share of U.N. funding coming from the United States, the U.N. has been largely unresponsive to our concerns over accountability and reform. According to Schaefer, this is due in large part to the fact that the U.N. relies on assessed contributions rather than voluntary ones from member states. In other words, “member states have legally committed to providing funding at levels determined by the organization.”

It was for this reason that conservatives in Congress have attempted on a number of occasions to pass legislation moving the U.N. to a more voluntary contribution structure and to condition funding of the U.N. on a number of reforms. Eventually, in response to the concerns of whistleblowers at the U.N., Congress passed new funding limitations which required a 15 percent withholding of U.S. contributions to U.N. agencies unless the Secretary of State certified that they had adopted best practices on whistleblower protection. This provision should be a model for how to use U.S. contributions to push for reform and accountability at the U.N.

It is essential to work to prevent countries like Russia and China from taking over U.N. agencies with

money and global influence to further their global authoritarian agenda. As Runde has explained, China has invested strategically in specialized U.N. agencies, especially those that have upcoming elections, and has worked with allied countries to take control of them. These tactics have helped China effectively take control of four U.N. agencies: the International Civil Aviation Organization (ICAO), which manages global airspace; the U.N. Food and Agriculture Organization (FAO), a humanitarian agency; the U.N. International Telecommunication Union, which facilitates international communications networks; and the U.N. Industrial Development Organization (UNIDO), which promotes industrial development for poverty reduction, inclusive globalization, and environmental sustainability. Countering undue Chinese influence within U.N. agencies is an essential national security interest. In March 2020, the Trump administration illustrated how this could happen by working successfully to block China from taking control of WIPO. The administration mobilized and worked with allied nations to rally behind Singapore as a candidate to take the position.

Other international organizations are also in need of major reform. As Danielle Pletka of AEI has noted, China's tight grip of the WHO during the COVID-19 crisis may be a sign that the old multilateral organizations and institutions, which the United States designed after World War II, are failing to serve the interests of democratic countries. Since China, Russia, and other authoritarian regimes have corrupted the U.N. system, development finance institutions, and other multilateral organizations, Pletka even argues for establishing new global institutions made up of democratic nations only to meet current challenges. President Trump has taken a step towards this by announcing a withdrawal from the WHO and his intent to create alternative structures for multilateral cooperation with democracies to fight pandemics. A shift away from existing international agencies that presently fail to serve U.S. interests could be pursued with respect to other international bodies as well.

As an immediate step, Congress should condition funding for multilateral organizations on reforms designed to displace the control of authoritarian regimes and undo their warped views on human rights. Moreover, the United States must be prepared

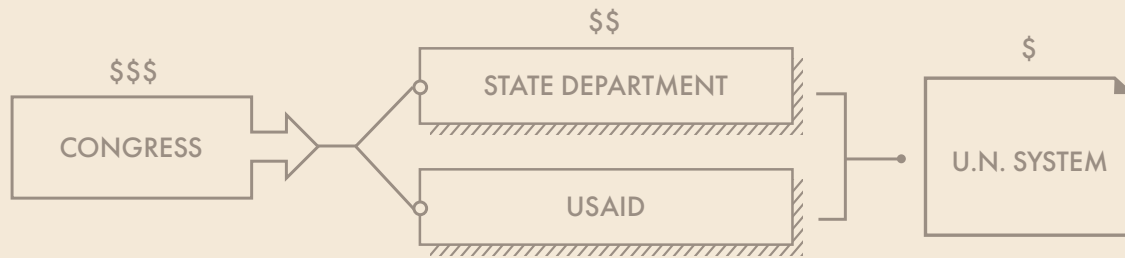
to withdraw from bodies where it shares little interests and which are unwilling or unable to change. In this spirit, the U.K. carried out a Multilateral Aid Review in 2010 to understand what worked and defund that which did not work. This review caused the U.K. to stop funding to four U.N. agencies: the UNIDO (an agency which the Clinton administration withdrew from in 1996), the International Labor Organization (ILO), the U.N. Habitat, and the U.N. International Strategy for Disaster Reduction. President Trump's National Security Strategy sees things the same way and emphasizes that ceding leadership of multilateral bodies to authoritarian regimes would cause the United States to lose opportunities to serve its interests. At the same time, the document states that "all institutions are not equal," and that the United States "will prioritize its efforts in those organizations that serve American interests, to ensure that they are strengthened and supportive of the United States, our allies, and our partners."

The Task Force recommends that Congress take the following actions to ensure that these priorities and goals are put into action.

Congress should direct the President to pressure the U.N. to shift member contributions toward a voluntary basis.

A transition to voluntary contributions, which would allow the United States to fund only U.N. agencies that advance U.S. interests, would result in a competition among U.N. entities for funding and increase their transparency and accountability. The Task Force recommends that Congress pass legislation directing the President to use U.S. influence at the U.N. to shift toward a voluntary funding model. Additionally, Congress should condition a sufficient percentage of future U.S. contributions on the U.N.'s adoption of such a model as well as U.N. adoption of real reforms including new mechanisms for accountability and transparency as well as countering the malign influence of authoritarian regimes—especially China and Russia. The Task Force would encourage that any withheld funding be allocated instead toward the establishment of alternative multilateral organizations made up of democratic countries.

BREAKDOWN OF THE U.S. DOLLAR



Congress should direct the Department of State Inspector General to inspect and audit the use of U.S. funds by international organizations and make a portion of U.S. contributions to international organizations contingent on cooperation.

As Schaefer has proposed, the Department of State should establish an investigatory unit to carry out an audit on how U.S. funds are being used by international organizations. Doing so would improve accountability by ensuring that U.S. funds are spent appropriately. Such a unit could also carry out periodic reports on U.N. organizations which receive U.S. funding such as the WHO or the UNDP. This could bring about more insight regarding the activities of these organizations and provide more oversight of U.S. funding.

Congress should direct the Department of State to rank U.N. organizations in terms of how valuable they are to U.S. interests.

As recommended by Schaefer, Congress should require the Department of State to produce a report in which it assesses how vital each U.N. organization is to U.S. interests. This could help assist Congress in understanding which U.N. organizations are worth continued funding. If U.S. interests are negligible or overridden by more urgent priorities, the United States should terminate its support and membership. Forcing the Department of State to rank the organizations prevents them from making the argument that all are equally important.

Congress should continue to enforce the 25 percent cap on funding for U.N. peacekeeping.

In 1994, Congress put in place a 25 percent cap on U.S. funding for the total of all assessed contributions for peacekeeping operations for every year after 1995. This cap created a gap between U.S. contributions and U.S. assessed obligations, which put pressure on the U.N. This eventually led to the Helms-Biden agreement in November 1999 under the Clinton administration, which conditioned the payback of \$926 million in arrears, which the United States owed to the U.N. over peacekeeping, on specific reforms being implemented. This included recalculating the United States' peacekeeping assessments in a way which would have lowered the U.S. share to 25 percent, and capping the United States' share of the U.N. Regular Budget at 22 percent. Unfortunately, in reality, peacekeeping assessments remained at 28 percent and Congress waived the 25 percent cap for most years throughout the 2000s. Yet, since FY 2017, Congress has no longer raised the 25 percent cap, leading to the accumulation of an additional \$900 million in arrears. In March 2018, then Amb. Nikki Haley announced that peacekeeping was a "shared responsibility" and the United States would no longer pay over 25 percent of peacekeeping anymore.

The Task Force believes that Congress should continue to enforce the 25 percent statutory cap on U.N. peacekeeping and refuse to pay any arrears until there is an agreement to reduce the maximum U.S. assessment to 25 percent.

Congress should require the State Department's annual Voting Practices in the United Nations report to include information on foreign assistance awarded to each nation and enact legislation making U.N. voting habits a mandatory consideration in U.S. foreign assistance decisions.

President Trump has wisely proposed linking U.S. foreign aid to U.N. voting practices. As Schaefer has noted, advancing U.S. interests in the U.N. system is a foreign policy priority of the U.S. However, a country's voting record in the U.N. is not a mandatory consideration in allocating U.S. foreign aid. The State Department's annual report on Voting Practices in the U.N. details the voting practices of every nation at the U.N. The data in this report has shown that most recipients of U.S. foreign aid regularly vote against the U.S. in the U.N. For example, Egypt, Jordan, Afghanistan, Kenya, and Iraq—some of the largest recipients of U.S. foreign assistance—all voted with the United States less than 30 percent of the time. However, this report does not clearly and directly include information regarding the amount of U.S. foreign assistance received by each country. Congress should expand this report to include such information.

Furthermore, in 1983, Congress passed legislation linking the U.N. voting report and U.S. foreign assistance by forbidding U.S. assistance from going to any country "engaged in a consistent pattern of opposition to the foreign policy of the United States." This policy was eliminated in 1990. The Task Force supports legislation which would again make U.N. voting habits a mandatory consideration in U.S. foreign assistance allocation. This does not mean that foreign assistance would be conditioned on voting in the U.N., but it would mean that U.N. voting habits would have to be one factor to be considered. Finally, U.S. Ambassadors should be required to bring up the issue of country voting practices every year with the Minister of Foreign Affairs in the countries they are assigned to.

Congress should restrict a portion of U.S. voluntary contributions to the U.N. on it increasing its employment of U.S. nationals.

U.S. nationals have "historically been under-represented in UN organizations," according to The Heritage Foundation. This is true even though the United States has long sought to increase such employment. This lack of representation has reduced U.S. influence within the bureaucracy of the U.N. system despite being the largest donor to the U.N. Increasing employment of U.S. nationals could also be helpful in combatting

Chinese influence within the U.N. system. The Task Force believes that Congress should condition a portion of its total voluntary contributions to the U.N. system every year on a certification by the Secretary of State that the U.N. has employed a sufficient amount of U.S. nationals.

Congress should end U.S. funding for the U.N. Development Program, the U.N. Office of Disarmament Affairs, the U.N. Human Settlements Program, the U.N. High Commissioner for Human Rights, the U.N. Intergovernmental Panel on Climate Change, and the U.N. Framework Convention on Climate Change.

The UNDP is a voluntarily funded U.N. agency for which the United States is the third largest contributor. The United States has given \$80 million a year since 2012 to UNDP's core operating budget. Yet, the agency largely carries out the same sorts of programming done by the United States directly through both USAID and State Department programs for democracy, human rights, and labor. Having such programs done under the U.N. banner does not provide tangible benefits to U.S. foreign policy interests and creates inefficiencies, overhead, and decreases effectiveness. Furthermore, aid distributed through the UNDP lacks oversight and transparency mechanisms that are present within U.S. government entities. In one particularly egregious example, the UNDP was found to have deliberately misappropriated millions of dollars from the Global Environment Facility intended to reduce greenhouse gas emissions in Russia. The UNDP then covered this up through its official auditing office. In fact, a 2013 report by the UNDP itself found that the organization's efforts had only a "remote connection" to relieving poverty and were "seriously compromised."

The U.N. Office of Disarmament Affairs "supports multilateral efforts aimed at achieving the ultimate goal of general and complete disarmament under strict and effective international control." Yet, in effect, what it works to do is undermine American nuclear defense by calling on the United States to disarm. This program receives its funding through mandatory assessed contributions to the U.N. Regular Budget. In 2020, it received \$13.25 million total from the U.N. Regular

Budget, meaning the U.S. share would be \$2.91 million (22 percent). Congress should deduct a portion of its voluntary contributions to the U.N. until the Secretary of State can certify that U.S. taxpayer dollars are no longer funding this organization.

Three other examples of taxpayer-funded U.N. organizations that fail to sufficiently advance U.S. national interests include the U.N. Human Settlements Program, U.N. High Commissioner for Human Rights, and the U.N. Intergovernmental Panel on Climate Change. The U.N. Human Settlements Program promotes “socially and environmentally sustainable towns and cities.” The U.N. High Commissioner for Human Rights is the leading U.N. entity on human rights and has recently said that parental notification laws for abortion in a number of U.S. states were an example of “extreme hate,” “torture,” and “gender-based violence against women.” The U.N. Intergovernmental Panel on Climate Change is the U.N. body for assessing the science related to climate change. For FY 2020, \$14 million was provided for the U.N. High Commissioner, \$6.4 million for the U.N. Inter-governmental Program on Climate Change, and \$700,000 for the U.N. Human Settlements Program. The Task Force supports elimination of this funding.

Congress should statutorily block funding for the U.N. Population Fund Agency (UNFPA) and codify President Trump’s enhanced Mexico City policy.

Since 2017, the Trump administration has withheld funding from the UNFPA upon a determination by the State Department that it “supports, or participates in the management of, a program of coercive abortion or involuntary sterilization” through its China program. In fact, every Republican administration for the last 35 years has made this same determination with respect to China. The Task Force vehemently supports the President’s action to stop funding the UNFPA and believes that Congress should reject any future funding to the UNFPA. Similarly, the Task Force supports efforts to codify President Trump’s enhanced Mexico City policy and Protecting Life in Global Health Assistance plan.

Congress should enact the Stop U.N. Aid for Assad Act.

Syria is perhaps the most egregious example of how U.N. assistance gets funneled to brutal regimes and militia groups. The WHO, U.N. High Commissioner of Refugees (UNHCR), and UNICEF, all of which receive U.S. taxpayer dollars, have propped up the Assad regime. A 2016 investigation by The Guardian found that the U.N. had directly entered into tens of millions of dollars in contracts with the Assad regime and affiliated militias, including a \$5 million contract by the WHO to a blood bank controlled by the Syrian military. This is the same military responsible for the humanitarian crisis through its aerial bombardment of Syrian civilians. UNICEF had also paid \$267,933 to the Al-Bustan Association, a so-called charity that doubles as an armed militia controlled by Assad’s cousin Rami Makhoul. Even Robert Ford, President Obama’s former Ambassador to Syria, has testified that “Congress and the Administration should consider cutting assistance to UN humanitarian aid programs in Syria,” noting “through the UN we the United States, have subsidized the Syrian government with one-sided humanitarian aid even while the Syrian government flouted humanitarian law and agreements and blocked other aid to some of its own people.” The Task Force supports the Stop U.N. Support for Assad Act, sponsored by Task Force Chairman Rep. Wilson, to help solve this problem. The bill would require the Secretary of State to certify that U.N. programming in Syria does not materially support the Assad regime. If the Secretary of State cannot make such a certification, the bill would redirect U.S. funds to USAID’s Office of Foreign Disaster Assistance for Syria programming.

Congress should enact a statement of policy promoting the Community of Democracies as an alternative multilateral organization to the U.N.

Congress has always played an important role in U.N. reform efforts. As mentioned before, the Task Force believes that the U.N. system plays an important role in pushing international cooperation and multilateralism, but the time has come for Congress to discuss replacements for some international organizations,

especially those within the U.N. umbrella, that would be more democratic, efficient, and accountable. In this vein, the Senate passed S.Con.Res.83 in 2004, promoting President Bush's efforts to promote the establishment of a Democracy Caucus at the U.N. The Task Force believes that Congress should pass a statement of policy promoting the Community of Democracies as an alternative multilateral organization for political affairs rather than the U.N. Such a statement should stress that only through a multilateral institution made up of only democracies, which respect rule of law and open markets, can international action be legitimate.

A RESULTS-ORIENTED APPROACH TO FOREIGN AID AND INTERNATIONAL DIPLOMACY

“Unlike the state-directed mercantilism of some competitors that can disadvantage recipient nations and promote dependency, the purpose of U.S. foreign assistance should be to end the need for it. The United States seeks strong partners, not weak ones. U.S. development assistance must support America’s national interests. We will prioritize collaboration with aspiring partners that are aligned with U.S. interests. We will focus on development investments where we can have the most impact— where local reformers are committed to tackling their economic and political challenges.”

– President Donald J. Trump, National Security Strategy

FOREIGN AID REFORM

U.S. foreign assistance can help in advancing U.S. foreign policy interests. It can be used as a tool to promote good governance in fragile states, democracy, and human rights. It can assist the United States in responding to global challenges such as the COVID-19 pandemic. President Trump, for instance, used aid to help control the spread of this disease around the globe, especially in the world’s poorest countries with the weakest public health systems. Foreign aid can also lead to long term free trade relationships. Eleven of America’s top 15 trading partners were once recipients of U.S. aid.

U.S. foreign assistance programs may also serve as a means of countering China and Russia. Both nations have increased their investments in development assistance around the globe and created predatory debt-dependency schemes in the developing world to challenge U.S. influence. While U.S. foreign assistance programs promote democratic values, rule of law, and an eventual transition to free trade and open markets, Russia and China have promoted a model which actually encourages corrupt and authoritarian governance and dependency.

Nevertheless, unlike what Democrats may profess, foreign assistance should not be administered as

charity, but must be directly connected to the goals of U.S. foreign policy. Too often our foreign aid programs have not reflected this important reality. U.S. foreign assistance must also be efficient and eliminate waste and overhead. Our foreign assistance programs are sprawling and uncoordinated with 12 departments, 26 agencies, and more than 60 offices of the federal government being responsible for its implementation. Consequently, too many foreign aid programs are ineffective and inefficiently use U.S. taxpayer dollars. Finally, foreign assistance programs have been bogged down through dozens of legislative directives that have undercut the effectiveness of assistance in promoting U.S. foreign policy.

While conservatives may disagree over the extent to which the federal government should provide assistance to foreign countries, the Task Force believes that it is still critical to ensure that any aid the United States does provide is reformed to best reflect U.S. foreign policy objectives and increased effectiveness. The Foreign Assistance Act in particular must be updated to meet the needs of the modern day and the current threats we face. The Millennium Challenge Corporation is a strong example of a foreign assistance program which requires countries to demonstrate a commitment to free markets, rule of law, and democratic principles. The United States must use foreign development assistance, in particular, in a more targeted way to promote markets

and rule of law and eventually transition toward trade, not aid, in developing countries. Accordingly, the Task Force supports the following recommendations.

Congress should replace the Foreign Assistance Act with legislation that implements various reforms from The Heritage Foundation’s comprehensive foreign assistance reform plan by James Roberts and Brett Schaefer.

In September 2017, the Heritage Foundation put together a comprehensive report entitled *An Overhaul of America’s Foreign Assistance Programs Is Long Overdue*, by James Roberts and Brett Schaefer. This landmark report recommends a number of important conservative foreign assistance reforms and a complete restructuring of U.S. foreign assistance in a way which is effective, accountable, and in line with U.S. foreign policy. The report recommends ending congressional legislative directives in foreign aid, consolidating foreign assistance programs, replacing USAID with a new State Department managed agency that deals specifically with humanitarian aid, moving many of remaining USAID programs to the MCC, and empowering Ambassadors to control more decisions regarding foreign assistance. The Task Force believes these principles should help form the basis for legislation within Congress to replace the Foreign Assistance Act of 1961, the statute which organizes the structure of U.S. foreign assistance programs.

Congress should reduce legislative directives in foreign assistance.

As the report mentions, legislative directives are a major problem in foreign assistance. In 2001, the bipartisan Hart-Rudman Commission on State Department reform noted that “Congress has larded the Foreign Assistance Act with so many earmarks and tasks for the U.S. Agency for International Development (AID) that it lacks a coherent purpose.” As Roberts and Schaefer note, although many of these directives may be well-intentioned and may promote worthy goals, together they “inadvertently hinder effective use of assistance” because “instructions enacted to address specific concerns remain the law long after their motivation

recedes as a priority.” Furthermore, these mandates bind the Executive Branch to providing foreign assistance to items of special interest rather than areas of high value. This hinders the effectiveness of taxpayer dollars used on aid for advancing U.S. national interests. This is especially true since Congress fails to update these mandates in a timely manner. The Task Force agrees and believes that Congress should undertake a process of removing unhelpful legislative directives.

Congress should consolidate foreign aid programs.

The Heritage Foundation report also recommends getting rid of the considerable overlap between foreign assistance programs. For instance, the United States provides food assistance through three separate programs, one implemented through the Department of Agriculture and overseen by USAID, another directly through USAID, and a third through the State Department-supported World Food Program. A number of Department of State programs overlap with USAID, and many programs also overlap with multilateral organizations.

Instead, Schaefer and Roberts recommend that Congress consolidate these programs and establish four assistance accounts with clear purposes and well-defined lines of authority, including: “(1) humanitarian and health assistance, (2) development assistance, (3) political assistance, and (4) military and security assistance—with a clear lead agency identified for those programs.” Schaefer and Roberts describe that such a new foreign assistance authorization law could move targeted assistance programs into increased funding to the regional bureaus at the State Department, and move humanitarian assistance such as the President’s Emergency Program for AIDS Response (PEPFAR) into a newly created “U.S. Health and Humanitarian Assistance Agency” which would replace USAID and be within the Department of State. Finally, development assistance could be transferred into an “expanded MCC, which would remain independent and focused on promoting economic freedom.”

Congress should move USAID under the Department of State.

The Task Force agrees with Schaefer and Roberts' plan that it is critical to allow foreign assistance to more closely reflect U.S. foreign policy goals. Placing most of what currently is USAID into the Department of State is likely the most important reform Congress could undertake in this respect. Although Democrats have been critical of this idea in the past, as Roberts has noted "Sweden, Norway, Denmark, and Canada — are way ahead of the U.S. and have already merged their foreign aid and diplomatic agencies." By being placed under the Department of State, USAID would have to conduct its activities in ways to more directly meet U.S. foreign policy objectives. In addition, Schaefer and Roberts suggest, and the Task Force agrees that U.S. Ambassadors should be given greater control over political assistance. "For U.S. development assistance to become more effective, the ambassador should be seen as the "go-to" person for assistance projects." Schaefer and Roberts propose that:

The U.S. Ambassador in recipient countries should have authority to guide and approve political assistance and freeze other assistance if political circumstances warrant. This would also shore up the relevance of U.S. Ambassadors with governments. Although modern communication is enormously beneficial for coordination, the reputation and authority of Ambassadors has eroded as decisions are increasingly made in Washington. There should be no question that the U.S. Ambassador is the representative of the U.S. government and has power and authority over issues that matter in the bilateral relationship.

Congress should empower the Millennium Challenge Corporation.

Finally, the Task Force supports transitioning more of USAID's development assistance work to the Millennium Challenge Corporation (MCC). This will allow Congress to assess the potential benefits of eventually moving all of USAID's development assistance programs to the MCC, as proposed by Schaefer and Roberts. This will also allow Congress the opportunity to examine USAID's effectiveness under the Department of State,

as recommended above. Congress should also require the MCC to ensure that developing countries receiving assistance adopt policies to strengthen the rule of law, enhance economic freedom, and attract private investment. Doing so would eventually reduce their dependence on foreign aid. The MCC should carry out development assistance "with the explicit goal of encouraging low-income countries to adopt economic and governance policies that increase economic growth and private-sector investment." Congress should also examine merging all other smaller U.S. development assistance programs into the MCC.

STATE DEPARTMENT REFORM

The State Department is the most important tool of U.S. foreign policy responsible for representing the United States on the world stage and the painstaking diplomacy needed to keep America safe. Yet, the Department has also gone six decades without a major reform effort to make it more effective. During this time, most other major government agencies, including the Department of Defense, have undergone significant reforms. The issues faced by our nation and the State Department sixty years ago are far different than those of today. In June 2017, a report commissioned by the State Department found "the people of the Department lack clarity and alignment on that which is the mission of the organization."

As Tom Hill has noted, despite being the diplomatic arm of the U.S. government, diplomacy is now something that is being carried out by a multitude of government agencies, each of which is now operating in the international space. The Department of Defense conducts its own diplomacy and controls 60 percent of all security funds, up from 25 percent in 2002. The White House National Security Council has become, in the words of the Atlantic Council, "a mini foreign ministry."

The State Department has also grown bloated and inefficient. Despite the common perception that the Department is understaffed, its core staffing has nearly doubled since 1995 from 13,179 foreign service and civil service employees to 24,724 foreign service and civil service employees in 2015. Furthermore, the

current staffing system at the State Department, like in the federal government more broadly, does not emphasize meritocracy or modern private sector hiring practices. Many of the offices at the State Department are redundant of other programs, and many U.S. foreign assistance programs have been wasteful and inefficient. Despite the massive expansion in staffing, the Department has been undermined by other government agencies engaging in foreign policy. Ambassadors, in particular, have been disempowered and have seen their authority undermined. According to Hill, the State Department needs to concentrate on its “comparative advantage” while giving up its control over aspects of foreign policy which are best done by other government agencies, and “Congress should help in that effort by clarifying lanes of authority.”

The Task Force believes that the State Department should be required to streamline its efforts and go back to its core functions wherein it has an advantage, abandoning those efforts that are either unnecessary or redundant.

Congress should replace the Foreign and Civil Service with a modern hiring structure that better reflects the challenges of the day.

The Department of State Foreign Service was founded in 1924 and now consists of over 13,000 employees that carry out work as the U.S. diplomatic corps. However, the institution of the Foreign Service has muddled along for nearly 50 years without meaningful reform, failing to evolve to meet the challenges of today and tomorrow. Today, the Foreign Service is not competitive with the private sector. It no longer attracts the best and brightest, fails to reward agents based on merit, and instead rewards those with the longest tenure. A complete reimagining of a modern diplomatic corps is long overdue and critical to America’s civilian foreign policy effectiveness. The Task Force believes the Foreign Service should be replaced with a new diplomatic corps where personnel decisions are based on merit more akin to private sector hiring.

A new diplomatic corps starts with recruitment. The current Foreign Service system provides few

opportunities for lateral entry of qualified applicants at middle and senior levels and does not recruit for specific jobs, relying instead on a system where most new hires are trained once hired. This creates enormous inefficiency, requiring a separate bureaucracy to train new hires in skills that are already in abundance in the private sector. The existence of both a separate civil and foreign service prevents the efficient allocation of human capital within the Department and limits competition for jobs both domestically and overseas, often resulting in underqualified individuals in critical positions.

Instead, the Task Force supports the creation of a new diplomatic corps that hires to fill specific jobs and encourages a flow of personnel between the private sector and the Department of State. Such a workforce would also allow the Department to contract and shift its workforce to meet new needs and phase out others, while maintaining a concentration on core functions. All jobs at the Department, including those in overseas posts, should be open to competition from both government and private sector applicants. The concept of an individual having a 30-year career in the Foreign Service does not reflect the modern workforce and is not attractive to those currently entering the workforce. A modern diplomatic corps must adapt to be competitive with the market for talented individuals.

Congress should eliminate the Under Secretary of State for Economic Growth, Energy, and the Environment.

The Under Secretary of State for Economic Growth, Energy, and the Environment develops and implements policies related to economic growth, energy, agriculture, the ocean, the environment, and science and technology and is responsible for the Bureau of Economic and Business Affairs, the Bureau of Energy Resources, the Bureau of Oceans and International Environmental and Scientific Affairs, the Office of Global Partnerships, the Office of the Chief Economist and the Office of the Science and Technology Adviser. These issues are not within the Department of State’s core competencies and are redundant to the work of other federal agencies. For instance, the Bureau of Economic and Business Affairs “promotes a strong American economy by leveling the

playing field for American companies doing business in global markets,” while the Bureau of Energy Resources develops and executes “international energy policy to promote: energy security for the United States and its partners and allies.” These functions are nearly identical to those of the International Trade Administration at the Department of Commerce, and the International Affairs Office at the Department of Energy.

Congress should eliminate the Bureau of Conflict and Stabilization Operations.

The Bureau of Conflict and Stabilization Operations (CSO) operates under the Under Secretary for Civilian Security, Democracy, and Human Rights. This Bureau is completely redundant to the Office of Transition Initiatives (OTI) at USAID. CSO’s mission “is to anticipate, prevent, and respond to conflict that undermines U.S. national interests. The bureau implements this mission in two complementary ways: through data-driven analysis and forward deploying stabilization advisors to conflict zones.” OTI “seizes emerging windows of opportunity in the political landscape to promote stability, peace, and democracy by catalyzing local initiatives through adaptive and agile programming.” The GAO has published a number of reports which conclude that OTI and CSO have virtually identical missions and conduct the same types of programs.

Congress should reform current Under Secretary positions within the State Department to elevate its work on human rights and the oversight of multilateral affairs and international organizations.

The Task Force supports a recommendation from Brett Schaefer to create an Under Secretary for Multilateral Affairs that would coordinate a whole host of disconnected parts of the Department of State and serve as point-person for dealing with multilateral organizations. Currently, the Undersecretary of Civilian Security, Democracy & Human Rights handles multilateral affairs. This is too broad of a portfolio to allocate sufficient attention to reforming multilateral organizations. Most of the bureaus under the current Under Secretary, including the Bureau of

Population Refugees and Migration and the Bureau of International Narcotics and Law Enforcement, could be incorporated in a new Undersecretary of Multilateral Affairs. The Task Force also supports a recommendation from Schaefer to move the more security-oriented Bureau of Counterterrorism to the Under Secretary for International Security Affairs.

Furthermore, the current environment of great power competition demands a greater role for democracy promotion as part of the Department of State’s efforts. Thus, the Task Force supports establishing an Under Secretary for Democracy and Human Rights. This would elevate these issues as a central aspect of U.S. foreign policy.

Congress should reconstitute the U.S. Information Agency and eliminate the Under Secretary of State for Public Diplomacy and Public Affairs and most of its bureaus, including the Global Engagement Center.

The U.S Information Agency (USIA) was the U.S. government agency in charge of public diplomacy, counter-disinformation, and international broadcasting efforts from 1953-1999. Dan Runde has noted that the “USIA took the lead in the war of ideas between the United States and the Soviet Union following World War II” and was highly effective in presenting U.S. ideals and values through public diplomacy campaigns. In 1999, as part of the Foreign Affairs Reform and Restructuring Act of 1998, Congress placed the public diplomacy aspects of USIA into the Department of State’s new Under Secretary of State for Public Diplomacy and Public Affairs, while broadcasting elements like the Voice of America were placed into the newly created BBG, which later became the U.S. Agency for Global Media (USAGM). USAGM is made up of five media organizations: Voice of America, Radio Free Europe/Radio Liberty, Office of Cuba Broadcasting, Radio Free Asia, and Middle East Broadcasting Networks.

Rather than improving public diplomacy efforts, however, the current design has largely failed to advance U.S. interests, especially in an age with rising Russian and Chinese disinformation campaigns.

According to Runde, because the Department of State has “traditionally focused on state-to-state relations and has a deep aversion to risk” the dismantling of USIA “crippled U.S. public diplomacy operations in ways that have been lasting and profound—a self-inflicted wound from which the United States is still recovering.” Current public diplomacy campaigns are not efficiently integrated into country-specific strategies. Instead the Department of State’s campaigns have often stressed the promotion of cultural affinity and understanding. The GAO has found that the Department of State’s public diplomacy programs lack detailed country level plans and a “campaign-style approach.” The point of public diplomacy should not be to promote cultural affinity and understanding but to advance U.S. foreign policy. The Under Secretary of State for Public Diplomacy and Public Affairs and the Bureau of International Information Programs and Bureau of Educational and Cultural Affairs have failed to meet the challenge.

In addition, there have been major concerns over U.S. broadcasting programs through the USAGM that Congress has worked to address over the years. This includes empowering one CEO to oversee international broadcasting efforts in the 2017 NDAA to replace the previous Broadcasting Board of Governors (BBG)’s part-time, nine-member board. Nevertheless, as U.S. Special Representative for Iran Brian Hook recently noted, the delay by the Senate to confirm President Trump’s nominee for the agency, Michael Pack, caused USAGM to be less responsive and accountable. According to Hook, Voice of America’s Persian service would more accurately be called “Voice of the Mullahs” due to its content often supporting the Iranian regime. Tom Hill has similarly argued that rather than simply report the news, the AGAM’s role should be to target audiences with strategic messaging intended to advance U.S. foreign policy. Instead of simply funding news, which is often done in a way which helps adversarial regimes, the mandate of USAGM should be changed to focus on actively supporting democratic governance and exposing authoritarian regimes, such as China, Russia, Iran, Venezuela, and others.

Furthermore, the Global Engagement Center (GEC) is a relatively new government agency within the Department of State that falls under the Under

Secretary of State for Public Diplomacy and Public Affairs. The GEC’s noble mission is to “direct, lead, synchronize, integrate, and coordinate efforts of the Federal Government to recognize, understand, expose, and counter foreign state and non-state propaganda and disinformation efforts aimed at undermining or influencing the policies, security, or stability of the United States, its allies, and partner nations.” The GEC grew out of the Center for Strategic Counterterrorism Coordination (CSCC), which was created under the Obama administration to reduce radicalization efforts by terrorists. The CSCC was largely seen as a completely ineffective, and, as Hill notes, “in 2015 a panel of experts commissioned by President Obama recommended a complete rethink of the effort.” In 2016, President Obama rebranded the CSCC as the GEC, and it was given a \$15 million dollar budget (up from \$5 million) and a new mission to refute ISIS propaganda. In the 2017 NDAA, as a response to Russia’s disinformation campaign in the U.S. elections, Congress passed legislation expanding the mandate of the GEC to counter not only ISIS and Al Qaeda but also to “lead, synchronize, and coordinate efforts of the Federal Government to recognize, understand, expose, and counter foreign state and non-state propaganda and disinformation efforts aimed at undermining United States national security interests.” Yet, despite a \$50 million budget, Hill contends the agency is still “dysfunctional and a waste of taxpayer money.” Countering Chinese and Russian disinformation campaigns should be a priority of U.S. foreign policy. However, the federal government is not known to be a bastion of creativity and media production.

In this vein, the Task Force believes that Congress should eliminate the Under Secretary of State for Public Diplomacy and Public Affairs and most of its bureaus, including the Bureau of International Information Programs and the Bureau of Educational and Cultural Affairs, and put them back into a reconstituted USIA which would include USAGM. This reconstituted USIA should have the new express mission of supporting democratic governance, rule of law, human rights, and open markets, and exposing adversarial and authoritarian regimes, such as China, Russia, Venezuela, Iran, North Korea and others. Russia Today (RT) and China Central Television (CCTV)

actively promote their countries foreign policy and their values, and a reconstituted USIA should be promoting America and its values rather than just being a global news agency. The GEC should also be eliminated and its functions, including recognizing, understanding, exposing, and countering foreign state and non-state propaganda and disinformation should also be put into a reconstituted USIA.

In addition, USAGM should be able to allow its five media organizations to provide grants in a competitive process to both for-profit and nonprofit private organizations to create content for counter disinformation effort. In the media landscape, the private sector is more dynamic and creative than government bureaucrats at the Department of State, and the Task Force believes it is in our interests to leverage that expertise and talent wherever possible. In counter-messaging, government should retain editorial oversight, but it is highly unlikely that government content providers can produce programming that competes with the private sector.

Congress should eliminate redundant, outdated, irrelevant, and duplicative State Department reports

Congressionally mandated reports are often an important tool for Congress in creating national security policy, and, for this reason, the Task Force has recommended a number of such reports to assist in countering a number of global threats. Nevertheless, as Schaefer has noted, Congress has required a number of reports over the years that now are related to outdated issues. Such irrelevant reports are a waste of the Department of State's valuable time and resources. The Task Force recommends legislation eliminating reports over three decades old that are not specifically determined by the State Department to be relevant, useful, and important for U.S. foreign policy, such as annual Country Reports on human rights, terrorism, religious freedom, human trafficking, and other important reports.

CONCLUSION

New global threats make American leadership more imperative now than ever before. Americans have risen to the challenge time and time again to confront threats to our homeland and to the world at large. Our success is fueled by our national character marked by the ideals of liberty, human rights, and open markets. This is not the first time the American way of life has been challenged. Whether during World War II, the Cold War, or the Global War on Terrorism, conservatives have provided solutions rooted in these bedrock principles to help us face a variety of threats. In this critical time, a retreat from global leadership does not only mean a strengthening of Russia, China, Iran, and the Salafi-jihadi terrorist movement, but it also means a retreat of liberty and prosperity itself around the world, and a threat to our own national security and economic prosperity.

The Republican Study Committee Task Force on National Security and Foreign Affairs has recommended over 130 new policy solutions for Congress in this report to keep America strong, and to stand up for the international order rooted in liberty, human rights, and open markets. This agenda should serve as a blueprint for Congress to strengthen America and confront global threats.

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RECLAIMING THE AMERICAN DREAM

PROPOSALS TO EMPOWER THE WORKERS OF TODAY AND TOMORROW



THE AMERICAN WORKER TASK FORCE



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PROPOSALS TO EMPOWER THE WORKERS OF TODAY AND TOMORROW



THE AMERICAN WORKER TASK FORCE

LETTER FROM THE AMERICAN WORKER TASK FORCE



What is “the American dream?”

If we asked 100 American workers to define it, we would likely hear 100 different responses. For some, it is securing meaningful work and providing a safe home and financial security for their family. For others, it is the chance to reach the pinnacle in their chosen field, to reach their God-given potential. And for almost everyone it is the idea that the next generation will have greater opportunities than they’ve had. However the American dream may be defined, it is a deeply personal aspiration which reflects an individual’s beliefs and values.

As conservatives, we understand that every American dream is based upon two essential ingredients: liberty and opportunity. Both are necessary for people to be able to define, pursue, and achieve their goals. When American workers have confidence they can do so, the benefits extend far beyond the individual. That confidence strengthens families, our communities, and our nation as a whole. In short, the opportunity of upward mobility in our free enterprise system has been key to making and keeping America great.

Unfortunately, decades of often well-intentioned but ill-conceived government policies have restricted the liberty and opportunity of America’s workers. Consequently, far too many have been held back by a broken education system, sent unprepared into the job market, punished by ill-conceived labor laws, and even abandoned to the welfare state. Instead of solving these problems, politicians on the Left have made things progressively worse. This year, the COVID-19 pandemic and its related economic fallout have created even more obstacles to the pursuit of the American dream.

Before the pandemic began, President Trump and our previous Republican majority in Congress made great strides and enacted policy reforms that produced a record-breaking economy and unprecedented opportunities for all Americans. To return to that prosperity, we must reject the Left’s dangerous calls for socialism and instead double-down on our strategy and advance even more conservative reforms.

To that end, the Republican Study Committee’s American Worker Task Force presents this report, *Reclaiming the American Dream: Proposals to Empower the Workers of Today and Tomorrow*. Our conservative, solutions-oriented ideas take a fresh, innovative, and comprehensive approach to lift up and empower America’s workers.

We offer more than 100 concrete recommendations to accomplish three major objectives:

1) Refine our education system to better equip the American worker

2) Refocus labor policy to unleash the American worker

3) Reimagine welfare to empower individuals and families

Whether swinging a hammer, writing computer code, or hauling goods, America’s workers are the backbone of our nation. The same strength and determination that built this country will bring us back to prosperity after the pandemic. Our workers don’t ask for much in return—just a fair shot at their American dream. We owe them that much. Here is how we can deliver it.



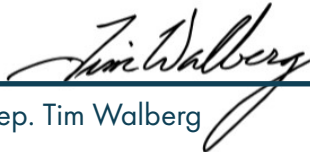
RSC Chairman Rep. Mike Johnson



Task Force Chairman Rep. Andy Barr



Rep. Paul Mitchell



Rep. Tim Walberg



Rep. Vicky Hartzler



Rep. Brian Babin



Rep. Glenn Grothman



Rep. French Hill



Rep. Ted Budd



Rep. Lloyd Smucker

INTRODUCTION

The United States, founded upon the simple, self-evident truth that we are endowed with certain unalienable rights, is the most successful experiment in governance in the history of the world. The Declaration of Independence gave birth to a nation rooted in principles of limited government, individual freedom, and the rule of law. It animates free enterprise and ensures our freedoms are not violated. Our Constitution protects these ideals through a system built on federalism, the separation of powers, and the Bill of Rights. This impressive model enables all Americans to work for their own happiness and has inspired a passion for free market capitalism and a “can do” spirit that is unmatched.

It is in this tradition, that we are a nation that values hard work, encourages entrepreneurship, and takes pride in personal autonomy and the ability to provide for ourselves and our families. We see work not as a burden, but as a blessing, which helps to liberate the soul, gives purpose and meaning to life, leads to self-sufficiency and dignity, and provides people a vehicle to share their talents and lift themselves and others.

We are an optimistic people, fueled by the belief that each successive generation can flourish and will be better off than the last. We have taught our children that anyone can be successful in this country, no matter their background, if they are willing to work hard, make sacrifices, and play by the rules. This tremendous promise is the “American dream.”

The pursuit of this happiness makes us who we are as a people, and the advancement of these ideals in public policy has always led us to greater success. Capitalism and the American work ethic have delivered the most free and prosperous people in the world. The first three years of the Trump administration is evidence of this, as our nation experienced a powerful resurgence as a direct result of conservative policy reforms.

As expected, under conservative leadership our economy quickly recovered from the Obama-Biden malaise and soared to new heights. Unemployment was reduced to a 50-year low, while take-home pay and productivity reached record highs. The poverty rate fell, and seven million people were lifted off food stamps. Consumer confidence and stability were restored, and success was achieved in every measurable demographic.

While the global COVID-19 pandemic temporarily paused or reversed many of these gains, the conservative policies that led to our economic stability and prosperity before the pandemic are the same policies that will help foster our much-needed economic recovery now.

Still, our full potential as a nation has not yet been reached, and we can do even better.

The Republican Study Committee (RSC) proposes that we take this opportunity to finally address the root problems that have held our country and American workers back for decades. The policy proposals in this publication are the product of more than a year of study and analysis by the RSC American Worker Task Force in collaboration with noted experts and scholars. All of these proposals are centered on one primary goal: empower every individual to enjoy a productive life through dignified work so they can prosper and turn their own American dream into a reality.

To achieve that goal, we offer a comprehensive conservative policy agenda focused on three key objectives:

REFINE OUR EDUCATION SYSTEM TO BETTER EQUIP THE AMERICAN WORKER

The pandemic has highlighted the need for a new approach to education. Our nation’s K-12 and higher education systems are failing to adequately equip students to become tomorrow’s workers. The federal government has historically exerted too much control over elementary and secondary curriculum and perpetuated the myth that a traditional four-year college degree is the only path to success. This “Bachelor’s-or-Bust” mentality has been costly, especially for the millions of students who have incurred mountains of personal debt in pursuit of diplomas that return to them little value. The inability for our education system to evolve with the needs of our labor market will continue to leave students without the skills needed to compete in an ever-changing economy. A more thoughtful approach to America’s education policy is long overdue.

REFOCUS LABOR POLICY TO UNLEASH THE AMERICAN WORKER

Even after the historic regulatory reforms achieved during the Trump administration, today’s labor market is smothered by

excessive and burdensome government red tape. Senseless regulations, counterproductive tax policies, and labor laws that subjugate workers all hinder human capital and individual achievement. The status quo is failing the American worker, particularly during the COVID-19 pandemic. Our approach would unleash the full potential of the American people by refocusing labor policy to provide workers more control over their own future.

REIMAGINE WELFARE TO EMPOWER INDIVIDUALS AND FAMILIES

By almost any standard of review, the modern welfare state has been an abject failure. Instead of measuring success by how many people are transitioned into self-sufficiency, our current system defines success by the growth of each government assistance program, the number of people who are actively enrolled, and the amount of taxpayer dollars spent. This backwards approach has trapped countless millions of Americans in a hopeless cycle of dependency. In times of economic certainty, this has needlessly deprived these individuals of their true potential and hamstrung the full power of our economy. During the present pandemic, the backwards policy approach now threatens to ensnare even more Americans in the welfare trap, fuel the Left's push toward socialism, and jeopardize a return to prosperity. In contrast, our approach is based on the belief that each individual has inestimable dignity, value, and potential—and that everyone deserves better than a lifetime of government dependency.

EDUCATION

Refine Our Education System to Better Equip the American Worker

In order to improve opportunities for American workers and ensure their success, we must start at the foundation of their careers: their education. After all, today's student is tomorrow's American worker.

The overarching goal of the Task Force as it relates to education reform is to create a system that provides opportunities for educational success to all students, is responsive to the needs of our future workers, and is easily adaptable to our rapidly evolving labor markets. Such a dynamic education system will be critical as our nation emerges from the COVID-19 pandemic. It will benefit today's students and tomorrow's American workers while ensuring our nation is primed to maintain its preeminent position in the global economy. The Task Force's vision for reform encompasses education occurring at all stages of life—from childhood to adulthood. Perhaps more importantly, our vision is not limited to traditional classrooms, but extends to training rooms and workplaces.

The Left's approach to education reform utilizes a top-down, one-size fits all method that assumes Washington bureaucrats and antiquated university systems know what is best for students. Their failed policies have put special interests over parental rights and increasing opportunities for students. They largely seek to increase Washington's control over elementary, secondary, and post-secondary schools, and thus decrease choice in education. Moreover, their "Bachelor's-or-Bust" mentality is harmful to the future job prospects of America's youth. It denigrates the pursuit of non-university courses of study, makes finding a job more difficult for those without four-year degrees, artificially inflates the cost of education, saddles students with crushing debt, and fails to prepare students for the needs of a revitalized economy.

The RSC's American Worker Task Force rejects the Left's short-sighted, outdated, and harmful approach. The Task Force understands that Washington should not dictate the curriculum for communities in which they have never set foot. Existing federal education programs should emphasize opportunity for all students and ensure that funding benefits families instead of systems. The federal government should not perpetuate the notion that a high school graduate's success

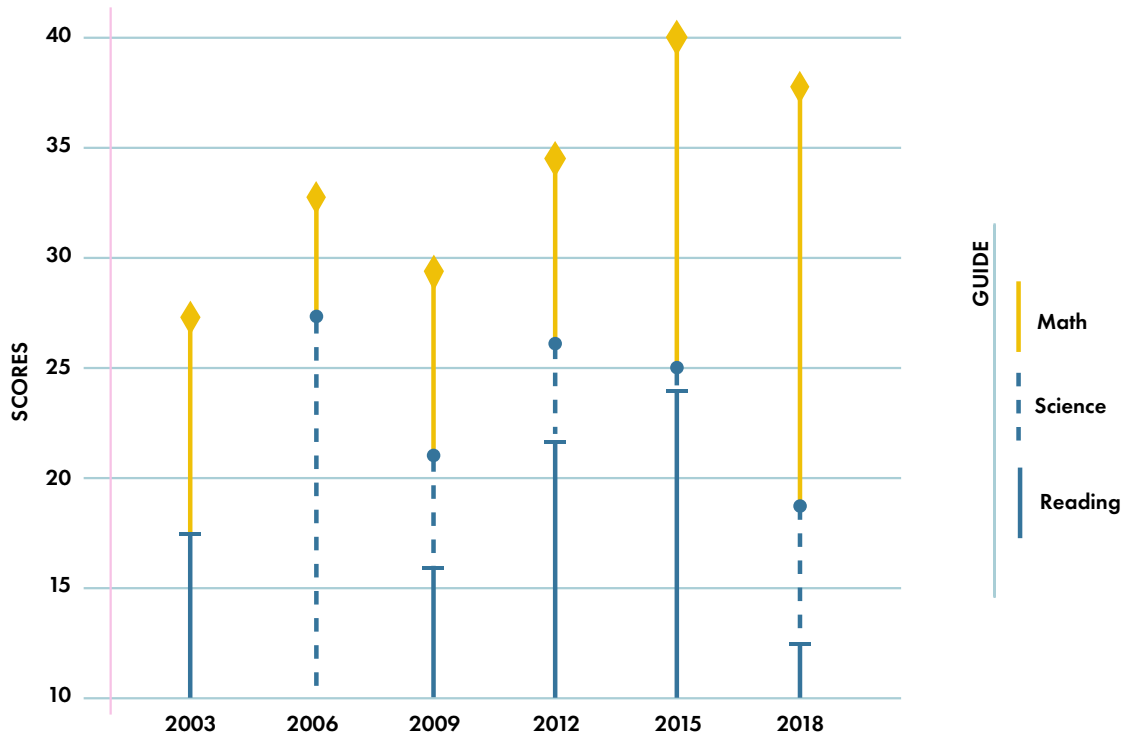
hinges on completion of a four-year college program, but instead should foster innovative post-secondary education pathways that incorporate a student's individuality along with viable employment opportunities. The Task Force seeks to reform the student lending system to promote these goals and prevent irresponsible borrowing. The proposals supported by the Task Force together will open our education system to provide as many pathways to success as possible for tomorrow's American worker.

Importance of Primary and Secondary Education

It should be no surprise that early education plays a pivotal role in employment, social, and even health outcomes later in life. For instance, among the civilian labor force, less than half of those who fail to complete high school are participating in the labor force.¹ In contrast, those who graduate high school are more than ten percent more likely to be participating in the labor force.² The consequences of dropping out of high school reach far beyond unemployment. In fact, those who drop out of high school are 3.5 times more likely to be arrested than those who graduate,³ and 68 percent of incarcerated men did not graduate high school.⁴ Those who drop out of high school also have a lower life expectancy.⁵ Collectively, these statistics remind us that providing our children with a quality education is critical to ensuring that they can lead fulfilling lives.

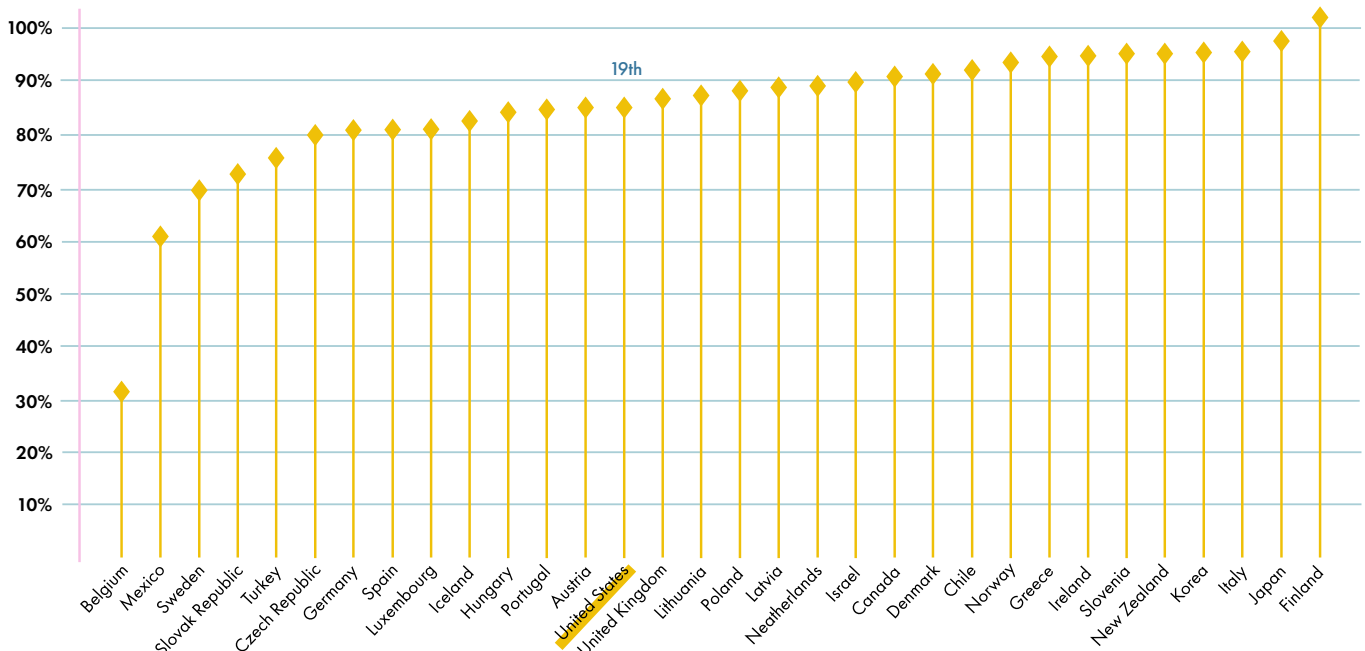
Unfortunately, over the last 15 years, the U.S. has failed to consistently improve in a number of critical areas. In fact, our nation has remained relatively stagnant in math, science, and reading test scores,⁶ compared to other Organization for Economic Cooperation and Development (OECD) countries despite being in the top five for elementary and secondary education spending since 2009.⁷ Furthermore, the U.S. ranks 19th in worldwide high school graduation rates among OECD countries. During the same time period, the U.S. passed the No Child Left Behind, a reauthorization of the Elementary and Secondary Education Act (ESSA) that significantly increased federal intervention in education and failed to significantly improve student outcomes when compared with other countries. While the most recent reauthorization of the Every Student Succeeds Act nominally reduced the federal role in elementary and secondary education, we believe much more can be done to send education decisions to the states.

U.S. STAGNATION IN MATH, SCIENCE, AND READING RANKING VS. OTHER OECD COUNTRIES



SOURCE: "PISA Database," Programme for International Student Assessment, Organisation for Economic Co-operation and Development, accessed September 2, 2020, <https://www.oecd.org/pisa/data/>.

SECONDARY GRADUATION RATE AMERICA RANKS AT #19



SOURCE: "Secondary graduation rate," Organisation for Economic Co-operation and Development, accessed September 17, 2020, <https://data.oecd.org/students/secondary-graduation-rate.htm#indicator-chart>.

Empowering Local Educators

The Left's approach to elementary and secondary education policy is a top-down, one-size-fits-all model that requires students to fit into a certain mold and abandons those that do not. They fixate on increasing union influence in education policy and moving toward centralized education,⁸ rather than increasing opportunities for students with varied dreams and ambitions. Conservatives reject this approach because it has demonstrably resulted in a negative impact on American students. For instance, Common Core, which centralized common education standards and testing for states, resulted in significant negative effects in 4th grade reading, and a significant negative impact on 8th grade mathematics.⁹ By stymieing local education officials, Democrats have forced students to conform to a nationalized idea of success and learning and made those who learn differently feel inadequate and substandard. Conservatives, on the other hand, believe that education policy should be set by parents, teachers, school boards and locally elected officials—not Washington bureaucrats. As described by former RSC Chairman Rep. Mark Walker, "Innovation starts in our communities, not in Washington."¹⁰

To this end, the Task Force recommends states have the ability to completely opt out of the burdensome and costly mandates created by the federal government and have the option to receive federal education funds in the form of a block grant. This proposal is largely based on the Academic Partnerships Lead Us to Success (A-PLUS) Act sponsored by former RSC Chairman Representative Mark Walker (NC-06).¹¹ This reform would restore local control of our education system and empower parents and teachers to help ensure each child has access to a quality education. It would also allow states to consolidate funding, reducing bureaucracy and increasing transparency and accountability.¹²

Expanding Educational Opportunities for All Students

Education is a key component of lifelong opportunity. Unfortunately, the U.S. public school system often traps students in schools that are failing, dangerous, or are simply a poor fit. Furthermore, the failures of the public-school system are felt most acutely by low-income, disproportionately minority communities, who do not have the resources to seek out a better education. As President Trump has said, "School choice is the civil rights statement of the year, the decade and probably beyond. Because all children have to have access to quality education. A child's zip code in America should never determine their future."

Across the country, states have chosen to expand choice in education through charter schools, voucher programs, and education savings accounts, so that students are able to access the opportunities they deserve.¹³ Additionally, the federal government has taken some steps in its areas of jurisdiction, including Washington D.C., to promote school choice policies.¹⁴

The Task Force emphasizes that during the public health emergency, as many public schools close and offer varying distance education options, school choice takes on increased importance. Many Americans are navigating new challenges in their lives as a result of the pandemic. Parents need the flexibility to seek out an educational arrangement that suits their unique situation, rather than be stuck following the school district in which they happen to reside.

The Task Force supports school choice policies within the proper scope of the federal government, including policies that provide choice to military families and students in the District of Columbia. Furthermore, the Task Force applauds the successes of state and local efforts to further school choice. Above all, the Task Force holds that the school system exists to serve America's youth and that all school policy should be student-centered rather than system- or union-centered.

Secretary DeVos recently suggested having federal education funding follow the student in the event that schools do not reopen, so that parents can access alternative educational options for their children.¹⁵ While this bold policy is especially important when many public schools may be closed, allocating funding to eligible children instead of schools is good child-centered policy in general. The Task Force supports repurposing federal funding to school districts into vouchers or education savings accounts for children. This policy will empower students to access better educational opportunities, the benefits of which will continue into their adult lives.

Advancing school choice is also critical for parents who opt to enroll their child in early childhood education programs. Early childhood education can help provide developmental opportunities for disadvantaged children, as well as give parents a safe option for child care during work. Unfortunately, the Head Start program, a one-size-fits-all federal program that provides pre-school for low-income children, has failed to produce positive results.¹⁶ Furthermore, stringent federal regulations prevent innovation and flexibility in Head Start centers. As currently administered, this decades-old program is failing the very children it is intended to help.

The Task Force recommends transforming the \$10.6 billion Head Start program into a voucher program for low-income families, to be administered by the states. A voucher program would empower low-income parents to choose an early education option that fits their schedule and their child's needs. This change would also task state and local governments, rather than federal bureaucrats, with shaping program requirements to best serve their citizens. The approach would be similar to that taken in Rep. Jim Banks' Head Start Improvement Act,¹⁷ which transforms Head Start funding into an early childhood education block grant, but would go a step further to require states to create a voucher program instead of simply allowing states to do so.

The Burdens of "Bachelor's-or-Bust"

Today, as soon as students get to high school, the pressure to attend college can become overwhelming. Parents, counselors, and peers often portray college as the only path to success. This mentality—one that is fueled by Democrats—is often referred to as "Bachelor's-or-Bust."

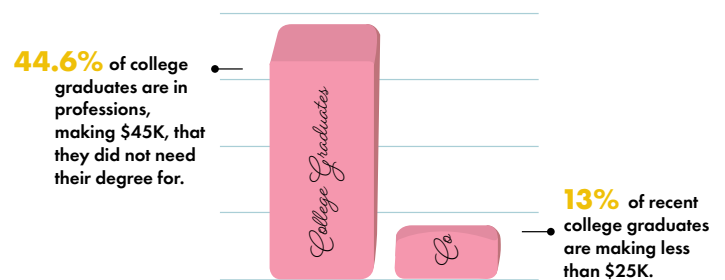
As a result, more and more students are feeling forced into attending college. In fact, half of students between the ages of 16 and 19 say that one of their reasons for attending college is because their parents want them to go.¹⁸ Once they begin attending college, some of these students are unable to keep up with the course work. Or, since their decision to attend college was perhaps heavily influenced by outside pressure, they do not have the drive to finish their degree. For these and many other reasons, almost forty percent of college students do not finish their degree within six years, with many saddled in significant education debt.¹⁹

For those that do choose to pursue education after high school, post-secondary institutions can build upon skills learned in high school in order to prepare students for employment in their field of choice. However, the Task Force seeks to emphasize that a traditional college education may not provide the best path to success for every student, and in many instances can even negatively impact their lives. Democrats' Bachelor's-or-Bust mindset, on the other hand, perpetuates the notion that a college degree is the benchmark for success and stigmatizes fulfilling and potentially lucrative pathways that do not rely on a four-year diploma. It also produces a number of unintended and harmful consequences that completely undermine the value of the education it seeks to provide. It drives ever-increasing tuition costs, burdens students in crushing debt, and fosters low-value university programs that fail to adapt to the opportunities provided by an evolving job market.

One unfortunate consequence of the Bachelor's-or-Bust mentality is that it exacerbates the problem of degree inflation—the idea that, while at one time a high school degree was sufficient to find a job, that same position now requires applicants to hold a college degree. Continuing down this path will make it nearly impossible for anyone who opts not to participate in a college program to find a well-paying job. While at one point in time, having a bachelor's or a professional degree made a person a more attractive candidate compared with other applicants, now having a degree is often a requirement to even be considered. As a result, students who may have at one time decided not to attend college are feeling obligated to get a college degree.

The limited extent to which an expensive traditional college degree significantly improves the earnings of some graduates also demonstrates the potentially high relative value of non-degree education paths. In fact, many college graduates end up in positions they would have been qualified for without their degree—not to mention without possibly thousands of dollars in education debt. Still others never finish their degree and walk away with substantial student loans. Indeed, about half of students that drop out of college are in default on their loans and have nearly \$14,000 on average in education debt.²⁰

UNDEREMPLOYED GRADUATES



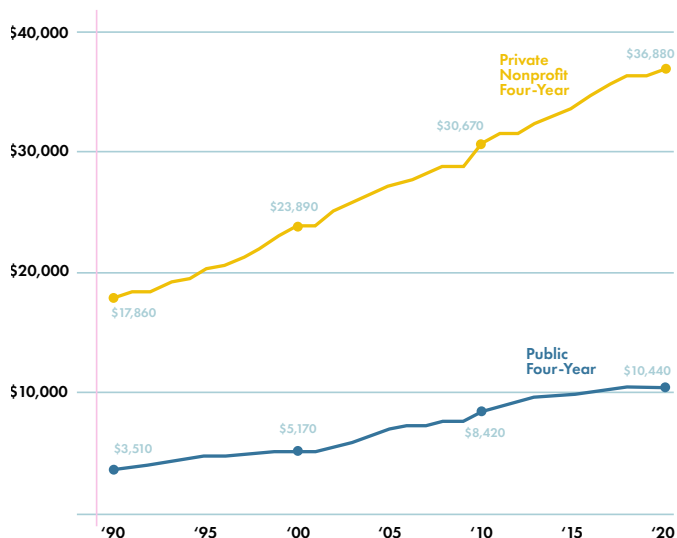
SOURCE: "The Labor Market for Recent College Graduates," Federal Reserve Bank of New York, July 17, 2020, <https://www.newyorkfed.org/research/college-labor-market/index.html>.

For its part, the Trump administration has begun to prioritize skills and competencies over degrees in federal hiring decisions. President Trump's recent Executive Order on Modernizing and Reforming the Assessment and Hiring of Federal Job Candidates requires the Director of the Office of Personnel Management (OPM) to revise job qualification standards so that job postings only require a degree when it is a legal necessity and only consider a degree advantageous when the education received directly relates to the job task.²¹ Additionally, the order instructs the Director of OPM to increase the use of skills assessments in hiring. The American Worker Task Force supports the Executive

Order on federal hiring and recommends that Congress codify its directives into law.

Perhaps the largest burden imposed by traditional university systems is the exorbitant, and yet still increasing, cost of tuition. Average annual tuition at private and public universities has jumped 154 percent and 181 percent, respectively, over the past 20 years.²² Over the 2018 – 2019 academic year, students at public colleges were expected to pay an average of \$10,000 in tuition and fees.²³ At private colleges, the average tuition was nearly \$37,000.²⁴

PUBLISHED TUITION AND FEES (IN 2019 DOLLARS)



SOURCE: "Trends in College Pricing 2019," College Board, November 2019, <https://research.collegeboard.org/pdf/trends-college-pricing-2019-full-report.pdf>.

Consequently, graduates often amass tens—or even hundreds—of thousands of dollars in education debt. The problem of student loan debt in the United States today is simply staggering. According to the Federal Reserve Bank of New York, Americans have collectively amassed about \$1.5 trillion in total student loan debt.²⁵ For context, that is larger than the entire Gross Domestic Product (GDP) of Australia.²⁶ Additionally, over the next ten years, the federal government is expected to lend another \$1.2 trillion in federal student loans.²⁷

This problem has become increasingly more dire on an individual level as more and more students take out larger amounts of debt. According to a 2019 Federal Reserve study, average student loan debt doubled between 2005 and 2014 among people between the ages 24 to 32.²⁸ Fifty-four percent of young adults who went to college took on some debt, including student loans, for their education.²⁹ The typical amount owed by those with outstanding education debt was between

\$20,000 and \$25,000. Graduates with bachelor's degrees carry an average of \$31,172 in student loan debt.³⁰ Perhaps more concerning is the fact that in 2018, two in ten of those who still owe money are behind on their payments.³¹

Making the situation even worse for many of these debt-ridden individuals, there is too often a disconnect between their debt load and the earnings they receive in return. For example, as Mary Clare Amselem of The Heritage Foundation points out:

Interestingly, graduate programs—which are generally perceived to be good investments—are some of the worst offenders.

Students who graduate from the University of Miami Law School, for example, hold a median total debt of \$150,896, but earn a starting salary of just \$52,100. Even more problematic, students who obtain a master's degree from New York University in film/video and photographic arts graduate with a median total debt of a whopping \$168,568, but earn a median starting salary of \$29,600...

However, depending on where a student goes to school and what their major is, earnings potential can be quite different.

For example, at the University of Miami, students who study mechanical engineering graduate with a median total debt of \$20,500 and earn a median starting salary of \$66,400. However, political science majors graduate with similar debt, \$18,269, but earn a median starting salary of \$37,500.³²

Considering these outcomes, it should come as no surprise that approximately two-thirds of graduates with a bachelor's degree regret some aspect of their education, and the most common regret is their student loan debt.³³ Such regret was highest among students that majored in low-earning career fields.³⁴

Additionally, the effects of this debt do not just present a purely short-term financial problem for recent students, but often act an impediment to reaching milestones—such as buying a home and starting a family—that have become synonymous with adulthood development in America. A large contingent of millennials that graduated amid the Great Recession with significant loans have felt the burden of this debt perhaps more than anyone. While the Task Force is optimistic for a quick economic rebound following the COVID-19 pandemic, it fears another broad swath of indebted graduates will suffer the same consequences in the near future.

The present student debt crisis has led to more and more Democrats expressing support for proposals offering free college for all or some students. However, this so-called solution fundamentally ignores the root causes of tuition spikes and would actually exacerbate the problem, shift increasing costs to taxpayers, and create a whole host of new problems. For instance, Democrats' short-sighted approach of increasing federal subsidies for college education would actually incentivize institutions to raise their tuition to capture more federal dollars. Studies demonstrate a direct correlation between increasing federal subsidies and subsequent increases in tuition rates. According to a study published by the Federal Reserve Bank of New York, there is "a pass-through effect on tuition of changes in subsidized loan maximums of about 60 cents on the dollar, and smaller but positive effects for unsubsidized federal loans."³⁵ Another study comparing for-profit colleges that receive federal funding with those that do not receive federal funding found that schools receiving federal funding charged 47 percent more for tuition.³⁶

Furthermore, tuition inflation caused by subsidies to low-income students are felt most by the middle class. As tuition skyrockets, low-income students are shielded by federal subsidies and wealthy families are able to cover the high costs, while middle income families are increasingly squeezed. A 2018 study from the American Enterprise Institute found that between 1999 and 2016 as tuition prices and federal subsidies increased in tandem, the proportion of low-income students at selective universities has remained steady, while the share of the student body from the middle class has declined.³⁷ Increasing subsidies would require Democrats to provide more and more students with subsidies or accept that middle-income students could no longer have the choice to attend college because of its unaffordability.

Similarly, Democrats also seek to reduce the amount of existing debt students must repay through generous student loan forgiveness programs. In the HEROES Act, Democrats proposed forgiving up to \$10,000 of an individual's student loans, a radical and costly proposal.³⁸ Again, these post hoc subsidies, which Democrats claim make college more affordable for students, would actually drive up the cost of college tuition and send the message that students who make irresponsible borrowing decisions will ultimately be bailed out by the federal government.³⁹

Advancing Alternative Education Early

The American Worker Task Force knows that students should be given the best chance at success in the path that best suits

them upon leaving high school, whether it be a four-year degree, a two-year degree, a short-term certificate, or other forms of job training that lead them to stable, well-paying employment. Fixing the problems created by the Bachelor's-or-Bust mindset must start long before students fill out their first college application. From the moment that students begin their high school studies, they should not be deprived of meaningful exposure to education paths that are not contingent upon a traditional college degree. Our students must understand that career and technical education (CTE) and apprenticeship options are a viable way for students to achieve quality, high-paying jobs without incurring massive amounts of debt.

Unfortunately, these programs have not always been presented as an alternative to college. In the 1980's, graduation requirements began to change, and students were required to take more courses, like foreign languages, in order to graduate high school.⁴⁰ While learning a foreign language may be helpful when applying for college, it is not necessary for students that plan to take a CTE path. As a result of these increased graduation requirements and the societal pressure to pursue a four-year degree, the number of CTE credits high school students earned dropped by 14 percent between 1990 and 2009.⁴¹

The Task Force urges lawmakers to undertake reforms to current programs and funding streams to ensure that students have adequate support and opportunity to pursue careers under a CTE path. Foremost, the Task Force recommends that lawmakers reallocate existing resources to amplify CTE opportunities for students in middle and high school. For instance, Federal TRIO Programs received \$1.16 billion for Fiscal Year 2020 and according to the Department of Education are "among the Department's largest investments aimed at getting more students prepared for, into, and through postsecondary education." In other words, they are designed to usher students toward a traditional college. Similarly, Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP), "provides funds to States and Partnerships for early college preparation and awareness activities to help low-income middle and high school students prepare to pursue postsecondary education" at a cost of \$360 million annually. If even half of such funding was reallocated, CTE funding would increase by nearly 60 percent.

Reducing Federal Education Subsidies and Their Distortionary Effects

To ensure that students have as many affordable education options as possible, lawmakers must also take steps to curb the rapid rise in the cost of college tuition. Rather than spur

further tuition inflation as Democrats' policies would do, the Task Force realizes that the federal government must reduce its overall role in subsidizing education costs. This includes limiting subsidies in the form of federal student lending at the graduate and undergraduate level, loan forgiveness programs, and ineffective tax credits.

For instance, the Task Force recommends eliminating the Parent PLUS and Grad PLUS loan programs. These programs have encouraged students and their parents to borrow large amounts of money and have contributed to the growth of tuition. The \$21 billion PLUS loan program provides federal loans to graduate and professional students, and the parents of undergraduate students. Those taking out loans are able to borrow up to the full cost of attendance, regardless of income. Additionally, these loans do not have an aggregate cap, a programmatic flaw that facilitates over-borrowing and contributes to tuition inflation. In the 2017-2018 award year, 839,000 parents borrowed an average of \$15,173 in Parent PLUS loans, while 403,341 graduate/professional students borrowed an average of \$24,048 in Grad PLUS loans. A 2016 study found that changes in Parent PLUS eligibility that reduced the number of eligible borrowers resulted in a \$487 reduction of net tuition.⁴² Schools that had a high number of newly ineligible PLUS borrowers saw a \$1,372 decrease in published tuition.

The Task Force also recommends that lawmakers recalibrate the borrowing caps on federally funded undergraduate student loans for independent students to promote responsible borrowing and discourage tuition hikes. Under current law, independent students are eligible to take out a total of \$57,500 in federal loans for their undergraduate schooling. However, this aggregate cap is higher than the average cost of attaining a four-year college degree, and thus could be unnecessarily contributing to our nation's tuition inflation problem.

The Task Force also recommends that other federal subsidies, specifically student loan forgiveness and tuition tax credits,⁴³ should be eliminated. Not only have these shown to benefit students with higher income more than students with lower income, they have failed to demonstrate effectiveness in increasing higher education rates and may be contributing to inflated tuition rates.⁴⁴ Additionally, while the Task Force does not advocate for the continued existence of the student loan interest payment deduction, it does believe that if it is to continue to exist, it should not, at the very least, penalize eligible taxpayers when they get married. Rep. Vicky Hartzler (R-MO) has introduced legislation to eliminate the marriage

penalty contained in this deduction, which could be paired with deficit reducing reforms to make it budget-neutral.⁴⁵

Modernizing Distance Education Policy for Current and Future Students

Student loan debt has spiraled out of control, driven in large part by federally-subsidized college tuition. Students typically pay a premium for the on-campus experience and in-person access to professors and mentors, especially at private colleges. Due to the COVID-19 pandemic, many universities announced plans to provide partially or completely online education for the 2020-2021 school year. Many of these schools will not be charging room-and-board for the semester but will also not be decreasing tuition. For example, Harvard University is planning to teach all classes remotely and heavily restrict on-campus housing, but will not be lowering its \$49,653 tuition for the semester.⁴⁶

Colleges that choose to close their campuses for the 2020-2021 school year for public health reasons may choose to do so, but their access to federal funds should reflect this change. To this end, the Task Force recommends that the cap on maximum student loans be adjusted for students attending a college that typically provides on-campus instruction but will be providing remote instruction to account for the removed cost of room-and-board and to reflect the change in services that the university is providing.

Furthermore, should Congress provide further aid to institutions of higher education, the availability of on-campus classes should be taken into account. Colleges providing on-campus instruction during the pandemic may experience increased costs as a result of social distancing and other public health measures. Congress's allocation of aid should reflect the increased responsibilities of schools that have chosen to continue in-person education. The allocation of aid should also reflect the decreased expenses associated with complete remote schooling as it relates to campus upkeep and the general provision of an on-campus experience.

While the Task Force believes that federal funding streams and student debt should reflect disparate levels of expenses associated with in-person and online instruction, it overall is supportive of innovative instruction methods that could reduce costs for students and open education opportunities to more individuals. Virtual classrooms are the lynchpin for such efforts, and the pandemic has helped to highlight this fact. Because the public health emergency disrupted the spring semester for on-

site learning on college campuses, the Department of Education provided broad approval for any existing on-site higher education program to be transitioned to a distance program without the usual Department of Education approval.⁴⁷ Under normal circumstances, an institution that has already received departmental approval for on-site learning must obtain separate approval to conduct that same education as a distance program. The American Worker Task Force supports the Department of Education’s distance education flexibility and recommends that Congress permanently codify this standard into law.

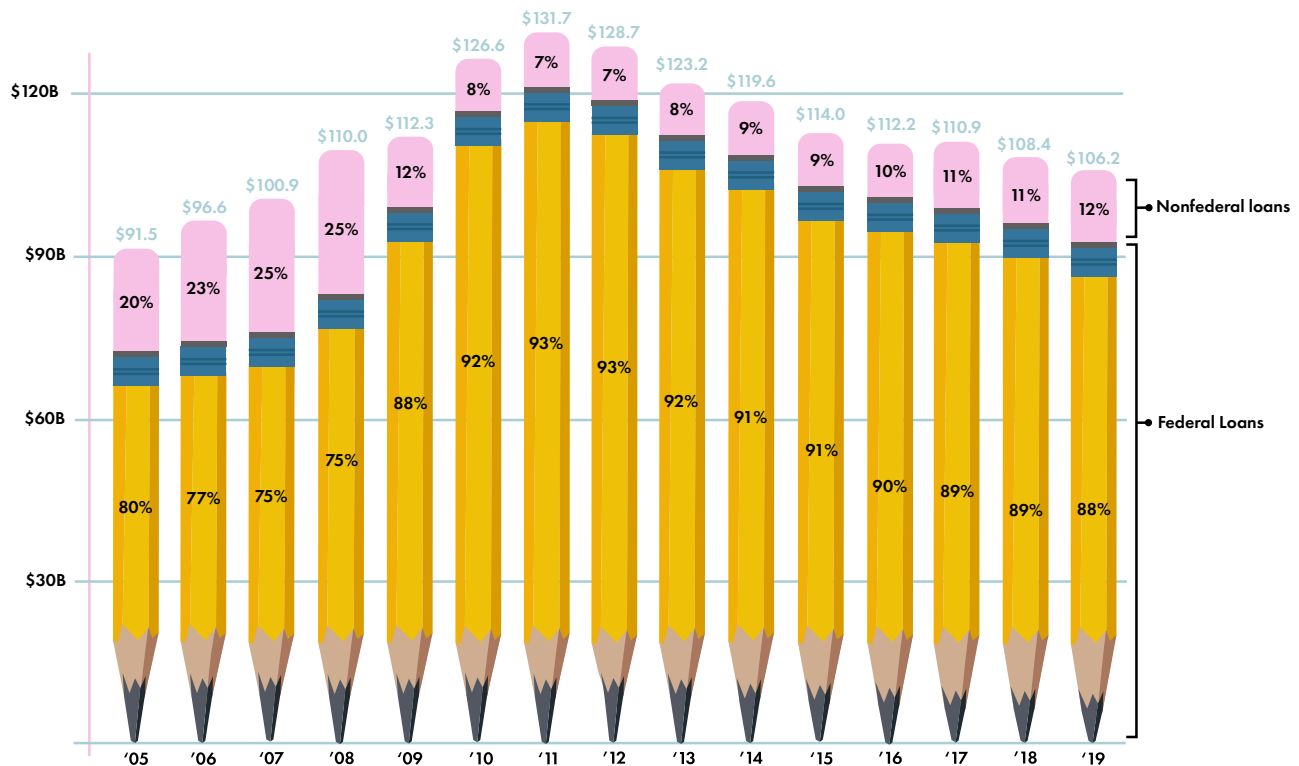
Institutions that can provide distance education have the potential to reach more students without the physical constraints of a campus and allow students to receive an education from a far-away institution without having to relocate or pay costly room-and-board. Allowing approved, accredited institutions to also offer distance education without a separate approval after the pandemic creates parity between on-site and distance learning and expands access to high-quality education. Non-traditional students, working students, and those who want to spend less on higher education could all stand to benefit from increased opportunities for distance learning.

Enhancing Educational Value Through Private Lending

The Task Force recommends that lawmakers embrace the increased role of private education lending that would emerge once the federal government begins to reduce its monopoly over the market. One critical flaw of federal student lending is that it does not meaningfully account for labor market trends and future earning potential. This has produced a public lending system that is blind to whether or not a student loan is a worthwhile investment. Periods of economic uncertainty, such as now, highlight why it is important for education investments to account for changes in the labor market. By restricting the federal government’s role in the student loan market, the Task Force seeks to enable private lending that can assist in guiding students toward educational paths that will provide them with the best return on their investment. Also, the private market is not bound by the complicated statutory framework that limits federal loans, but instead is freer to develop innovative lending mechanisms that benefit students and lenders alike.

While private lending is currently available, it has largely been crowded out of the market by the abundance of federal student loans, which are subsidized by the taxpayer. In the 2006-2007 and 2007-2008 aid years, \$27 billion in nonfederal

LOANS IN BILLIONS OF 2018 DOLLARS



SOURCE: “Total federal and nonfederal loans by type over time,” College Board, accessed September 3, 2020, <https://research.collegeboard.org/trends/student-aid/figures-tables/total-federal-and-nonfederal-loans-type-over-time>.

loans were extended to students; 48 for the 2018-2019 aid year, this was cut in half to \$13.1 billion.⁴⁹ During the same time period, federal student loans increased by \$10 billion.⁵⁰

The crowd out effect of federal student loans is perhaps best demonstrated by the change in borrowing behavior among graduate students when borrowing caps were removed on PLUS Loans in 2006. Prior to this change, graduate students used private credit to cover about 20 percent of the gap between their cost of attendance and the maximum borrowing cap.⁵¹ After PLUS loans were uncapped, these students shifted to using PLUS instead of private loans. Meanwhile, undergraduates, whose loans were not uncapped by the 2006 reforms, actually increased their private borrowing.⁵² Although private graduate loans more often had lower interest rates, it is likely that other federal loan benefits, such as income-driven repayment options attracted graduate borrowers.⁵³

Higher education spending is an investment in every sense of the term—it creates present costs to produce future benefits. Given the magnitude of the borrowing decisions made by recent high school graduates, lawmakers should ensure that our student lending system is focused on the future success of student borrowers. Unfortunately, the fact that all federal student loans are offered at the same interest rate promotes the inaccurate belief that a student's institution and field of study have no bearing on whether or not a graduate will be able to repay their student loan. In reality, a student's field of study and their institution have arguably the greatest effect on their future income. Private lending decisions could incorporate these important factors. Consequently, enhancing private lending options would naturally guide more borrowers toward education paths that prepare them for careers in sectors with more demand for workers. In contrast to the blind lending system currently utilized by the federal government, private lenders would more heavily weigh factors such as academic performance, the institution the student has chosen to attend, and the program the student has chosen to study. Private lenders recognize an education from the right program will increase a student's income potential, easing the burden of student loan repayment. Furthermore, a shift toward a more responsive private lending model would push postsecondary education institutions to adapt their programmatic offerings to enhance options that provide the greatest value after graduation.

One common argument made in favor of a large federal student lending role is that private lenders will require a parent cosigner because students rarely have the credit or finances to

support an unsecured loan (i.e., without collateral). In this way, critics of private lending argue, private credit will disadvantage lower-income students. However, these critics fail to recognize that private lenders can offer innovative products that would extend accessible credit to disadvantaged students that are not contingent upon their past, but rather their future.

One innovative non-federal financing mechanism strongly supported by the Task Force is the income-share agreement (ISA). ISA's are outcome-based arrangements that do not rely on existing collateral or the credit of a parent. Instead, ISAs allow a student to commit a percentage of their future income for an agreed upon amount of time in exchange for funds to pay for college tuition, workforce development, or other purposes. Additional capital and investors in this arena will incentivize educational institutions to help students graduate and succeed in the long-term. Further, as Richard Price of the Christensen Institute explains, "[d]ata from the income share agreement market could generate important insights regarding which practices, programs, and providers add the most value for students, driving institutions to reallocate their resources accordingly." For these reasons, ISAs are frequently provided by vocational and skills-based training programs, such as increasingly popular data science programs and coding. Recognizing the potential value of ISAs, the Trump administration is expected to announce a pilot program that would make it easier for higher education institutions to make them available to students.⁵⁴

However, until now a lack of regulatory clarity has deterred potential investors from backing programs that seek to offer ISAs to students. For instance, there is debate whether ISAs should be treated as loans or instead as non-loan financial contracts. To ensure that ISAs are not overly burdened by regulations linked to loan instruments, the Task Force recommends that lawmakers clarify that ISAs are not student loans but rather should be entitled to their own legal treatment. Accordingly, the Task Force supports establishing a legal framework under which ISAs can flourish and, among other things, would provide tax treatment clarity for students and ISA providers.

The Task Force is also supportive of the private market developing other innovative education finance mechanisms that are disruptive to the status quo. For instance, certain private lenders only finance loans to students attending coding boot camps that meet certain performance benchmarks.⁵⁵ Others partner with institutions that demonstrate a proven return on investment.⁵⁶ Reducing the federal governments student

lending monopoly will naturally result in the prevalence of more innovative, nonfederal lending practices.

Although pulling the federal government back from student lending will help make room for more private lenders, more can be done to ensure more private lenders underwrite on a forward-looking basis. As pointed out by Andrew Kelly and Kevin James of the American Enterprise Institute, “Ironically, fair lending laws intended to ensure equal access to credit may actually limit access for those who need it. After all, if private lenders rely almost exclusively on traditional criteria such as FICO scores—which regulators have accepted even though they are highly correlated with race and income—then disadvantaged students will have less access to credit.” But in order to foster innovation in lending based on a student’s future earning potential, lenders should be able to take Cohort Default Rates (CDRs), or some similarly informative metric, into account when making lending decisions. Critics argue that institutional CDRs correlate to the number of minority students at a school and thus may run afoul of fair lending laws. However, lenders argue it is essential for business and there is not a less discriminatory option. Mounting this defense against regulatory challenges can be difficult and costly. Consequently, private lenders may be deterred from lending and developing innovating credit models that would encourage student success. To help provide more certainty, the Task Force recommends a clarification of fair lending requirements to allow for CDRs and similar metrics to be used in private education lending.⁵⁷

A Market-Based Approach to Federal Education Financing

For the vast majority of students, the purpose of achieving a college degree is to get a better job, receive career-specific training, and increase one’s earning potential.⁵⁸ However, there is a serious disconnect from this goal at the institutional level. Colleges are too often focused on completion, not on employment. The current system provides little incentive for institutions to prepare students for well-paying jobs that may be readily available after graduation. Thus, in conjunction with a marked reduction of federal student lending, the Task Force supports policies that would make remaining federal student lending more responsive to evolving labor market needs. The crux of such policies would require federal lending decisions to incorporate a student’s future earning potential. Several promising proposals exist that seek to achieve these ends.

The Task Force supports a proposal included in the PROSPER Act, introduced by Rep. Virginia Foxx (NC-05), that would require student loan repayment rates to be calculated at the

program level, as opposed to an institutional level, for purposes of determining whether students enrolled in that program can receive federal loans.⁵⁹ This reform would make student aid more dynamic and responsive to labor market trends while actively informing students as to which programs produce high-paying and in-demand careers. Programs that successfully prepare their students for well-paying jobs after graduation would no longer be able to prop up programs that produce degrees of questionable market value.

The Task Force also recommends this reform be implemented in tandem with prospectively decreasing the amount of federal loans students can borrow on a program-by-program basis. Ideally, this determination would be based on data demonstrating the value of the program, namely future earnings. Fortunately, the Department of Education reportedly intends to implement a pilot program similar to this concept. The program would allow individual colleges to place limits on the amount of federal debt a student would be able to accumulate based on their field of study.⁶⁰

These reforms should produce a number of benefits for both the student and the taxpayer. For instance, these reforms should reduce default and forgiveness rates to ensure that taxpayer investments are repaid in a timely manner. They also could spur innovation in how colleges and universities price their programs. Higher education institutions should be encouraged to price programs appropriately to the degree fields their students are pursuing instead of the one-size-fits-all model that is common at today’s higher education institutions.

In order to ensure that educational institutions are focused on giving students the skills they need to find well-paying jobs, the Task Force believes colleges should have more “skin in the game” so that they are not churning out debt-riddled students with low-value degrees. While not all poor post-graduation outcomes can be attributed to the education institution, more should be done to hold chronically underperforming schools accountable for the financial burden their students accumulated while attending their institution. In other words, schools need to hold up their end of the bargain too.

Accordingly, the Task Force recommends requiring schools to repay some percentage of a graduate’s debt if the default rates of their graduates pass a certain threshold, say 10 percent. The percentage that must be repaid by the school should increase relative to the amount the default rates surpass the threshold. This proposal was offered by the Opportunity America, AEI,

and Brookings Working Class Study Group.⁶¹ It should result in schools focusing on fields that are in highest demand and ensuring that their programs will help graduates to transition to a high-paying job. Thus, students will be more likely to repay their student loans and earn a wage worth their investment.

Another strategy supported by the Task Force that is largely used at the state-level is linking performance-based funding to employment outcomes. This approach has been used most notably by the Texas State Technical College (TSTC) system where funding is entirely dependent on employment outcomes.⁶² This has resulted in a closer relationship between the school system and employers, and every decision being considered through the lens of ‘will this increase earnings and employment for graduates?’ In the first year, TSTC has recorded 18 percent more job placements, and a 21 percent increase in combined earnings.⁶³ The Task Force recommends lawmakers further foster this approach by incorporating employment outcome metrics into federal funding of postsecondary education programs, including career education programs, that stress the value of the program for the student. According to Dr. Amy Li of the University of Northern Colorado, “Median starting salaries, as well as the percent of graduates employed after 9 months, are two outcomes already being collected that illustrate the economic value of a degree.”⁶⁴

Connecting Educators and Employers

The Task Force, and the vast majority of students, realize that the end goal of the education system is to ensure that each graduate will be better equipped for the job market.⁶⁵ However, there is a great disconnect between those providing the skills and education to future employees, and the actual employers. In order to ensure a student’s schooling is adequately preparing them to be productive employees, we need to ensure that educators and those drafting and amending curriculum are speaking directly with employers to find out what skills are most valuable to them. To ensure that necessary skills are being passed along to students, the Task Force recommends that lawmakers require accreditation boards to include business representation, as proposed in the PROSPER Act.⁶⁶ Doing so will ensure that accreditors draft standards that are reflective of the needs of employers, which will result in graduates that are better equipped for the workforce.

The Task Force also recommends that lawmakers go one step further by allowing schools to partner with skills-focused organizations, such as private businesses, to allow these organizations to teach up to 100 percent of a program

available at that school. Schools are normally prohibited from allowing these outside organizations to teach more than 50 percent of a program. This would establish a stronger link between education and employment, ensuring that students gain the skills they need to attract employers.

A coding boot camp, for instance, could partner with a community college to teach a coding course to students at the school. This approach is already being used pursuant to the Department of Education’s Educational Quality through Innovative Partnerships (EQUIP) Experiment pilot program but should be made available nationwide.⁶⁷ Marylhurst University took advantage of the pilot program to partner with Epicodus, a local software coding school, to offer a 27-week certificate program in Web and Mobile Development.⁶⁸ Lawmakers, however, must implement this reform in a manner that does not add to overall federal education subsidies, but rather focuses on leveling the playing field between traditional courses of study and alternative paths offered through these partnerships.

The Task Force also recommends that Congress reform the federal work-study program (FWS), to ensure the program provides participants with valuable experience that will ensure they are well positioned to enter the workforce after graduation. Under current law, only 25 percent of an institution’s FWS funding can be awarded to students that are working at private sector companies. The Task Force supports removal of this arbitrary cap, enabling students to get real-world job experience that would enable them to make a smooth transition to the workforce.

The Task Force also recommends that the federal government treat all work the same and require all employers to meet the same federal match requirement. Under current law, the FWS program requires an employer to provide 50 percent matching funds. However, if a student is employed in certain positions that are considered community service, like tutoring, the federal government is required to provide more than 50 percent of a student’s compensation, and may provide up to 100 percent.⁶⁹ The federal share of a student’s compensation may also reach up to 90 percent in certain circumstances if the student is working at a nonprofit or government agency. The Task Force supports leveling the playing field in the FWS program, allowing for all work to be treated the same. Accordingly, it recommends eliminating the requirement that institutions spend 7 percent of their federal work-study funding on students that are employed in community service positions so that institutions can better focus on work-based learning positions. These provisions,

which the Task Force believes would greatly enhance the FWS program and realign the program's focus to preparing students for the workforce, are based on provisions included in the PROSPER Act⁷⁰

While these measures would help guide students towards high-paying fields, provide them with real-world experience, and more closely align education with future employment, we still should be providing students with as much information as possible to help them make better informed decisions about the repercussions of their borrowing decisions, which institutions they should attend, and which degree programs they should pursue.

Increasing Transparency and Information

Available to Students

One important and immediate step lawmakers should undertake to help stem the tide of growing student loan debt is to ensure that students are fully aware of the repercussions of taking out massive amounts of student loans before and while those loans are piling up. Many graduates end up blindsided by the amount of student loan debt they carry when they graduate and are sent their first bill. To this end, the Task Force recommends enacting the Empowering Students Through Enhanced Financial Counseling Act, introduced by Rep. Brett Guthrie (KY-02). Under current law, an institution is required to provide entrance counseling to first-time federal student loan borrowers. This legislation would expand loan counseling requirements to federal Pell Grant recipients and Parent PLUS loan recipients, transition entrance counseling to annual counseling, and require each student to receive average loan and employment data. The bill would also expand exit counseling requirements to include an outstanding loan balance summary, and the anticipated monthly payments under standard and income-based repayment plans, and provide the option to pay accrued interest before it capitalizes. By providing this information to students before they take out student loans, and annually each year, we can ensure that every student is fully aware of their financial situation while they still have the ability to make changes.

Conservatives believe in the power of choice and the competition that it creates. However, in many instances, a lack of transparency presents a barrier to a truly competitive market, as is the case in higher education. In order to empower students to make informed decisions about their future, we need to give them usable information. Students who have access to information on outcomes, jobs, and wages are able to make informed decisions about their future. However, federal law acts as a barrier to enhancing transparency with respect to

education outcomes. Currently, the Higher Education Act prohibits connecting employment outcomes to the participants in an educational program. Moreover, data is only available with regard to students that received federal financial aid.

The Task Force recommends that this restriction be reformed, with strong privacy safeguards and "de-identifying" requirements, so that students can make value-based decisions with regard to their educational future. One proposal, the College Transparency Act, introduced by Rep. Paul Mitchell (MI-10), would create a secure, privacy protected student-level data network within the National Center for Education Statistics (NCES) using strong security standards and data governance protocols.⁷¹

Another simple way to increase the amount of information to which a student has access is to require institutions to report on articulation rates. The Task Force recommends that colleges that accept federal aid funds be required to report what percentage of students who ask for their credits to be transferred to another post-secondary institution are actually able to transfer those credits. Greater transparency will encourage institutions to ensure their courses can be transferred, and empower prospective students to make informed decisions, especially if they plan to transfer at some point during their college career.

The Task Force also recommends that outcome-based data be integrated into the accreditation process. Presently, such accreditation decisions are based solely on factors like instructor credentials, facilities and student services, rather than on the success of students.⁷² This unfortunately is missing the factor that matters the most for students—their ability to leverage their education into a bright future. Such a reform reinforces the notion that a student's education is an investment for which they expect a return. Placing a school's accreditation on the line would enhance accountability among higher education institutions.

Finally, the Task Force also supports increasing transparency for the American taxpayer. To ensure that the American public understands the true costs of the federal loan portfolio, the Task Force recommends that lawmakers require federal budget writers only use fair-value accounting when determining the costs of our federal student loan programs. This would ensure the true costs of these programs are included in the federal budget and also make it easier to institute reforms to make these programs more efficient. As the Congressional Budget Office has pointed out, the current accounting rules hide the real cost to the taxpayers of several programs. Under the current accounting rules, new federal student lending in Fiscal Year

2019 would supposedly generate \$4.1 billion for the Treasury. But, in reality these new loans will actually cost \$16.1 billion, as revealed when using fair-value accounting.⁷³

While these proposals will help those pursuing a bachelor's degree, additional reforms are needed to ensure those who choose not to attend a four-year institution still receive the training they need to become successful.

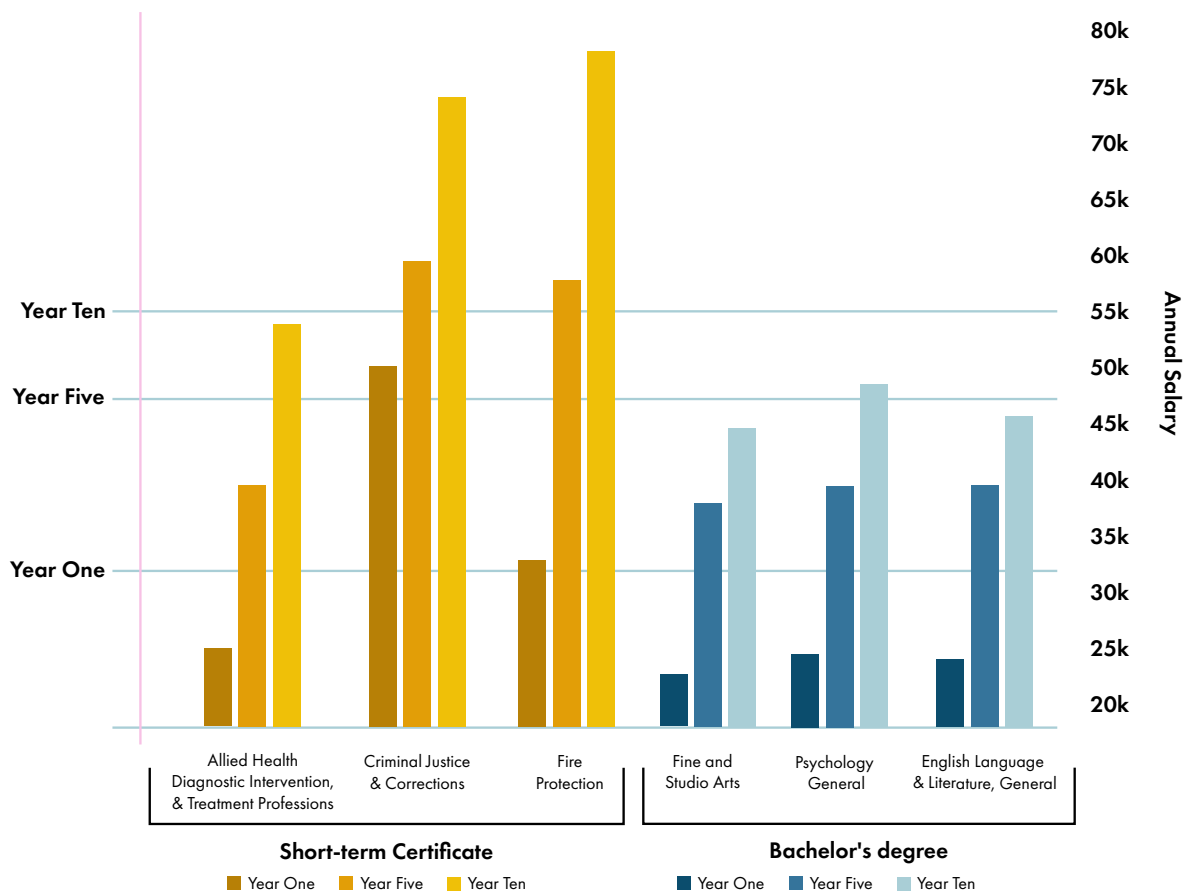
Supporting Career and Technical Education

Unfortunately, the current education system largely sustains the mistaken belief that a traditional bachelor's degree is the best, if not only, way a person can maintain a successful career. In actuality, many skilled workers go on to high-paying jobs, without the thousands of dollars in student debt their college graduate counterparts carry. A recent study of post-secondary education in Colorado found that students that earned a short-term certificate in Allied Health Diagnostic, Intervention, and

Treatment Professions, Criminal Justice and Corrections, and Fire Protection, actually earned more than certain graduates with a bachelor's degree one year, five years and ten years after graduation.⁷⁴ Furthermore, graduates with short-term certificates in Criminal Justice and Correction and Fire Protection earned more than the median salary for all bachelor's degree holders in years five and ten. Bachelor's degree holders in six programs of study were actually earning less than the median earners for all short-term certifications in year ten.

In addition to often earning more, graduates from certain short-term certificate programs completed their education with an average of \$12,000 less student loan debt than graduates with bachelor's degrees.⁷⁵ Yet, parents and high schools continue to push students to attend college.⁷⁶ Because there is such an emphasis on attending college, employers are having a difficult time finding skilled workers. For example, according to a survey conducted by the Association of General Contractors,

MEDIAN EARNINGS IN COLORADO AT YEARS 1, 5, AND 10 AMONG COMPLETERS OF SELECT SHORT-TERM CERTIFICATES AS COMPARED TO MEDIAN EARNINGS FOR BACHELOR'S DEGREES



SOURCE: Mark Schneider, *Education Pays in Colorado: Earnings 1, 5, and 10 Years After College* (College Measures, April 2015), <https://www.air.org/sites/default/files/downloads/report/Education-Pays-in-Colorado-Schneider-April-2015.pdf>.

80 percent of contractors are having difficulty finding qualified craft workers.⁷⁷

Leveling the Playing Field for CTE Programs

College is not the only path to success, and the Task Force strongly supports challenging that narrative. While Congress cannot change public perception of the trades overnight, it can make a difference on how skilled professions are perceived by ensuring that four-year colleges are not favored over CTE programs in federal student aid. Thus, Congress must start by leveling the playing field between traditional colleges and career and technical (CTE) programs, which will help increase CTE opportunities for students.

The first step to leveling the playing field for CTE programs is to equalize federal funding opportunities. The federal government should help break the stigma that a four-year college degree is the only path to success by allowing short-term CTE programs to qualify for the same federal funding opportunities for which traditional four-year college students and long-term technical education program students qualify.

Under current law, Pell Grants may only be used for federally accredited programs that lead to traditional four-year college degrees or provide a training program that is at least 15 weeks in length and provides a minimum of 600 clock hours of instruction. This inflexibility excludes certain short-term and non-degree programs offered by nontraditional education providers. As a result, students who are otherwise eligible for Pell Grants are discouraged from participating in shorter-term programs that may provide them with opportunities to find high-paying jobs with less student loan debt. It also disincentivizes Pell-eligible mid-career individuals from being able to acquire certifications to advance their career. The Task Force recommends that Congress address this inequity by amending the Higher Education Act so that Pell Grants apply to short-term career and technical education programs. This is the approach taken by the Pell Flexibility Act, introduced by Rep. Jim Banks (IN-03).⁷⁸

Other types of Title IV financial aid, in particular federal student loans, are also limited in this way. The Task Force recommends that lawmakers explore opening such federal financial aid to short-term programs, enabling more students to quickly gain skills in high-demand industries, and increase their earning potential. However, the Task Force warns that any eligibility expansion should not be allowed to increase the total amount of federal dollars spent on these programs. Additionally, the transparency and accountability measures proposed

by the Task Force should be applied to these programs as a prerequisite for eligibility to ensure that students' investments are protected.

Federal student aid programs are not the only tools students and parents have to help pay for post-secondary education. Using a 529 savings account, families are able to save their own money tax-free, to pay for qualified education expenses. Funds can be used to save for college expenses, like tuition and books, and up to \$10,000 of K-12 expenses. However, families are only able to use 529 funds on trade school programs at colleges that are eligible for Title IV federal student aid. Again, this excludes certain short-term non-degree programs offered by nontraditional education providers. To better equip parents to save for their child's education, the Task Force recommends that 529 accounts be transitioned into Lifelong Learning Education Savings Accounts, which would be allowed to cover pre-kindergarten, homeschooling expenses, additional educational expenses, short-term degree programs, job training programs, and other educational programs. It is also worth noting how helpful Lifelong Learning Education Savings Accounts would be to many parents as they grapple with the realities and expenses of home-based education during the COVID-19 pandemic.

Additionally, the federal government can reduce some of the burden on training providers participating in the Workforce Innovation and Opportunity Act's (WIOA) training programs. WIOA allows students to use federal funding toward eligible training programs, subject to certain requirements. Under these requirements, eligible training programs must collect and report student information on completion rates, earnings, and employment. Information must be collected on all students, even if only one of the program's students is receiving WIOA funding.⁷⁹ These reporting requirements are much more onerous than those for institutions receiving federal financial aid under Title IV of HEA, even though significantly more taxpayer dollars are disbursed through federal financial aid than WIOA. As a result, these reporting requirements can serve as a disincentive to participation for smaller programs, like community colleges, that don't have the necessary infrastructure in place and find this information difficult to track. A recent report found that participation by training providers dropped by 80 percent once programs were required to provide performance information, a result of public colleges opting not to participate.⁸⁰

The Task Force supports reforms that would right-size these reporting requirements to make it easier for eligible training

programs to participate in WIOA. Some options include only requiring programs to report information on participating students, instead of all students participating in the program, or only requiring programs to report data on all students if the percentage of students receiving WIOA funding meets a certain threshold. Another option would be to shift data collection to a relevant state or federal agency that is better equipped to track the necessary information. While having access to performance data is necessary to evaluate the effectiveness of a program, the current reporting requirements need to be tailored to ensure they are not counterproductive.

Lastly, the Task Force voices its support for state-level efforts to make credentials “stackable.” This approach, led by community colleges across the nation, involves awarding credentials—usually in the form of a training certificate—on a segmented basis instead of requiring completion of a degree program. Students may decide to earn a single credential to utilize that skill immediately in the workforce. Later they could stack new credentials on their original one to build a more comprehensive credential portfolio or eventually earn a full degree.

Expand Opportunities for Skilled Workers by Clarifying Allowable Hiring Assessments

Workers should be able to access job opportunities based on their skills and experience, even if they do not have a college degree. Unfortunately, a provision of federal law, paired with misguided labor case law, encourages businesses to screen applicants based on whether or not they have a degree. As Frederick Hess at the American Enterprise Institute has explained, well-intentioned provision of the Civil Rights Act of 1964 prevents employers from using hiring assessments so long as they are not “designed, intended, or used” to discriminate against a protected class.⁸¹ However, federal courts have interpreted this standard to hold any assessment that has a disproportionate impact on a protected group as unlawful unless the employer can prove that the assessment is directly job related and is the assessment option that has the least adverse impact. In one revealing example of this standard, a federal court held that a physical fitness test for railroad workers, which male applicants passed at a higher rate than female applicants, was unlawful.⁸² The same scrutiny has not been applied to employers using degrees as a screening tool, even if the degree earned has little or no relationship with the duties of the job being filled. This dynamic encourages employers to require a college degree as a rough proxy for abilities that could otherwise be determined in assessments.

The widespread practice of screening prospective employees based on having a degree increases the pressure for young people to obtain a degree that they don’t want and unnecessarily bars qualified workers from job opportunities.^{83,84} In order to reduce this unintended consequence, while maintaining the integrity of the Civil Rights Act, the Task Force recommends that Congress amend Title VII of the Civil Rights Act so that hiring assessments may only be found unlawful if there is intent to use the test to discriminate against a protected class or if the assessment has no reasonable connection with the duties of the job. This change will encourage companies to use assessment tests effectively and fairly, ensuring that more workers will be able to reach their full potential in the workforce without having to obtain an unnecessary degree.

LABOR

Refocus Labor Policy to Unleash the American Worker

The Task Force’s vision for labor policy reform is designed to increase employment opportunities and unleash the potential of the American Worker. This vision benefits hardworking Americans regardless of economic conditions. It seeks to make it easier for Americans to choose a career that fits their needs, start their own business, or gain skills that prepare them for a promotion. In this way, the Task Force recommends solutions to reverse decades of ill-fated policies that have prevented workers from attaining their American dream. Given the added challenges stemming from the COVID-19 pandemic, adoption of these policies is perhaps more important than ever.

Democrats, unfortunately, have a completely different vision that would stifle the growth and success of American workers. Generally, they seek to increase the federal role in the workplace, rather than reducing mandates that interfere with an employer’s ability to adapt to changing market forces. If nothing else, the pandemic has shown the need for greater regulatory flexibility. According to Americans for Tax Reform, 846 federal, state, and local mandates have been waived, no doubt saving countless businesses and their workers across the nation.⁸⁵

The Left’s agenda includes policies that force workers to pay into unions they reject,⁸⁶ reduce job opportunities by disparaging employers,⁸⁷ implement minimum wage laws that would eliminate nearly 4 million American jobs, and limit independent contracting and franchising opportunities. In fact, some of these provisions are included in the PRO Act, which was supported by 219 Democrats in the House and is cosponsored by 40 Democrats in the Senate.

The Task Force rejects this flawed approach and instead recommends several overarching reforms. First, lawmakers must prioritize career and technical education by increasing apprenticeship opportunities for the American worker. Second, states must be encouraged to eliminate burdensome regulations which limit employment opportunities for the American worker. Third, American workers must be given opportunities to improve their skills and flexibly benefit from the efforts of their labors. Lastly, American workers must be empowered to control their own futures, so they are not subservient to the interests of powerful unions. We know these priorities will result in American workers having a chance to reach their full potential and attain their American dream.

SELECTED OCCUPATIONS WITH MANY APPRENTICES

OCCUPATION	EMPLOYMENT GROWTH, PROJECTED 2018-28	EMPLOYMENT 2018	MEDIAN ANNUAL WAGE 2018
Carpenters	8% (Faster than average)	1,006,500	\$46,590
Construction Laborers	11% (Much faster than average)	1,405,000	\$35,800
Electrical Power-line Installers and Repairers	8% (Faster than average)	119,400	\$70,910
Electricians	10% (Faster than average)	715,400	\$55,190
Heavy and Tractor-Trailer Truck Drivers	5% (As fast as average)	1,958,800	\$43,680
Plumbers, Pipefitters, and Steamfitters	14% (Much faster than average)	500,300	\$53,910
Sheet Metal Workers	8% (Faster than average)	143,000	\$48,460

SOURCE: U.S. Bureau of Labor Statistics (employment growth, employment, and wages), U.S. Department of Labor (selected occupations, based on federal data on active apprentices in fiscal year 2018)

Prioritize Career and Technical Education by Increasing Apprenticeship Opportunities

In the previous section, the Task Force outlined recommendations to help redefine education to better equip the American worker. For some, a traditional four-year degree is necessary to achieve their particular career goals, while others are not well served by four-year institutions. Instead, they find great success in alternative training pathways. Apprenticeships are an excellent way for workers to receive education and training specifically targeted towards a particular career opportunity. These apprenticeship programs can lead to high-paying jobs after completion without the need to pay out-of-pocket tuition, and in many cases, while earning a paycheck. These burgeoning alternate pathways may serve a greater role in workforce development as our economy emerges from the pandemic. According to the Department of Labor, the average starting wage for an apprentice is \$15.00 an hour. Furthermore, Americans that pursued an apprenticeship earned an average of \$6,595 more than those in similar jobs that did not.⁸⁸ Moreover, these careers are often situated in industries of higher demand that offer high potential for advancement. For this reason, the average salaries for many apprenticeship-track occupations far outpace the national median of \$38,640.⁸⁹

Apprenticeships and other alternative training opportunities provide thousands of Americans with the skills they need to build a successful, long-term career. The Task Force believes it is vitally important to support these programs by removing barriers that prevent them from flourishing and increasing the number of participants.

Promoting Industry-Recognized Apprenticeships to Expand Employment Opportunities

In 1937, the Department of Labor established the Registered Apprenticeship Program. Today, the program provides participating apprenticeship programs with several benefits including technical assistance and support; a national, industry-recognized credential; access to federal resources; the ability to claim some expenses for training as a federal tax credit; and, in some states, access to state-based tax credits. In fiscal year 2018, almost 240,000 active apprentices participated in over 23,000 registered non-military apprenticeship programs across the nation.⁹⁰ However, in order to register their program, entities are required to navigate a complicated application process and the accompanying federal bureaucracy.

Recognizing the importance of apprenticeship programs, in 2017, the White House released President Trump's Presidential Executive Order Expanding Apprenticeships in America. The executive order directed the Secretary of Labor to identify policy options to promote apprenticeships, specifically through the establishment of a program that allows third parties to recognize high-quality programs.⁹¹ One year later, the resulting Task Force on Apprenticeship Expansion released a report with recommendations on how to structure such a program.⁹² Following those recommendations, President Trump's final rule would establish the Industry Recognized Apprenticeship Program (IRAP).⁹³ This program would allow third-party certifiers to approve individual training providers such as industry groups, companies, non-profits, educational institutions, and unions. Certifiers would have to confirm to DOL that they have established standards and certifications and can evaluate and certify individual programs. The Task Force recommends codifying the proposed Industry Recognized Apprenticeship Program with several modifications to enhance its effectiveness.

While the Industry Recognized Apprenticeship Program as proposed would substantially increase the availability of quality apprenticeship programs, the Task Force believes the program can still be improved. The Task Force recommends that the rule fully level the playing field between IRAPs and DOL registered apprenticeships. First, the rule prohibits construction industry and military apprenticeships from participating in IRAP. However, the Task Force recognizes construction industry workforce challenges. According to an August 2019 survey by Associated General Contractors, 80 percent of contractors experienced trouble filling craft worker positions even though many of these positions require a limited amount of training or certificates.⁹⁴ Moreover, 45 percent of these contractors rate the adequacy of the local pipeline for supplying well-trained or skilled craft personnel as poor.⁹⁵ In an attempt to fill these jobs, 66 percent of contractors increased pay and 29 percent provided incentives or bonuses for employees, which provides an excellent earning opportunity for those who can gain the skills needed to qualify for these positions.⁹⁶ By enabling the construction industry and the military to participate in IRAP, we can help ensure thousands of additional Americans get the training and certifications they need.

Additionally, the Task Force recommends removing other restrictions on IRAPs under the rule. First, IRAPs should be equally eligible for the Eligible Training Provider List (ETPL) under the Workforce Innovation and Opportunity Act (WIOA). Equalizing eligibility would make it easier for training providers running apprenticeships to compete against registered apprenticeships for federal workforce resources. Second, IRAP participants should be considered apprentices under Davis-Bacon prevailing wage laws. This designation would allow employers to pay apprentices an appropriate percentage of a journeyman's wage. Otherwise, IRAPs would have to pay their apprentices the same amount they would pay a fully trained worker, which would limit the number of apprentices an IRAP could undertake. Last, IRAPs should not, as is the case under the President's rule, be ineligible for "other statutory benefits" which presumably includes access to resources targeted to registered programs under 29 C.F.R. 29. The Task Force reiterates its position that allowing new entities to compete for access to federal resources should be done simply to level the playing field and should not expand the overall amount of resources provided by the federal government.

Providing Meaningful Careers for Veterans

In addition to expanding apprenticeship opportunities, the Task Force urges lawmakers to identify and break down other barriers that prevent Americans from accessing worthwhile training opportunities. For example, one barrier impeding access to quality training opportunities for those transitioning out of military service is the uncertainty surrounding certain federal labor and contracting laws.

The Department of Defense's SkillBridge program provides soldiers with the opportunity to learn valuable technical skills that help lead to careers at the conclusion of their service. Through SkillBridge, soldiers are matched with civilian employment opportunities up to 180 days prior to the end of their service. Soldiers are then allowed to continue to receive military compensation and benefits while receiving valuable experience in a civilian workplace that could provide an employment opportunity after retirement from the military. An important component of any skilled training program is the ability to learn on-the-job and in a real-world environment. Unfortunately, many contractors were hesitant to bring these soldiers onto their jobsites out of fear of violating a confusing maze of labor and federal contracting laws.

In November, the Department of Labor released a guidance document that clarified the application of many of these laws,

which has allowed soldiers to come onto the jobsites without the participating construction companies having to fear a violation.⁹⁷ The Task Force recommends codifying this guidance document so that our men and women in uniform have every opportunity possible to pursue meaningful careers at the conclusion of their service.

Increasing Access to the Trucking Industry

Another example of a regulation that is preventing Americans from accessing the workforce is found in the trucking industry. Currently, federal law prohibits individuals under the age of 21 from driving commercial motor vehicles (CMVs) for interstate commerce, even though these same individuals are allowed to drive CMVs in all 48 contiguous states. This prohibition is baffling when one compares the amount of driving a trucker is able to undertake in different states. While a driver in Texas is allowed to drive for hundreds of miles and several hours within the state, a driver in Delaware would only be allowed to drive 23 miles before reaching state lines and having to turn around. This prohibition puts increased stress on another industry that is struggling to fill jobs. In 2018, the trucking industry was short over 60,000 employees, with an expected shortage of over 160,000 drivers in 2028.⁹⁸ As a result, some companies are offering their drivers bonuses of over \$20,000.⁹⁹ The Task Force supports increasing the opportunities for young American workers to access jobs, including in the trucking industry. Moreover, during emergencies such as the COVID-19 pandemic, restrictions such as this can unduly limit the transportation of critical and lifesaving goods to areas of need.

The U.S. Department of Transportation (USDOT) is currently conducting a pilot program¹⁰⁰ for individuals who received heavy-vehicle training while in the military in order to study the feasibility, benefits and safety impacts of allowing those who are between the ages 18-20 to drive CMVs for interstate commerce. A second pilot program, one that would allow non-military drivers to drive CMVs for interstate commerce, is currently going through the rule-making process.¹⁰¹ The Task Force supports codifying these pilot programs and also recommends that drivers between the ages of 18 – 20 be allowed to drive in interstate commerce following completion of an apprenticeship program.

While these programs would increase training opportunities for skilled workers, additional steps should be taken to increase other employment opportunities for American workers.

Remove Barriers to Work Force Entry

Over the last 200 years, American innovation has transformed how Americans earn a living and support their families. In the 1800s, modern day franchising began, which gave Americans additional opportunities to own their own business.¹⁰² In the early 1900s, the invention of the assembly line transformed the automobile industry. In the 1990s, Craigslist began advertising job openings online, which began the evolution of the gig economy. Twenty-five years later, American ingenuity has created companies that have expanded options for ride-sharing, short-term rentals, and food deliveries and have once again transformed how some Americans work. Placing undue regulatory burdens on burgeoning enterprises jeopardizes job formation. While lawmakers should constantly evaluate appropriate ways of reducing these burdens, such efforts should be put into overdrive to ensure our economy emerges from the pandemic as quickly as possible for the benefit of all American workers.

Franchising and independent contracting have empowered hundreds of thousands of Americans to own their own business and design careers that best suit their needs. However, in an effort to bolster unions and their efforts to organize, Democrats have proposed and passed through the House legislation that stifles American innovation and makes finding and keeping fulfilling work more challenging. These policies have targeted the most ambitious Americans by limiting franchising and independent contracting opportunities. Additionally, at the state level, other policies have also made it more difficult for Americans to enter hundreds of occupations through strict occupational licensing laws. The Task Force recognizes that through unleashing American innovation our country can reemerge from the present uncertainty stronger than ever. But in order to do so, we must break down the barriers in place that prevent Americans from entering the workforce in a self-determined, meaningful way.

For these reasons, the Task Force voices its support for President Trump's May 19, 2020 Executive Order that requires agencies to provide regulatory relief to support the recovery of the economy during and after the public health emergency.¹⁰³ Importantly, Part 7 of the Executive Order directs the heads of agencies to review any regulation that they temporarily modified or suspended and consider making such modification or suspension permanent. The Task Force requests that the Trump administration review all regulations with the best interest of the American workforce in mind.

Allowing Workers to Design Non-Traditional Careers that Fit Their Needs

While there have always been some people that made their living as an independent contractor, free from the constraints of a single employer, the smartphone has dramatically expanded this opportunity. Smartphones have allowed innovative companies to provide a platform—often app-based—to immediately connect a customer directly with a worker, giving way to what is known as the gig economy.

While Democrats bristled at the disruption the gig economy created in the labor market and have attempted to exert burdensome regulatory control, conservatives have welcomed the innovation that has enabled more people to design careers that align with their individual needs. According to a recent survey, independent contractors value the flexibility, choice, independence, and personalization that independent contracting offers them.¹⁰⁴ Additionally, for many individuals that have found themselves unable to work at their normal jobs during the pandemic, earnings from gig economy jobs have provided an important lifeline. As traditional businesses have been unable to operate normally, the services provided by the gig economy have taken on added importance. Nonetheless, even gig economy workers have suffered from the effects of the pandemic, experiencing risk of exposure and unreliable demand for many of their services.

Unfortunately, in their long-time attempts to regulate these innovative business models, Democrats have sought to limit workers who qualify for the independent contractor status and impose the more onerous employee designation. Some gig economy companies, including Uber and Lyft, want to be able to provide portable benefits to their drivers as part of their compensation.¹⁰⁵ However, the uncertainty in current law makes it unclear whether or not doing so would classify these independent contractors as employees.

To address these concerns, the New GIG Act, introduced by Rep. Tom Rice (R-SC), would ensure that a worker is classified as an independent contractor for income and employment tax purposes so long as they meet three objective tests: (1) the worker is treated as an independent contractor and not an employee; (2) the customer is not treated as the employer; and, (3) if a third party facilitates payments and transactions, the third party is not treated as the employer. This would allow companies to provide their independent contractors with benefits like deals on insurance, matching IRA contributions, and assistance with setting up HSAs without the workers being classified as

employees. The Task Force recommends implementing the New GIG Act to protect independent contractors and safeguard their ability to work independently.

While conservatives welcome innovations, such as the rise of the gig economy, that enable people to design careers that align with their individual needs and dreams, Democrats have sought only to extend old regulations to new industries. Democrats bristle at the gig economy's positive influence and have attempted to limit the choices of workers by imposing the onerous regulatory designation of employee and limiting independent contracting.

The Task Force opposes any attempt to extend employee status to those that prefer their current independent contractor classification. Unfortunately, many states have adopted what's known as the "ABC test," which makes it very difficult for a worker to qualify as, or remain, an independent contractor.¹⁰⁶ Democrats, through the PRO Act, attempted to impose the ABC test as a national standard. A recent report found that implementing the ABC test nationwide, reclassifying 15 to 50 percent of independent contractors as employees, could increase business costs by \$3.6 billion to \$12.1 billion.¹⁰⁷ The California standard, known as AB5, could negatively impact as many as 1.9 million workers.¹⁰⁸ Enforcement of the California AB5 standard would force Uber and Lyft to cease operations as they currently exist, effectively "fire" all gig workers using their ridesharing platform, rehire a drastically smaller number as employees, create rigid driving schedules, and raise prices for riders.¹⁰⁹ California Governor Gavin Newsom recently signed into law a modification (AB2257) to AB5 which implements the same stringent test as AB5 but exempts additional categories of freelancers, including recording artists, home inspectors, and competition judges.¹¹⁰ AB2257 brings the total exemptions to AB5 to over 100,¹¹¹ largely for white-collar professionals.¹¹²

Another report estimated the potential economic disruption from the implementation of a national ABC test to be up to 8.5 percent of gross domestic product, or \$1.6 trillion.¹¹³ If enacted, the costs and restrictions of freedom of the ABC test would ripple through the economy. Moreover, as with any increase in the regulatory state, imposing this standard would increase costs for consumers, diminish the income of workers, and jeopardize the innovation that is key to growth. As such, The Task Force opposes any increase in regulation that would disempower and restrict the freedom of workers across America.

Extending Contractor Status to Household Workers

With many schools, child care centers, and other public places closed or limited because of the pandemic, people are in greater need of hiring workers to complete tasks in their home. Workers are also increasingly seeking flexible arrangements. Currently, workers providing home services, including nannies, cleaners, yard workers, gardeners, health aides, and nurses, are considered "household employees."¹¹⁴ Tax withholding requirements apply if the individual makes more than \$2,200 from a household in a tax year, and the employee is required to report income from each household for which they work.¹¹⁵ The household employee designation triggers burdensome tax filing requirements for both the worker and the homeowner, lowering wages, discouraging accurate filing, and limiting opportunities for such workers.

The Task Force recommends allowing workers who fall into the "household employee" category to instead be treated as independent contractors, if the worker so chooses. This designation simplifies the income reporting requirements for these workers and expands opportunities to work for more homes and receive higher pay.¹¹⁶ Other workers who do work primarily in the home, like plumbers and carpenters, already enjoy independent contractor status.¹¹⁷

Addressing Onerous Occupational Licensing Requirements

Every day across the country, thousands of people are prevented from entering industries due to onerous occupational licensing laws. As millions of Americans look to return to the workforce in the coming months, these legal restraints serve as another unnecessary barrier to their individual prosperity. Occupational licensing was originally established in an effort to protect public health and safety. While some occupational licensing laws have a justifiable nexus to do so, others have requirements that verge on irrational. For instance, 66 occupations have stricter licensing requirements nationwide than emergency medical technicians (EMT), including interior designers, and manicurists.¹¹⁸ While on average a cosmetologist must spend 372 days in training, the average EMT only needs 33 days of training.¹¹⁹ Almost thirty percent of jobs now face government-imposed licensing requirements, up five percent from the 1950s.¹²⁰

Unfortunately, occupational licensing has been turned into a tool to prevent outsiders from entering certain professions. Requiring licenses for occupations that do not justifiably impact public health or safety limits the amount of people that are

REAL AND RIDICULOUS OCCUPATIONAL LICENSES REQUIRED ACROSS THE COUNTRY

OCCUPATION	STATE(S)
Fortune Teller	Annapolis, MD & Virginia
Auctioneer	Tennessee, Kentucky, Alabama, Ohio, West Virginia, Pennsylvania, Georgia, North Carolina, Texas, Mississippi, Illinois, Florida, South Carolina, Rhode Island, New Hampshire, Arkansas, Massachusetts, Indiana, Louisiana, Virginia, Wisconsin, North Dakota, D.C., Maine, Minnesota, Vermont, Washington, Hawaii, Delaware, Missouri
Forest Worker	Connecticut
Shampooer	Kentucky, South Dakota, Nebraska, Iowa, North Dakota, Kansas, Delaware, Michigan, Missouri, Montana, Rhode Island, California, Oklahoma, Mississippi, New Mexico, Hawaii, Oregon, Ohio, Wisconsin, Colorado, Vermont, Wyoming, Idaho, New Jersey, Washington, Utah, Massachusetts, Texas, Tennessee, New York, South Carolina, Nevada, Arkansas, New Hampshire, West Virginia, Alabama, Louisiana
Makeup Artist	Kentucky, Kansas, Alabama, Georgia, Missouri, Illinois, Tennessee, Indiana, Montana, Vermont, New Mexico, West Virginia, Mississippi, South Dakota, Delaware, D.C., Minnesota, New Jersey, Idaho, Maine, North Dakota, California, Hawaii, Ohio, New Hampshire, Arkansas, Oklahoma, New York, North Carolina, South Carolina, Wisconsin, Oregon, Michigan, Alaska, Pennsylvania, Florida, Louisiana, Nevada, Nebraska

SOURCE: Dick M. Carpenter, et al., "License to Work." Institute for Justice, November 2017, <https://ij.org/report/license-work-2/>.

able to enter these professions, thus limiting the amount of competition for those currently in the industry. Furthermore, the members of the regulatory boards that establish the standards for the licenses are often members of the regulated profession.¹²¹ As a result, they have an incentive to make the standards as restrictive as possible, and to protect those who are already licensed, instead of the general public. Unjustifiable barriers to entry, such as these, must be eliminated as part of a nationwide strategy to get people back to work.

The Task Force is especially concerned that strict occupational licensing laws are regressive, affecting individuals at the low end of the income scale the most.¹²² According to Shoshana Weissmann and C. Jarrett Dieterle of the R Street Institute, occupational licensing has made it especially difficult for "the most economically disadvantaged among us to acquire a license due to the time, fees, and education necessary to acquire one. The result is that millions of would-be workers are locked out of the workforce because they lack the means to obtain a license."¹²³ Unfortunately, it is low-wage individuals that have taken the brunt of job losses during the pandemic.¹²⁴ Those who move over state lines face even more challenges. In many cases, a person wishing to continue their occupation in a new state must relicense, meeting any additional qualifications the new state may impose, and paying hefty licensing fees. While Arizona and Pennsylvania have implemented legislation to make it easier for those who are licensed in another state to move into their state, the vast majority of states do not have

similar reciprocity laws in place.¹²⁵ Licenses that are not portable are especially burdensome to families of military servicemen and women, who are 10 times more likely to move between states. According to a survey conducted in 2017, about 34 percent of military spouses are employed in occupations that require licensure.¹²⁶ Nearly 75 percent of these spouses have to be relicensed every time they move, which can be time consuming and costly.¹²⁷ To ensure our military families are not unduly burdened every time they have to move, the Task Force recommends implementing the Portable Certification for Spouses (PCS) Act, introduced by Rep. Jim Banks (IN-03).¹²⁸ This proposal would allow the Department of Defense to use defense dollars to help states come up with universal licensing standards.

While onerous occupational licensing laws are initiated at the state level, lawmakers should examine other ways in which the federal government could respect the notion of federalism and still facilitate the state-level adoption of policies that use less restrictive alternatives to occupational licensing. Pre-pandemic, strict occupational licensing laws reduced the number of available jobs by 2.85 million, and have cost consumers \$203 billion annually.¹²⁹ However, additional information is needed on how many states require licenses for which occupations and what the requirements are for those licenses. Many of the metrics that currently exist only include a sample of licensed occupations or include inaccurate or incomplete data. As a result, the Task Force recommends implementing a reporting requirement for states that wish to receive funding through the

Workforce Innovation and Opportunity Act (WIOA). Through WIOA, the federal government provides funds to states to help Americans, including those with barriers to employment, into high-quality jobs, and to help employers hire and retain workers. Because some occupational licensing requirements pose undue employment barriers to particular industries and restrict employment freedom for job-seekers, which contradicts the goals of WIOA, states should be required to report which occupations require licenses, as well as the requirements for obtaining those licenses.

While having accurate information on state occupational licenses is important, the Task Force also questions why we continue to provide federal funding to states with laws that are in direct contradiction with the very purpose for which we provide WIOA funds. To ensure that taxpayer dollars are dedicated to states that further the purpose of WIOA, rather than hinder it, onerous state occupational licensing laws should be taken into account when disbursing WIOA funding.

Currently, under WIOA, states are awarded grants for adult and youth employment and training activities pursuant to a formula incorporating the following factors:

1. The state's relative share of total unemployment in areas of substantial unemployment.
2. The state's relative share of excess unemployment.
3. The state's relative share of economically disadvantaged adults.

The Task Force recommends adding a fourth factor that would take into account the severity of each state's occupational laws and other regulations that serve as barriers to employment. The Institute for Justice has developed a metric for comparing the burdens imposed by occupational licensing laws on blue collar professions in all fifty states that could provide lawmakers with a starting point for developing their own comparative standard.¹³⁰ This standard would use data collected with the recommended reporting requirement. Another barrier to employment that could be incorporated is a state's right-to-work laws. The Cato Institute has also developed metrics designed to measure relative labor-market freedom and occupational freedom among the states.¹³¹ The Task Force also supports the Restoring Board Immunity Act, introduced by Senators Lee, Cruz, Sasse, as well as former Rep. Darrell Issa, as a means of reining in occupational licensing boards that impose monopolistic barriers to employment.¹³² In 2015, the United States Supreme Court ruled in *North Carolina Board of Dental Examiners v. Federal Trade Commission* that antitrust immunity may apply to licensing boards where

a majority of the members are involved in the industry in question, but only if the board is "actively supervised" by the states, which is often not the case.¹³³ While this case theoretically opened the door to greater federal oversight of anti-competitive occupational licensing laws, it runs the risk of boards circumventing such oversight by having states rubber-stamp their decisions.¹³⁴

As a means of addressing this concern while also respecting state-level authority to determine the general welfare of their citizens, the Task Force supports enactment of the Restoring Board Immunity Act. This bill would grant anti-trust immunity to actions by these boards only if they adopt one of two reforms designed to prevent runaway occupational licensing restrictions. Under the first option, a state would have to establish day-to-day supervision of licensing authorities through a new occupational-licensing oversight board that would review occupational regulations on a regular basis. Under the second option, a state would have to create a legal cause of action to challenge occupational-licensing laws under an enhanced review standard of intermediate scrutiny.

Implementation of this legislation would ensure that federal regulation of these boards is done in a constitutionally sensitive way that promotes conservative free market principles and respects local authority. This bill would help to roll back some of the most onerous occupational licensing laws, and the systems that create them.

Increasing Employment Opportunities in the Construction Industry

The Davis-Bacon Act requires DOL to determine a local prevailing wage that applies to all federally funded or assisted contracts over \$2,000 for the construction, alteration, or repair of public buildings or public works. In order to determine the local prevailing wage, DOL either takes the average or majority wage rates of the largest city in affected counties, the county average, or the existing wage rate, and then applies it to the project payments. However, this method of calculating wages has resulted in wages that are average over 20 percent higher than market wages.¹³⁵ Artificially higher wages favor unions and unionized workers and decrease job opportunities for workers. As a result of increased wages, Davis-Bacon increases the cost of construction projects to the government by almost 10 percent.¹³⁶

To provide more opportunities for American workers, the Task Force recommends a full repeal of Davis-Bacon. Repealing

Davis-Bacon would remove the current market distortion caused by the prevailing wage calculation and instead allow market forces to determine the proper wages for construction workers on federal projects. As a result, removing this job-killing requirement would reduce the bias towards unionized workers in federal construction and allow employers overseeing such construction projects to hire more workers at fair wages. Additionally, the repeal of Davis-Bacon would save taxpayers billions of dollars, according to the Congressional Budget Office as a direct result of decreased construction costs.¹³⁷ These savings could be used to create an additional 155,000 new jobs.¹³⁸

Safe-Guarding Access to Franchising Opportunities

In 2015, the Obama-era National Labor Relations Board's (NLRB) upset decades of precedent in the Browning-Ferris Industries (BFI) decision by changing the definition of a joint-employer from one that has immediate and direct control, to one that has indirect, or reserved, control. As a result, franchisors could be held liable for labor violations committed by franchisees, despite the fact that a franchisor has no control over employment decisions made by the franchisee. In fact, franchisees saw a 93 percent increase in lawsuits resulting from the implementation of the BFI joint-employer standard.¹³⁹

Moreover, many franchisees saw dramatic changes to the franchisor-franchisee relationship. Desperately looking to avoid the joint-employer designation, 92 percent of franchise owners reported receiving less services from franchisors after the BFI standard was implemented.¹⁴⁰ As a result, the BFI decision, while in effect, increased costs for franchisees and limited the amount of jobs they were able to create. According to a recent study, the BFI joint-employer standard cost franchises up to \$33.3 billion annually and reduced employment by 376,000 jobs.¹⁴¹ This is especially concerning when coupled with the fact that between 2012 and 2017, franchises were responsible for creating 10.9 percent of all private sector jobs.¹⁴²

In December 2017, the NLRB, under President Trump, issued a decision overturning the BFI joint-employer ruling. Although this decision was eventually vacated in February 2018, the NLRB posted a Notice of Proposed Rule-making in September 2018 re-asserting the traditional standard that required an employer to actually directly employ someone to be considered a joint-employer.¹⁴³ In February 2020, the final rule was issued by the Department of Labor (DOL).¹⁴⁴

The Task Force fully supports DOL's new rule but recognizes that Democrats will continue to push to return to the BFI joint-

employer standard through legislation, like the PRO Act, or future administrative rules. If the BFI joint-employer standard was ever codified or if a future NLRB reversed the new rule, it would have significant negative effects on the franchise business model, would eliminate opportunities for thousands of Americans to own their own business and endanger the jobs of even more workers. Such an outcome would be untenable as our nation seeks to emerge from the economic ramifications of the pandemic.

Attempts to revert to the BFI joint employer standard are further examples of Democrats putting union priorities over the needs of everyday Americans. Unions, in particular, are strong supporters of the BFI joint-employer standard because it made it easier to unionize thousands of employees at one time. Under the traditional joint-employer standard, a union must unionize each and every individual franchise. However, under the BFI joint-employer standard, a union only needed to unionize the franchisor to capture thousands of employees at once. This wholesale unionization totally disregards the varying employer-employee relationships and varying economic conditions that exist within every individual franchisee's location.

In order to provide certainty to current and future franchise owners, the Task Force recommends codifying the traditional joint-employer standard, which will allow franchise owners to continue to flourish and provide opportunities for thousands of American workers.

Supporting Child Care Options and Affordability for Working Parents

Families, supported by working parents, are the foundation of American society. It is imperative that working parents have options for safe, affordable care for their children that are not limited by unnecessary regulation. The need for flexible and affordable child care options has become even more important during the pandemic as millions of families find themselves grappling with its interruptions to work, school, and society at large.

Unfortunately, top-down policies that dictate acceptable forms of child care often have the opposite effect, restricting child care options and increasing the cost of care.¹⁴⁵ Every family is unique and has unique child care needs. State and local policies are often particularly burdensome on home-based and informal care arrangements, unfairly biasing the market towards center-based care options through regulations and funding.¹⁴⁶ While some families may prefer center-based care, home-based care can provide safe, flexible, and local care

for many families.¹⁴⁷ Additionally, home-based care is typically more affordable than center-based care: a 2019 report from Child Care Aware of America found that the average annual cost of center-based care is \$10,336, compared to an average of \$7,998 for home-based care.¹⁴⁸

Proposals from the Left often involve massive subsidies and increased regulations, which further exacerbate the cost of child care and continue to push home-based, church-based, and other unique child care arrangements out of the market. In contrast, the Task Force voices its supports for more options in child care and reducing regulations and barriers to entry that increase child care costs. Further, it believes that state and local governments should monitor child care safety, while trusting parents to assess the quality of care and determine the best environment for their children.

Reforming the Child Care Development Fund to Encourage Affordability and Choice

Currently, states receive funding from the Child Care Development Fund to provide child care assistance to low-income families. States have the option of using funds to provide vouchers to families, enter into contracts with facilities for slots, or provide grants to qualifying facilities. Contracts and grants allow states to use the funds to increase the supply of policymakers' preferred child care options, while vouchers emphasize the choice of the families. The Task Force recommends removing the "contracts and grants" option so that families, not politicians and bureaucrats, are driving the child care market.¹⁴⁹

Additionally, states are able to set reimbursement rates for child care providers based on perceived quality of the provider.¹⁵⁰ This provision allows states to choose winners and losers in the child care market and may deter families from home-based or otherwise affordable care options that they might prefer. The Task Force maintains that states should be able to vary reimbursement rates by geographic area, for family-care options, and for enhanced services for children with disabilities, but should not otherwise be able to differ reimbursement rates among legally operating child care providers.

Report on the Effects of Regulations on Child Care Costs

Workers rely on safe, affordable child care to help balance their family responsibilities with their work schedule. While states are correct to ensure basic safety measures for child care providers, state regulations for licensing have become increasingly

arbitrary and numerous. Oklahoma dictates specific kinds of toys in a specified number per child, including directives on the numbers of puppets that must be available.¹⁵¹ Washington D.C. implemented a regulation in 2017 requiring all child care providers to obtain college degrees by December of 2020.¹⁵² These and other bureaucratic attempts to micromanage child care practices have left many parents without affordable child care options.

Overregulation pushes otherwise qualified child care providers, especially home-based providers, out of the market, restricting supply and raising costs for families. A study from the Mercatus Center at George Mason University showed that quality regulations (as opposed to safety regulations) often increase the cost of care without necessarily improving the quality.¹⁵³ A 2007 study also found that stringent regulations can actually reduce the wages of child care workers, again without improving quality.¹⁵⁴

State regulations that increase the cost of child care also undermine federal efforts to help workers access child care, including through the Child Care and Development Block Grant and the child and dependent care tax credit. Utilizing vouchers to allow parents to determine the quality of providers should encourage states to reduce unnecessary regulations and let the free market improve the affordability and quality of care.

The American Worker Task Force recommends that lawmakers require a report from the Office of the Administration of Children and Families in the Department of Health and Human Services examining the extent to which overregulation negatively impacts the cost and supply of child care services. The report should consider the number of regulations in each state and the effect of each regulation on: (1) child safety, (2) cost of child care, and (3) supply of child care.

Enhancing Incentives, Flexibility, and Personal Growth

While many Americans are seeking new job opportunities at this time, others are looking for a more rewarding path within their current line of work. This may mean the opportunity to earn more pay, the ability earn more time off, or the opportunity to train for a better position. Unfortunately, Congress has implemented policies that inhibit a worker's ability to reach their full potential. In order to maximize our nation's return to prosperity, we need to ensure the federal government is not advancing policies that make it more difficult for Americans to reach success. We must enable them to reach their individual goals.

Supporting the Advancement of the American Worker by Increasing Upskilling Opportunities

American workers can greatly benefit from employers who seek to improve their efficiency by upskilling their employees. These employees benefit from additional skills, and often an accompanying pay bump. However, current law disincentivizes employers from upskilling their employees by limiting the deductibility of education or training expenses to those that apply to an employee's current job.

Unfairly, education and training are not a qualifying business expense for deductibility purposes for the employer if the training or education qualifies the worker for a new trade or business. This can pose a significant barrier to future success of American workers. It also impedes employers from investing in human capital in the same way that they are allowed to invest in physical capital like equipment. While a bakery owner can expense a new oven, the owner would not be able to expense the cost of cake decorating class for a hardworking cashier the owner wishes to promote. The tax code should be updated to correct for this inequity. Accordingly, the Task Force recommends that employee training and education expenses that are not related to an employee's current job should also be deductible as a business expense.

Moreover, the Task Force's approach, would allow employers to expense the costs of partnerships they form with non-profits or educational institutions for purposes of upskilling their employees. Deducting these costs would allow companies to work with these organizations not only to promote the well-being of their labor force, but also to build networks that can counsel employees into developing skills needed across the economy.

Insulating Remote Work from Undue Tax Burdens During the Pandemic

During the pandemic, as governments closed businesses and implemented stay-at-home orders, many Americans have been forced to telework outside of the state in which they normally work or chose to move for reasons of health and safety. In many states, working for even one day in the state can trigger tax obligations for the employer and the employee.¹⁵⁵ During the pandemic, many people worked outside of the city or state in which their workplace is located, potentially exposing the employee and employer to additional tax and compliance burdens.¹⁵⁶ Overlapping state laws can result in an employee's salary being double-taxed.¹⁵⁷

Hundreds of thousands of Americans could be facing unexpected tax obligations as a result of teleworking. For example, according to the New York Times, about 420,000 people left New York City during the pandemic, amounting to roughly 5 percent of the city's population.¹⁵⁸ Data shows that many left New York State entirely for surrounding areas in Pennsylvania, New Jersey, and Connecticut, as well as further locations like southern Florida.¹⁵⁹ Across the country, hundreds of thousands of people who commute across state lines would be penalized even though they had no choice but to work from their homes.

Given the unforeseen and unprecedented circumstances that workers and businesses have found themselves in, it is only fair to maintain the tax status quo, as if the employee had not been teleworking. Workers who were forced to telework to protect public health should not be penalized with an increased tax burden.

The Task Force recommends that Congress act to maintain the status quo for taxation of employers and employees during the public health emergency. Specifically, employee income should be considered to be earned at the employee's primary work location. Businesses would also have certainty that allowing workers to telework would not create a business tax nexus in other states nor impact payroll factors for purposes of tax apportionment.

Boosting Employee Pay and Encouraging Increased Productivity

Congress should also ease administrative burdens that make it less likely that an employee will receive a bonus as a reward for their hard work. Such a bonus could serve as a lifeline for many American families impacted financially by the pandemic. Under current law, employers must recalculate an employee's regular rate of pay each pay period, taking into account any bonuses the employee has received. This serves as an enormous administrative burden for employers who would be required to recalculate the regular rate of pay for any employee receiving a bonus every single pay period, and a major disincentive to employers to offer frequent bonuses. An employer could opt to offer annual bonuses, since the regular rate of pay would only have to be recalculated once a year, but having to recalculate salaries multiple times a year would require most employers to hire an accountant to take on the administrative burden. This is an expense that small businesses often cannot afford, and the effects are felt by their employees.

While most employers give annual bonuses (55 percent),¹⁶⁰ far fewer tackle the difficulties and costs associated with providing quarterly bonuses (17 percent)¹⁶¹ even though, according to a recent study, annual bonuses are not as effective in increasing productivity as quarterly bonuses.¹⁶² Furthermore, small businesses are almost ten percent less likely to offer individual retention bonuses to employees than mid or large-sized organizations.¹⁶³ In order to ease the burden on more organizations, and allow more American workers to receive bonuses, the Task Force recommends that Congress implement the Employee Bonus Protection Act.¹⁶⁴ This bill would prevent employers from having to recalculate an employee's regular rate of pay for the purposes of overtime compensation each pay period in which an employee receives a bonus, increasing the number of American workers that receive bonuses.

Providing Additional Options for Employees that Work Overtime

While many employees value high compensation more than any other offering in their current positions, a growing number of American workers seek more time off to spend with family. According to a recent study, 30 percent of employees hope to see additional vacation days in their current positions.¹⁶⁵ While the federal government has the flexibility to provide additional time off to employees in lieu of overtime compensation, private-sector employees do not have that option. Under current law, private employers are required to pay employees overtime at 1.5 the employee's regular rate of pay, and do not have the opportunity to instead offer comp time. As the COVID-19 public health emergency continues to disrupt everyday life, many workers are especially interested in opportunities to earn more comp time and adjust their work schedules.

To provide employees with more options, the Task Force recommends implementing the Working Families Flexibility Act, introduced by Sen. Mike Lee (R-UT), to give employers more flexibility to provide compensatory time off.¹⁶⁶ Under the bill, employers would have the option of offering comp time or overtime pay. Employees would voluntarily elect to receive comp time in lieu of overtime pay, which would empower employees to select the option best fits their needs. Employees would be able to cash out their accrued comp time at any time, and the proposal would require employers to pay employees the traditional overtime rate of any unused comp time at the end of the year. This proposal would give American workers the ability to make decisions that best fit their needs and the needs of their families.

Restoring Workers' Freedom Over Their Income and Expanding Access to Retirement Accounts

One important way to encourage work and independence is to allow people to keep more of their own money in a way in which they can use it to invest in their future. Universal tax-free savings accounts would allow individuals to save or invest a certain amount each year in tax-free accounts without restrictions on how these funds can be used and with simple requirements on how long savings must be maintained.

While there are already a number of tax advantaged savings accounts, they are limited for specific government-favored purposes and have restrictive and complex rules and regulations. The inflexibility of these accounts diminishes the value of the hard-earned income of all Americans. Universal accounts would allow families the flexibility to build up their nest eggs and save for a large purchase, such as a home, education, medical procedure, or even a "rainy day" emergency fund. Moreover, these accounts would restore full freedom and flexibility to American workers over their earned dollars.

Support Trump Administration Guidance to Expand Investment Options for 401(k) and IRA Holders

Tax-advantaged retirement accounts empower workers to save for retirement and prepare for a secure financial future. On May 19, 2020, the Department of Labor issued guidance that gave individuals with defined contribution retirement savings plans the option of investing in funds that included private equity investments.¹⁶⁷ While defined benefit plans (pension plans) have been able to invest in private equity, previous policy barred 401(k)-style plans from doing the same. A study from the American Investment Council showed a 15% average rate of return on private equity investments.¹⁶⁸

The Trump administration's guidance expands investment options for Americans in defined contribution plans. Defined contribution plans offer workers security and ownership of their retirement funds. Workers should be trusted to make investment decisions over the retirement account funds that they earned, which includes choosing to invest in private equity product. The Task Force applauds the Trump administration's action and recommends that this investment option be codified into law.

Empower American Workers to Control Their Workplace Futures

For decades Democrats have been beholden to the influence of powerful unions. Democrats argue that their pro-union policies are pro-worker, but the Task Force rejects this assertion.

While the Task Force understands that many unions have played an important role in the lives of American workers, it also recognizes that unions do not always prioritize the well-being of all employees over the prosperity of the union. This is particularly egregious as many workers across the nation face uncertainty as to their employment. While the Task Force supports the right of every worker to join a union, this decision should be made by a worker that knowingly, willingly and freely chooses to do so. Democrats, on the other hand, support policies that coerce union membership. For these reasons, the Task Force supports reforms that refocus labor policy on workers, instead of on the union.

The tendency of Democrats to support union-giveaway policies is perhaps best demonstrated by the passage of the PRO Act in the House of Representatives in the 116th Congress. This bill, which received 219 Democratic votes,¹⁶⁹ seeks to eliminate Right-To-Work protections, force workers to pay dues to unions they may not wish to be a part of, require employers to provide employee contact information to unions without their permission, and codify the 2015 Browning-Ferris Industries (BFI) joint-employer decision and the California “ABC” independent contractor test nationwide in an attempt to make it easier to unionize large swaths of American workers. The Task Force rejects this outdated way of thinking about labor policy and seeks to empower Americans to decide for themselves how they wish to be represented.

Enabling High-Performing Employees to Be Rewarded

Under current law, union contracts set both a wage floor and a wage ceiling. As a result, individual workers cannot be given raises, including performance-based raises, by their employer. Typically, unions resist raises given to individual employees, and instead demand that employees be compensated based on the amount of time they’ve worked for the employer. This mechanism serves as a disincentive to the employee to become more productive to benefit one’s self and family, since an employee is paid the same no matter how productive he or she is. The Task Force recommends allowing employers operating under a union contract to award bonuses and pay raises to employees without having to get permission from union bosses.

The pandemic highlights the need for more pay flexibility for unionized workers. Many unionized workers, including nurses, grocery store workers, and transportation workers, provided essential services during early stay-at-home orders and responded with courage to the new demands of their jobs. Without these workers, the country would not have

been able to effectively respond to the virus. Employers must be allowed to reward these workers who have, and continue to, serve in essential roles during the pandemic. Additionally, as more businesses open, some employees will be willing to take on more risk than others during the return to work. If the country is to successfully reopen, businesses must be allowed to compensate workers who are willing to go above-and-beyond the job description during these challenging times.¹⁷⁰

The Rewarding Achievement and Incentivizing Successful Employees Act (RAISE Act), introduced by Rep. Dusty Johnson (SD-AL) would allow employers to pay individual workers more than is specified in the union contract.¹⁷¹ Under the proposal, union contracts are still allowed to set minimum wage rates, which enables unions to continue to protect workers from being paid too little. The bill also upholds the prohibition against discriminating against an employee based on union membership, which would prevent employers from selectively give raises to employees that are not union members in an effort to undermine the union.

Protecting the Right to Work

All people have a right to work and enjoy the fruits of their labor. Unfortunately, unions all around the country have been granted monopolistic powers by the federal government, allowing them to restrict who is allowed to work in certain jobs and what businesses can enter a market. They have become the guilds of the modern era, working to stifle innovation when it threatens the power of their leadership.

While *Janus v. American Federation of State, County and Municipal Employees* provided all public sector employees with the right to work, many private sector employees are forced into unionism as a prerequisite to employment. Recently Democrats, through their support of the PRO Act, reinforced their opposition to private sector right-to-work laws. The Task Force strongly opposes such efforts to force workers to pay dues to unions of which they may not wish to be a part.

Democrats argue that right-to-work laws allow employees to benefit from union representation without paying union dues. But they fail to recognize that it is the unions themselves who fought for exclusive representation, or the right to represent all employees, which prohibits employees from representing themselves. According to Glenn Taubman of the National Right-to-Work Legal Defense Foundation, “this is like being kidnapped by a cab driver, driven all over town against your will, and then being forced to pay the driver an exorbitant fare for the ‘services’ he allegedly rendered.”¹⁷²

The Task Force is also concerned that prohibiting state-level right-to-work laws requires an employee to pay dues to a union that may be funding political or advocacy campaigns with which the employee disagrees, or even to fund union corruption. A recent report found that unions sent over \$1.3 billion to liberal advocacy groups between 2010 and 2017, without employee permission.¹⁷³

While twenty-seven states have enacted right-to-work laws within their jurisdiction, millions of Americans remain under an unjust system. To correct this problem, the Task Force recommends enacting the National Right-to-Work Act, introduced by Rep. Joe Wilson (SC-02), which would empower every American worker to determine how they wish to be represented.¹⁷⁴

Restoring Employee Rights

While Democrats seek to marginalize an employee's right to choose how they are represented in contract negotiations, the Task Force seeks to protect that right. As a result, the Task Force strongly recommends the implementation of the Employee Rights Act, introduced by Rep. Phil Roe (TN-01). The bill would enact a number of important reforms that seek to protect workers in their right to select, or abstain from selecting, union representation. First, the bill would require every union win a majority of votes cast in a secret ballot election. Under current law, a union can be certified through either a secret ballot election or what's known as card check. In order to request a secret ballot election, a union must turn in authorization cards signed by at least 30 percent of employees. If a union is able to get cards from over 50 percent of employees, the union can then ask the NLRB and the employer to voluntarily recognize the union without holding a secret ballot election. While the employer may choose to respect the employee's right to a secret ballot election, the employer may also recognize the union without holding an election.

Though the Task Force seeks to empower employees to independently decide how they wish to be represented, Democrats, through the PRO Act, sought to allow unions that failed to win a secret ballot election to still gain certification using card check. With card check, a union could allege that an employer wrongfully interfered in the election, and, unless the employer can prove otherwise, the union gains certification so long as they provide cards signed by at least half of employees. The Task Force understands that card check of any kind undermines the secret ballot election and the employee's right to vote for union representation in privacy. Thus, the Task Force recommends requiring unions to win a secret ballot election before being certified.

The Employee Rights Act would also require all unions to hold a recertification election if over 50 percent of the bargaining unit has turned over. In 2016, 94 percent of union members never voted to be represented by their union.¹⁷⁵ The Employee Rights Act would also require unions to receive permission from members to use union dues for purposes beyond collective bargaining, such as towards supporting political candidates or advocacy campaigns. Finally, the Employee Rights Act would make it illegal for a union to use intimidation, violence, or threats in an effort to coerce employees into union membership.

The Task Force also recommends extending many of these protections to federal employees through the Federal Employee Rights Act, originally introduced by former RSC Chairman Tom Price.¹⁷⁶ Like the Employee Rights Act, the Federal Employee Rights Act legislation would require unions representing federal employees to win a secret ballot election. The bill would allow an employer to withhold personal information from a union and would require a union to receive authorization from an employee before using union dues for purposes beyond collective bargaining. The Federal Employee Rights Act would also prohibit unions from deducting union dues directly from employee pay.

Preventing Ambush Elections

In 2014, the Obama-era NLRB established the Ambush Elections rule,¹⁷⁷ under which union representation elections can take place in as few as 11 days.¹⁷⁸ Prior to the Ambush Elections rule going into effect, the median time before an election was 38 days.¹⁷⁹ Ambush elections generally provide employees with very little time to become adequately informed about the benefits and drawbacks of union membership, and the union upon which they are voting. Furthermore, while the union has months to present their message to employees, employers often have only a few days to provide information to employees.

Shortened election time frames greatly increase the likelihood a union will win a representation election. Prior to the Ambush Elections rule going into effect, unions won only 60 percent of elections held between 36 and 42 days, but won over 86 percent of elections held in less than 21 days.¹⁸⁰ In the first half of 2019, four years after the rule went into effect, unions recorded a 77 percent win rate,¹⁸¹ despite never recording a 70 percent win rate in any previous decade.¹⁸²

The NLRB, under President Trump, recently finalized a rule rolling back the 2014 Ambush Elections decision.¹⁸³ While portions of the rule have been blocked from implementation by a federal

judge, the remainder of it went into effect on June 1, 2020.¹⁸⁴ Notably, Democrats have attempted to codify the flawed 2014 Ambush Elections rule through legislation, specifically through the PRO Act, which passed the House of Representatives on February 6, 2020, but has not been taken up in the Senate.¹⁸⁵ The Task Force rejects any attempt by unions and Democrats to shut down debate and limit the amount of information provided to employees and supports proposals to ensure that union elections cannot be held in less than 35 days. Accordingly, the Task Force recommends codifying NLRB's 2020 rule.

Protecting Employees That Stand Up Against Corruption

Current law protects whistleblowers through 23 statutes that prohibit an employer from taking adverse action against an employee that reports a variety of forms of misconduct.¹⁸⁶ Noticeably absent from this list are protections for union employees that report union misconduct. While an employee that reports employer discrimination based on an employee's union support would be protected from retaliation, a union employee that reports corruption within the union can legally be fired for doing so. Unfortunately, this serves as a disincentive for union employees, who are the most likely to witness violations, to report corruption. It is for this reason that the Task Force recommends implementation of the Union Integrity Act, introduced by Rep. Francis Rooney (FL-19).¹⁸⁷ The Union Integrity Act would protect union employees that stand up against union corruption in the same way that thousands of other employees are protected.

Promoting Union Transparency and Accountability

Currently 22 states allow companies to require employees to pay union dues as a condition of employment. However, many of these employees have no way to find out how their dues are being spent. The Task Force vehemently opposes forcing employees to belong to a union without giving them access to important financial information related to their own contributions. Those who do live in right-to-work states should also have access to this information, which enables them make a well-informed decision of whether or not to continue to be represented by the union.

In 2003, the Department of Labor under President George W. Bush finalized rules seeking to increase transparency and accountability of unions through enhanced financial reporting requirements.¹⁸⁸ Specifically, the rules required unions to disclose financial interests in trusts that received more than half of their income from unions, provide details on the buying and selling of assets, and provide information on potential conflicts-of-interest.

Predictably, these rules were rescinded by the Department of Labor under President Obama.¹⁸⁹ The Trump administration has sought to bring back some of these rules, an effort the Task Force strongly supports.¹⁹⁰ However, to protect union member access to how their dues are being spent, the Task Force recommends enactment of the Union Transparency and Accountability Act, introduced by Rep. Francis Rooney (FL-19).¹⁹¹ This bill that would codify the Bush administration's union reporting requirements into the Labor-Management Reporting and Disclosure Act (LMRDA).

Reducing Stifling Regulations on Small Business Owners

Under current law, the NLRB is allowed to decline jurisdiction over small companies that do not pass a certain annual revenue threshold. Those thresholds are generally \$50,000 in annual revenue for non-retailers and \$500,000 in annual revenue for retailers.¹⁹² The thresholds have not been adjusted for inflation since they were set in 1959. At a minimum, the Task Force believes those thresholds should be adjusted for inflation to \$400,000 for non-retailers and \$4 million for retailers. Ideally, the Task Force supports passing legislation exempting small businesses from NLRB. This would reduce compliance costs and regulatory risk for small businesses. As many of these small businesses struggle to stay afloat during the pandemic, it is absolutely essential that policymakers relieve as many regulatory and compliance burdens as practicable.

Promoting Alternative Labor Management Cooperation

The Task Force supports alternative forms of labor-management cooperation outside traditional unions. Employee-involvement programs, like works councils and almost all other formal labor-management cooperation models, are prohibited under current law, unless the company already has a traditional union. In Germany, nearly 90% of large companies (those with more than 500 employees) have active work councils.¹⁹³

Around the country several other forms of labor-management in addition to unions currently exist. Through works councils, employees are able to elect representatives to discuss concerns with management, such as changes to workplace policy, safety standards, and equipment. Other companies have formed committees with employees and managers to suggest improvements to wages and benefits, or action teams made up of randomly selected employees.¹⁹⁴ Though alternative models do not impact the ability of unions to represent employees, any model that promotes discussion between employees and an

employer is prohibited under the NLRA unless the employees are already represented by a union. Allowing for employee-involvement programs outside the confines of a traditional union would put pressure on unions to modernize, innovate, and better meet employee needs in order to maintain support. Any policy that results in improved services for the American worker should be encouraged. As a result, the Task Force strongly supports employee-involvement programs and believes that employees should be able to choose alternative forms of organizing without also being represented by a union.

Extending a Lifeline to Those Suffering from Opioid Addiction

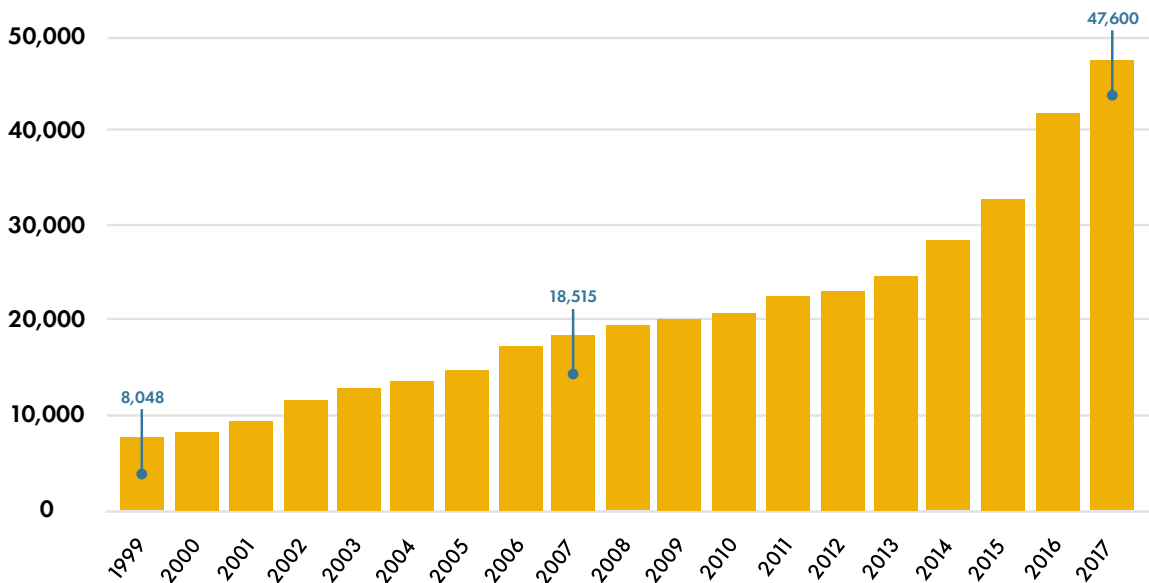
Unfortunately, more and more Americans are suffering from opioid addiction than ever before. Between 1999 and 2017, opioid overdose deaths increased by almost 500 percent.¹⁹⁵ And for every fatal overdose, about 30 nonfatal overdoses occur.¹⁹⁶

increase in opioid prescriptions could account for 20 percent of the decline in labor participation in prime-age males, and 25 percent of the decline in labor participation in prime-age females. This translates to almost 1 million people absent from the labor force as a result of opioid addiction.¹⁹⁹ Between 1999 and 2015, this resulted in a loss of \$702.1 billion in real economic output.²⁰⁰

The Task Force recognizes that the grip of opioid addiction can be devastating for both individuals and their entire families and is committed to helping those suffering from addiction get back on their feet. It recognizes the potential the COVID-19 pandemic may have in also exacerbating the opioid epidemic. The main defense against the effects of opioid addiction is stopping over-prescription. States first and foremost control the prescribing and dispensing of prescription drugs and thus are on the front lines in this respect. The Task Force applauds those

NATIONAL OPIOIDS OVERDOSE DEATHS

TOTAL DEATHS ACROSS ALL AGE GROUPS



SOURCE: U.S. Department of Health and Human Services, the Office of the Assistant Secretary for Planning and Evaluation, "Welfare Indicators and Risk Factors, Seventeenth Report to Congress," May 4, 2018, <https://aspe.hhs.gov/pdf-report/welfare-indicators-and-risk-factors-seventeenth-report-congress>.

While not only heartbreaking, the opioid epidemic is also affecting American workers. While many factors contributed to the decline in long-term labor participation rates "Labor force participation has fallen more in areas where relatively more opioid pain medication is prescribed, causing the problem of depressed labor force participation and the opioid crisis to become intertwined."¹⁹⁷ Almost half of prime-age men that are not in the labor force take pain medicine daily, with 31 percent of them taking prescription painkillers.¹⁹⁸ Furthermore, the

states that have made strides in reducing over-prescription of opioid medication in recent years, such as Ohio, Kentucky, New York, Tennessee, and Florida.²⁰¹ Still, more can be done to ensure that those that do suffer from this disease can access existing resources to help them turn their lives around and provide for their families.

WIOA's Rehabilitation Services Program currently provides formula grants to state agencies for vocational rehabilitation

services. A state vocational rehabilitation agency may provide counseling, medical and psychological services, and job training to individuals with a myriad of physical or mental disabilities. The Task Force recommends that individuals recovering from addiction be allowed to participate in this program by incorporating this substance use disorder within the scope of qualifying conditions. Access to already existing resources could provide the boost that many individuals suffering from addiction need to take that next step in returning to the workforce for the benefit of themselves, their families, and their communities.

WELFARE

Reimagine Welfare to Empower Individuals & Families

The RSC's American Worker Task Force believes every American deserves the opportunity to pursue their dreams, improve their economic circumstances, and be independent and free. While today's economic landscape undoubtedly presents added barriers to the immediate upward mobility of millions of Americans, the Task Force understands that succumbing to calls for expanding our welfare state even further will only delay a return to prosperity on individual and national levels. Conservatives must resist such calls while also pursuing a path toward future programmatic reforms designed to empower individuals rather than create long-term dependency.

Today's federal welfare programs, which cost more than \$1 trillion a year even before the pandemic, do little to address the root causes of poverty and the lack of upward mobility.²⁰² Rather, they focus on alleviating the material symptoms of poverty instead of fostering the conditions that allow individuals to escape it. They allow people to become dependent on government and behave in ways that keep them from achieving the opportunities they deserve. In fact, "welfare cliffs" in these programs can actually penalize hard working Americans for receiving raises and promotions and trapping ambitious Americans striving for a better life.²⁰³ Consequently, children whose parents receive welfare benefits are more likely to become dependent on these programs in their adulthood too.²⁰⁴

The evidence of the power of work as a means to fight poverty is overwhelming. The Congressional Research Service (CRS) found that the poverty rate in 2015 was 90.8 percent for families with no workers and only 8.7 percent for families with at least one worker.²⁰⁵ In addition to reduced earning potential, long term unemployment is also linked to higher mortality rates an increased risk for substance use disorder, and higher probability of relapsing after drug and alcohol abuse treatment.²⁰⁶ Policies that discourage unemployed individuals from re-engaging in the workforce drive long-term decreases their quality of life.

This cycle of dependency deprives our nation of the bright potential these individuals might otherwise achieve. As Yuval Levin has noted, "The poor are more isolated – economically,

culturally, and socially – than they used to be in America... It is a function of entrenched, intergenerational poverty that isolates too many lower-income Americans from even middle-class economic, cultural, and social opportunities and norms."²⁰⁷

Unfortunately, the millions of Americans that lost their jobs in the midst of the COVID-19 pandemic may also fall victim to this broken system. While the Left seeks to capitalize on this misfortune to advance their vision for a society rooted in socialism, conservatives must ensure that American workers receiving temporary benefits remain attached to the workforce as much as possible. As the economy reopens, it will be essential for our welfare programs to encourage workers to re-enter the workforce and regain self-sufficiency. Federal welfare programs are already designed to expand eligibility—perhaps by too much—in times of economic downturn. While well-intentioned, such mechanisms can act as barriers to returning to work. Adding any additional barriers will jeopardize not only the individual prosperity of would-be workers, but also the benefits inherently derived from a strong economy.

Take for instance how Supplemental Nutrition Assistance Program (SNAP) caseloads lingered far too long after the Great Recession. In 2009, amid the Great Recession, Congress waived all of the program's work requirements through fiscal year 2010. States then used longstanding waiver criteria to avoid work requirements for several years. Categorical eligibility, which allows states to extend eligibility to individuals and households above SNAP's income and asset limits, also became increasingly popular among states around this time. As a result, the number of able-bodied adults without dependents (ABAWDs) in the program grew, and ABAWDs became a greater percentage of the program's caseload. SNAP rolls grew for five years after the beginning of the recession. Even during the prosperous pre-COVID-19 economy, the SNAP caseload remained above pre-Great Recession levels. Over the same period, the labor force participation rate failed to rebound as work-capable individuals remained out of work and ceased looking for a job.²⁰⁸ Instead of helping American workers rejoin the labor force during a historic period of economic recovery, overgenerous waivers in the welfare system trapped hard-

working Americans in a state of dependency and joblessness. The country now finds itself in a similar situation with the SNAP program. The Families First Coronavirus Response Act (FFCRA) generally waived work requirements in SNAP during the length of the public health emergency, and longstanding waivers will remain available even after that expiration.²⁰⁹

Even more egregiously, Democrats used the CARES Act to temporarily increase unemployment insurance benefits by \$600 per week, resulting in 68 percent of beneficiaries making a profit from being unemployed.²¹⁰ Although the \$600 plus-up expired at the end of July, Democrats continue to insist on revival of the plus-up. According to the Congressional Budget Office (CBO), “House Democrats’ proposal²¹¹ to continue the extra \$600 weekly payment through January [2021] would reduce employment in 2020-2021; cause economic output to be lower next year; and contribute to more business closures.”²¹² Far from providing real aid to struggling families, the UI plus-up creates long term destruction by destroying businesses, creating dependency, and severing the employer-employee relationships on which our economy built. As Matt Weidinger of the American Enterprise Institute has noted, extended unemployment benefits also increase the time a worker spends on unemployment and result in lower earning potential when the worker returns to the workforce.²¹³ Moreover, it represents one more step of the Left’s march toward a Universal Basic Income. The Trump administration unilaterally extended increased benefits of \$400 per week, a level that still creates an unemployment profit for more than half of U.S. workers.²¹⁴

For these reasons, the Task Force opposes further extension of any UI plus-up and urges all members to reject proposals that are not fully devoid of anti-work influences. Any future change to UI benefits must be tailored in a pro-growth manner to return to the program’s original purpose. UI was intended to help preserve the system of free enterprise that has made America the most advanced and prosperous nation on the planet. We must not let those with pernicious motivations use this crisis to derail that system.

As the economy continues to reopen, the Task Force will continue to work toward the enactment of reforms that promote workforce development, employment, marriage, and stable family formation.²¹⁵ The welfare reform efforts of 1996, which resulted in the much improved Temporary Assistance for Needy Families (TANF) block grant program of today, were based on these same principles. According to Robert Doar, welfare policy expert and current president of the American Enterprise

Institute, and Kiki Bradley, former associate director of the Temporary Assistance for Needy Families Bureau, because of the TANF reforms, “Within ten years, welfare rolls shrank by more than half, the number of single mothers engaged in work rose to new heights, and the poverty rate for black children dropped to its lowest point in history.²¹⁶ Furthermore, between 1995 and 2006, the child poverty rate declined by 3.4 percentage points, moving 1.8 million children out of poverty.²¹⁷ The reform proved that the pursuit of work opportunities and stable families, not endless government checks, provided the true long-term solution to poverty.

Other historic successes demonstrate why it is so important for lawmakers to continue to push for strengthened work requirements as our economy improves. In 2013, under the leadership of Governor Sam Brownback, Kansas instituted work requirements and time limits for able-bodied adults without dependents on food stamps and created a tracking system to monitor the results. These reforms led to an increase of 247 percent in the incomes of the families that are now subject to the work requirements.²¹⁸ Similarly, Maine, under Governor Paul LePage, required able-bodied adults receiving food stamps to take a job, participate in job training, or perform six hours of community service per week. Within three months, the “caseload of able-bodied adults without dependents plummeted by 80 percent.”²¹⁹ After work requirements were put in place, “[e]nrollees [went] back to work and their incomes more than double[d]; their increased incomes more than offset lost benefits; their time on welfare [was] cut in half.”²²⁰

It is demeaning to low-income Americans to believe—as the modern Left does—that they do not have the ability to succeed once again and require perpetual subsidization of their basic needs. The American Worker Task Force rejects this negative view of Americans. We are a nation built on perseverance, commitment, sacrifice, prioritization and personal responsibility. Government assistance programs should encourage these positive values. While the challenges faced by American workers today are many, we know that abandoning these values by severing the link between the workforce and citizens facing temporary hardship is the worst thing lawmakers could do for the long-term wellbeing of these citizens and our nation.

The Left’s insistence on expanding dependence-inducing welfare programs reflects the fact that returning to work presents a visceral threat to the socialism-based society they pursue. As Arthur Brooks, former president of the American Enterprise Institute, once wrote, “Work gives people something

welfare never can.”²²¹ Work instills a sense of purpose, self-worth, self-sufficiency and dignity that cannot be duplicated by any government program. Work provides a “crucial means of shaping us for liberty. Like the family, it has an obvious material utility, enabling us to support ourselves and our families financially. But, work also buttresses dignity, inculcates responsibility, encourages energy and industry, and rewards reliability. It can help form us into better human beings and better free citizens.”²²²

Additionally, while Americans recognize families as the foundation of society, welfare programs often dismiss the importance of stable families and penalize marriage. As described by Yuval Levin:

The family is the core character-forming institution of every human society. It is the primary source of the most basic order, structure, discipline, support, and loving guidance that every human being requires. It is simply essential to human flourishing, and its weakening puts at risk the very possibility of a society worthy the name.²²³

One of the most important predictors of whether a family lives in poverty is whether the mother and father remain married. In 2018, of families with children under 18 years of age, 33.8 percent of families with a single mother and 16.6 percent of families with a single father lived in poverty. In contrast, only 5.8 percent of married-couple families lived in poverty.²²⁴ Single mothers are also much more likely to be trapped in dependence on welfare programs. “In 2012, 78.9 percent of families headed by a single female received at least one need-tested benefit.”²²⁵ Unfortunately, more and more children are facing a higher likelihood they will grow up in poverty as more and more parents reject marriage. In 2018, 39.6 percent of all babies born in the United States were born out of marriage, 1.503 million in total.²²⁶ In stark contrast, when the War on Poverty began in 1965, only 7.7 percent of children were born outside of marriage.²²⁷

It takes the support of friends, family and communities to nurture and support individuals in their time of need. If those vital social bonds are broken down, that important safety net disappears. Deepening the ties that hold our families and local communities together is the most effective way to fight poverty and promote the culture of self-reliance. Unfortunately, the current system of means-tested welfare programs punishes those who marry. Some of the largest welfare programs, like Medicaid, TANF, and SNAP all contain a marriage penalty.²²⁸ It has even been

said that “for most couples on welfare, getting married is among the more expensive decisions. Saying ‘I do’ will reduce welfare benefits, on average, by 10 percent of their total income.”²²⁹ These policies encourage broken families, exacerbating the cycle of poverty and joblessness.²³⁰ The RSC American Worker Task Force supports policies that take steps to eliminate these penalties as perhaps the single best antipoverty measure: marriage and a stable family structure.

The following discussion lays out a number of program-specific reforms recommended by the Task Force, many of which are built on the uplifting principles discussed above.

Reforming the Supplemental Nutrition Assistance Program

As noted above, the current structure of Supplemental Nutrition Assistance Program (SNAP) rewards disengagement from the workforce, hindering the goal of helping Americans become self-reliant. As the economy continues to improve, SNAP must be reformed to better usher capable people back into positive and gainful employment. During normal times, the SNAP program limits benefits for ABAWDs who are unwilling to work, search for work, or enroll in job training to three months in any three-year period. Recognizing the lack of opportunity during times of high unemployment, the program waives such requirements for ABAWDs living in low-opportunity areas (at the state or county level). These areas include those where: (1) the average 12-month unemployment rate is over 10 percent; or 2) the average 24-month unemployment rate is 20 percent higher than the national average. Unfortunately, this framework has been decimated by the manipulative use of waivers in recent years, allowing areas with normal unemployment rates and plenty of job opportunities to skirt reasonable work requirements. Even when these geographic waivers are unavailable, states can still use discretionary waivers that automatically allow a state to exempt up to 12 percent of its ABAWDs from work requirements.

The unnecessary use of waivers traps beneficiaries on the program instead of helping them rejoin the workforce when appropriate.²³¹ For instance in 2018, well into a prosperous pre-pandemic economy, the average national unemployment rate was 3.9 percent—lower than pre-Great Recession levels—and only one state had an unemployment rate above 6 percent.²³² Yet, that year, 5 states and the District of Columbia retained full waivers from work requirements, as well as 1,287 of the nation’s 3,142 counties across 28 states.²³³ In other words, the manipulative use of waivers simply means that

work requirements are turned off when they should be turned on. The use of waivers seems particularly problematic when one considers the fact that an ABAWD could fulfill the work requirement by simply looking for work, enrolling in a job training program, or by volunteering.

The Task Force supports efforts to reform waivers so that they do not unnecessarily detach SNAP beneficiaries from a labor market capable of supporting them. First, lawmakers should eliminate waivers currently available to locations where the average 24-month unemployment rate is 20 percent higher than the national average. As Jamie Hall of The Heritage Foundation has pointed out, certain localities tend to lag national employment averages on a long-term basis, resulting in the permanent availability of waivers.²³⁴ Moreover, basing waivers on the relative unemployment numbers means that locations can receive a waiver even when experiencing exceptionally low unemployment. For instance, in February 2020, just before the pandemic, the national unemployment rate was 3.5 percent, a 50-year low. That means that localities with an unemployment rate of 4.2 percent—indicative of unemployment rates during the strong economy that existed at the turn of the 21st century—would qualify for a waiver.

In recognition of Congress's failure to enact meaningful pro-work reform in the 2018 Farm Bill, the Trump administration has promulgated a Department of Agriculture rule that strengthens the work requirements in SNAP for ABAWDs. This rule sets firm, metrics-based, nation-wide standards for how states can apply for geographic waivers. In particular, the rule would use Bureau of Labor Statistics defined commuter areas with shared labor and economic activity pools to serve as the standard for determining what qualifies as an area for the program. This eliminates the availability of state-wide waivers. Additionally, the rule adds a 6 percent minimum unemployment rate for a state to be eligible for a waiver based on its relative unemployment rate—a step in the right direction. The Task Force supports the Trump administration's rule and urges its codification.²³⁵

As our economy improves, lawmakers should also reduce the discretionary waiver allotment down from its present level of 12 percent and consider reducing the grace period (three months in a three-year period) where someone can receive SNAP benefits without meeting the program's work requirements.

The Task Force also urges lawmakers to enact other critical reforms that would fairly promote work among beneficiaries regardless of the state of the economy and ensure that the

program is only being utilized by those families and individuals that truly need it. A basic principle for government assistance programs is that a person should only receive taxpayer-funded benefits if he or she meets a program's eligibility requirements. Allowing individuals to receive government benefits without the requisite need encourages dependency and redirects a state's attention from workforce development to bloating the rolls. Unfortunately, a policy called "broad-based categorical eligibility" allows a person to claim benefits under one program just by receiving benefits from another, even if receiving benefits from the other program did not involve any income or asset test.

Data shows that widespread use of broad-based categorical eligibility has resulted in millions of ineligible individuals receiving welfare benefits. Current law requires states to limit SNAP benefits to only those households with assets of \$2,250 without an elderly household member (\$3,500 with an elderly household member) or less in order to focus the program on those who are truly needy.²³⁶ This asset test includes cash and liquid assets like stocks but excludes things such as primary residences, vehicles, and education and retirement savings. However, nationwide, more than 5 million individuals are receiving SNAP benefits despite having assets above the aforementioned statutory limit.²³⁷ More than half of these households have assets of \$20,000 or more, and more than 20 percent of them have assets of greater than \$100,000.²³⁸ As the Foundation for Government Accountability has exposed, SNAP enrollment loopholes are so broad that millionaires can receive benefits.²³⁹

In July of 2019, the USDA released a proposed rule revising broad-based categorical eligibility.²⁴⁰ Under the revised rule, a state could deem an individual categorically eligible for SNAP only if the individual received "ongoing and substantial" TANF benefits. This rule would prevent states from considering a person who received a brochure, hotline number, or other nominal TANF benefit to be eligible for SNAP. Instituting a basic standard to prevent abuse of categorical eligibility would reaffirm that welfare is only for the truly needy and reduce overall dependence on welfare. The Task Force supports the proposed rule and further recommends that Congress codify it to prevent further abuse of categorical eligibility. The Task Force also supports closing the so-called "heat and eat" loophole.²⁴¹

While current federal law allows states to integrate home visits into their SNAP programs, there is no requirement that they utilize this fraud deterrence mechanism. As a condition of SNAP eligibility, states should require consent to home visits as a means of deterring welfare fraud. Visits could help determine,

for example, if a SNAP applicant does not actually have custody of a claimed dependent, has more assets than stated, or is being supported by another individual.

The Task Force also recommends that states be required to restrict the types of food that can be purchased to only healthy options, such as those eligible in the Women, Infants and Children (WIC) Program, with the addition of lean meat and poultry. According to a study for the Department of Agriculture of SNAP purchases, “20 cents out of every dollar was spent on sweetened beverages, desserts, salty snacks, candy and sugar.”²⁴² Soft drinks ranked as the top overall commodity based on expenditures, followed by bag snacks at number 4, packaged candy at 11, ice cream at 15, cookies at 17 and cakes at 22.²⁴³ If the taxpayers are footing the bill for the basic needs of beneficiaries, those funds should be focused on core nutritional needs.

States should also be required to prohibit the purchase of marijuana-based products with SNAP benefits, as proposed by the No Welfare for Weed Act, introduced by Rep. Paul Gosar.²⁴⁴ Using taxpayer money to fund consumption of these products degrades the work done by the employed individuals that earned the money.

Enhancing the Temporary Assistance for Needy Families Program

In 1996, conservatives in Congress worked to reform the old Aid to Families with Dependent Children Program, which had created a destructive culture of dependency. These reforms were embodied in the Temporary Assistance for Needy Families (TANF) program, which replaced the failing, dependence-driven status quo and instead focused on work incentives. Thanks to these commonsense reforms, child poverty decreased and employment for single mothers increased.

Despite the program’s incorporation of work requirements into its original framework, the American Worker Task Force knows that TANF’s effectiveness as a pro-work, pro-family program could be greatly improved. States have abused TANF, using more than half of the program’s funding on purposes other than the core purposes of supporting work and marriage. States regularly use TANF dollars to plug state budget holes instead of using it on its intended purpose—helping families in need become self-sufficient. During a time of increased joblessness, it is more important than ever that TANF funds be used to provide critical services to those in need.

Moreover, while states are supposed to ensure that 50 percent of all families and 90 percent of two-parent families be engaged in work-related activities,²⁴⁵ states can manipulate their percentages by spending in excess of the state’s Maintenance of Effort (MOE) requirement.²⁴⁶ Consequently, 22 states and territories reduced their 50 percent all-family standard to zero, and 14 states and territories reduced their 90 percent two-parent family standard by more than 50 percent.²⁴⁷ Even in a recovering economy, this is unacceptable and can contribute to a slower recovery.

Building off the TANF program’s focus on encouraging self-sufficiency, the Task Force recommends implementation, with minor adjustments, of Ways & Means Ranking Member Kevin Brady’s JOBS for Success Act. This legislation makes several important reforms to the TANF program to strengthen the program’s focus on helping the poor, encouraging self-sufficiency, and increasing state accountability. Importantly, the bill’s reforms would not impose undue burdens during the present pandemic and leave in place statutory flexibilities states have utilized to overcome recent struggles.²⁴⁸

The bill includes language that would prohibit states from diverting federal TANF funding to supplant state spending on social services and limits state use of TANF funds to families below 200 percent of the federal poverty level.²⁴⁹ The bill would maintain current law penalties for individuals that fail to comply with pro-work activities agreed to in their individual opportunity plan. Importantly, the bill would also maintain the current law “good cause” exception from work requirements, granting flexibility to beneficiaries during the current pandemic. The bill would also expand the scope of allowable work activities with a greater emphasis on education, training, and substance abuse and mental health treatment—beneficial activities that can be undertaken generally without regard to labor market conditions. Lastly, and perhaps most critically, the bill would replace current law’s easily manipulated work participation rate system with an outcome-based performance accountability system to more effectively assess the effectiveness of States in increasing employment, retention, and advancement among families.

Building off the JOBS for Success Act, the Task Force would also recommend several minor conservative modifications designed to further enhance the bill. Some of the suggested changes to the JOBS for Success Act include provisions that were in the original Ways and Means Committee draft of the bill from the 115th Congress. For example, the Task Force suggests

reallocating the size of each state's TANF block grant based on the child poverty rate of each state. The Task Force also supports adding new language barring state maintenance-of-effort (MOE) funds from being spent on beneficiaries beyond the 60-month limit placed on use of federal funding and on non-citizens.

Breaking the Cycle of Dependency in Housing Programs

The Task Force seeks to emphasize that federal housing assistance programs are in much need of reform. In their current form, these programs encourage broken homes, broken communities, low self-worth among recipients, and a cycle of dependency that encourages people to stay out of the workforce. Surely this is not the aim of housing assistance programs, but it has unfortunately been the result. These programmatic problems are only exacerbated by the present pandemic, making reform all the more critical.

The dependence created by federal housing programs is reflected in the length of time people remain dependent on federal housing assistance. While the average length of stay varies slightly across the major HUD programs, the average across all programs is approximately 6 years. In some areas, that number is drastically higher, even staggering. For instance, in New York, "one-half of all spells lasted 42 years or more, and one-quarter lasted 55 years or more."²⁵⁰

Policy experts disagree whether the federal government should play a central role in subsidizing housing. However, in their present form, many of the existing federal housing policies act as direct barriers to a dynamic and innovative American workforce. At a minimum, these policies must be reformed away from the tangled, dependency inducing, web they are today and should focus on moving the impoverished toward self-sustainability and full work engagement. This is truer now than ever to ensure that individuals and families most impacted by the current pandemic do not become permanently trapped on the welfare rolls like many of those that have come before them. The recommendations outlined here by the Task Force provide a roadmap to do so. Overall, the federal government should strive to promote work and family formation, streamline the federal housing bureaucracy, create opportunity for upward mobility for participants, and unleash market forces to make housing authorities more competitive and economically efficient.

First, the Task Force recommends that the exclusive reliance on the so-called Housing First policy be abandoned, allowing for more innovative and flexible approaches to be adopted. Housing First requires community-based housing entities that

receive federal housing aid to focus on putting beneficiaries into housing before addressing any other issues and concerns that exist with the homeless individual. Thus, local housing entities are required to ignore the causes of homelessness. In many cases, this creates unproductive and unsafe situations. This model prevents local housing entities from offering services to deal with addiction, domestic abuse, and unemployment. Exclusive reliance on the Housing First model not only interferes with these attempts from local housing entities, but it also prevents them from compelling engagement with these services as a condition of receiving housing aid. This practice hinders the personal growth of individuals receiving these transitional services and can be detrimental to the progress of the people housed around them. For example, these policies have led to recovering drug addicts being housed down the hall from active drug users.

Opposition to the misguided Housing First policy is bipartisan. Even former Democratic New York City Mayor Ed Koch's Deputy Director, Ralph DaCosta Nunez, described Housing First's one-size-fits-all approach not as "public policy" but rather as "public stupidity." Nunez pointed out that homelessness is not just an issue of homes, but often an issue of mental illness, domestic violence, and lack of education and skills.²⁵¹

The Task Force recommends codification of the Trump administration's updated Continuum of Care (CoC) policy to mitigate the ill-effects of Housing First.²⁵² The updated policy would allow housing entities to, after providing housing to people, require enrollment in services to deal with the causes of homelessness as a condition of continuing to receive federal housing benefits. Critically, this change gives flexibility to local housing entities, the groups that know best what needs to be done in their area. By building off the work of the Trump administration and ending exclusive reliance on Housing First policies we can tackle not only the root causes of homelessness but also some of the issues that impede the full engagement and empowerment of American workers.

Sadly, the CARES Act included language preventing homeless service providers funded by the HUD Emergency Solutions Grants (ESG) program from requiring program participants to utilize supportive services (e.g., job training, financial literacy, substance abuse treatment). This excludes emergency shelter programs and faith-based organizations who successfully rely on a model of accountability. This language should be eliminated in any future funding measures.

The Task Force supports a number of other reforms designed to reduce dependence on federal housing programs. According to the Department of Housing and Urban Development, only 15 out of 3,100 housing authorities across the country require some sort of work or job training in return for benefits. This state of affairs is abysmal and must be fixed as we emerge from the pandemic and our economy continues to improve. The Task Force supports implementation of the Trump administration's proposal to institute "uniform work requirements for non-elderly and non-disabled persons to work a minimum of 20 hours per week, or participate in training or educational activities."²⁵³

The Task Force also supports implementation following the pandemic of Secretary Ben Carson's proposal to implement a minor increase in the rent paid by able-bodied tenants to 35 percent of income with a \$150 minimum rent to give states greater flexibility in modifying their programs and ensure that such beneficiaries undertake meaningful work.²⁵⁴ The present minimum of \$50 per month is simply too low to ensure that tenants are taking their responsibility to become self-sufficient seriously. Additionally, the Task Force urges lawmakers to review whether the present income limitations could be adjusted to encourage housing beneficiaries to attain raises and promotions.

The Task Force also recommends expanding and making permanent HUD's Moving to Work (MTW) Demonstration Program. This program offers select PHAs increased flexibility to use federal housing funds to help people into self-sustaining employment situations, ending the dependency cycle. This program has shown positive and proven results to combat homelessness in some parts of the country with the highest homes prices and rates of homelessness.²⁵⁵

Presently, portability restrictions on the Housing Choice Voucher program make it difficult for beneficiaries to use their benefit outside of the jurisdiction of their local Public Housing Authority (PHA). These restrictions can limit the ability of an individual to accept employment that would offer a path to self-reliance and economic stability, if the job offer requires the individual to move outside of their local PHA jurisdiction. Congress should relax restrictions on Housing Choice Voucher portability, so that Americans, including those who are economically displaced by government policies related to the COVID-19 pandemic, may use vouchers to secure housing where they are able to secure job opportunities. Specifically, HUD should be required to grant portability requests, even when the 12-month residency requirement is not met, if the move is required for a new job

(i.e., a "special family need"). Additionally, Congress should allow a certain portion of a recipient's Section 8 vouchers to be used to cover moving expenses and to put down a security deposit to acquire housing. This expanded use would alleviate burdens on people who seek to move to new communities to better their economic livelihood and become more self-reliant. Additionally, eligibility of entities that can receive federal funding should be expanded beyond PHAs to include private organizations, such as transitional housing facilities and faith-based organizations. The Task Force also recommends subjecting housing grants to competitive bidding based in large part on the ability of local grant recipients to move beneficiaries out of subsidized housing and into permanent, non-subsidized, safe, and secure housing. This reform would be designed to reward only the most effective housing solutions, based on track records of success. Rep. Andy Barr (R-KY), Chairman of the American Worker Task Force, is presently developing legislation to implement these critical reforms.

To encourage private investment in public housing, housing authorities should be permitted to use profits to build units without government assistance and to reduce the need for federal funding. For example, Congress should expand the Rental Assistance Demonstration (RAD) Program and remove the statutory cap on the program. This would allow housing authorities to leverage public and private debt and equity to reinvest in public housing stock and ensure federal funding follows the people it is intended to serve—not the bureaucracy. According to the HUD Inspector General, over 25,000 families are receiving public housing benefits despite not meeting applicable income guidelines. When individuals are able to cheat welfare programs it takes benefits away from those that truly need them, which is particularly egregious during the difficult times posed by the current pandemic. Requiring PHAs to conduct periodic reviews of beneficiaries' income, as proposed by Rep. Bradley Byrne's Public Housing Accountability Act would help to close this gap and restore the value and dignity of work engagement.²⁵⁶

Additionally, the current structure of public housing benefits discourages marriage and the formation of families. According to one study, "A single mother receiving benefits from Section 8 or public housing would receive a subsidy worth on average around \$11,000 per year if she was not employed, but if she marries a man earning \$20,000 per year, these benefits would be cut nearly in half."²⁵⁷ When the federal government maintains marriage penalties, it subsidizes against the cornerstone of civil society, the family. This marriage penalty should be reduced or

eliminated as part of the Task Force’s overall goal to remove such penalties.

A portion of federal housing funding should be allocated to programs that are designed to assist those recovering from substance use disorder in order to help them become productive members of society. These programs should be open to faith-based, charity and non-profit organizations.

Furthermore, the waitlist system should be fixed. Currently, the public housing waitlists will not place recipients into a roommate situation, leaving some people without housing and needlessly increasing costs for both the federal taxpayer and the beneficiaries. A survey in 2012 suggested as many as 11.5 million families are on these waitlists and that the average wait time is around two years.²⁵⁸ These waitlists should be amended to allow for the placement of people into appropriate roommate situations when those opportunities exist.

Empowering Work-Able Individuals on Social Security Disability Insurance

Another crucial step in promoting a culture of work and self-reliance is reforming our welfare programs that help people with disabilities. Over the past 20 years, enrollment in Social Security Disability Insurance (SSDI or DI) has increased by over 60 percent. At the same time, the labor force participation rate has plummeted over the same time period to just 63 percent.²⁵⁹ This means there are fewer tax-paying workers supporting a growing non-working population—a recipe for disaster and economic stagnation.

Under the DI program’s current design, beneficiaries can become trapped and unable to earn a living even if they get healthier and want to return to work. Surveys of DI beneficiaries have shown that 40 percent of those receiving benefits are interested in working. However, only 3.7 percent of beneficiaries actually leave the rolls each year because they get a job.²⁶⁰ Beneficiaries face a “cash cliff” because they will be removed from the rolls if they earn above a set amount, creating a powerful incentive for beneficiaries to ignore employment opportunities.

The last few years have proved there are many good ideas available to tackle what will otherwise be the eventual insolvency of the DI Trust Fund head on. Reputable think tanks, such as the Mercatus Center²⁶¹ and The Heritage Foundation,²⁶² published proposals with innovative solutions and brought members of Congress, staff and experts together to discuss the problem. The

McCrery-Pomeroy SSDI Solutions Initiative was formed, and several papers detailing how to improve the DI program were presented at its conference. Among these efforts, former Rep. Todd Rokita introduced the Making DI Work for All Americans Act—now sponsored by Rep. Ted Yoho—a bill that pulls together many of the best reforms DI needs. The Task Force recommends implementation of most of the proposals in this bill along with a few additional reforms that would enhance its effects.

The Task Force recommends implementation of the following provisions of the Making DI Work for All Americans Act:

Establish a Single Flat Benefit Level. Creating a flat benefit for all SSDI beneficiaries would serve as an anti-poverty measure by increasing benefits for many SSDI beneficiaries and decreasing them for the highest income earners, reducing the present disincentive to reenter the workforce. Additionally, higher income earners are much more able to supplement SSDI with private disability insurance, allowing the organic growth of this market and encouraging free market solutions to safeguard against being unable to be in the workforce.

End Double-Dipping of Disability Insurance and Unemployment Insurance. These two programs are meant to serve mutually exclusive populations. DI is for individuals who are unable to work, and UI is for individuals temporarily unemployed. Individuals should not be allowed to draw benefits from both programs at the same time. Allowing this double dipping just incentivizes people to remain out of work for longer at the expense of those that are engaged in the workforce.

Match Retroactive Benefits to the Period of Retroactivity. Under current law, new beneficiaries receive back-pay for the months between filing their claim and being approved. However, they may also receive up to an additional 12 months of back pay for the retroactive period. This is the period when they had the disability but were not allowed to apply for SSDI benefits. However, individuals only need to wait 5 months after the onset of a disability to apply for benefits. As such, the Task Force supports only awarding these retroactive payments for up to 6 months to cover this mandatory waiting period and a month to file the claim.

Include Unearned Income in the Definition of Income. Under current law, benefits are only reduced if a beneficiary earns more income, serving as a work disincentive and allowing people with large unearned income (from investments, for example) to continue receiving SSDI benefits. This proposal would include all

passively earned income and all investment income to the assessed income of potential applicants and beneficiaries.

Update the Official List of Available Jobs. SSDI's official list of available jobs was last updated roughly 30 years ago. Consequently, it includes many jobs that are virtually non-existent and excludes jobs in many innovative and new industries. This allows many people that can now join the workforce, but perhaps could not a few decades ago, to instead continue to receive benefits and stay out of the workforce.

Eliminate the Non-Medical "GRID" Qualifications of Age, Education, and Work Experience. Congress must ensure that only the truly disabled are eligible to receive benefits. Unfortunately, the criteria to determine eligibility has not been amended to reflect advances in medicine, technology and the labor market, leading the GAO to designate federal disability programs, including the DI program, as "high risk."²⁶³ Many of the medical criteria have not been updated since the 1980's when the qualification standards were expanded. A large percentage of applicants suffer from mental or musculoskeletal problems, which can be difficult to diagnose. Thus, a diagnosis and ability-to-work determination can be subjective and can vary from one adjudicator to the next.

Many DI beneficiaries are now awarded benefits based on the "Medical-Vocational Grid" rather than meeting a specific condition on the "Listing of Impairments."²⁶⁴ The grid uses various factors (including age, education, skills levels, and English language proficiency) to determine if a person is disabled instead of focusing on whether a person can perform work in the modern or local economy. This has led to egregious oversights, including an instance where the SSA awarded benefits to individuals in Puerto Rico because they only spoke Spanish, despite the fact that "Spanish is the predominant language spoken in the local economy."²⁶⁵ The Task Force recommends these eligibility standards be updated to reflect the advances in science and medicine and that those standards be updated regularly and more uniformly applied.

Strengthen Continuing-Disability Reviews (CDRs). According to the Social Security Administration (SSA), these reviews are one of the most cost-effective tools for improving program integrity. Every dollar spent on reviews between 1996 and 2011 generated \$10 in future program savings.²⁶⁶ However, there is significant room to utilize modern technology to enhance their effectiveness. For instance, CDR mailers should be replaced with online questionnaires that can more easily ask

detailed questions to ensure that the CDRs report accurate data. SSA should also take advantage of advances in "big data" for data analytics and prioritizing backlogged CDR cases.²⁶⁷ A recent GAO study found that, "SSA could increase savings by refining its selection of cases for disability review."²⁶⁸ SSA should use these tools to better ensure that only people who are still disabled and unable to work continue to receive SSDI payments.

Allow use of Social Media in Eligibility Determinations. SSA should be allowed to look at the social media postings of applicants to verify their claims and prevent fraud. This would expand the capacity of SSA to ensure that it has accurate information and can prevent bad-actors from inappropriately relying on the income of those that do work.

Apply Judicial Code of Conduct to Administrative Law Judges (ALJ). The code of conduct that applies to ALJs is less stringent than the code that applies to other federal judges. The Task Force supports applying the same code followed by other federal judges to ALJs.

Conduct Reviews of Outlier Judges. There is presently no process to review judges that award either an unusually high or unusually low number of cases. The Task Force supports creating a method to review these judges to ensure a standardized process for adjudicating cases. This would increase the efficiency and accuracy of the process, ensuring the program does not subsidize against work engagement.

Reduce Target Caseloads for ALJs. ALJs hear appeals from DI applicants who have their initial application and reconsideration for benefits denied. ALJs face a huge task: as of FY 2018, the SSA faced a backlog of over half a million claims awaiting a decision, according to the SSA Office of Inspector General.²⁶⁹ The Task Force supports increasing the number of ALJs to improve the efficiency and accuracy of the process and reduce the long-term costs from initial inaccurate handling of cases.

Eliminate the Reconsideration Review Stage. Reviews occurring at the Reconsideration Review Stage are conducted in a nearly identical process to the first application, but by a different set of bureaucrats. This stage is not needed to go through the appeals process and simply adds to the backlog of cases without increasing the efficiency or accuracy of the process.

End SSDI Payments to Representatives Out of Personal Benefits. An audit from the SSA Office of the Inspector General on attorney representation at the initial application stage found that

only 37 percent of representatives assisted the client throughout the claim process, 41 percent helped only with filing the claim, and 22 percent appeared to provide no assistance at all.²⁷⁰

Unlike other legal cases, the clients in DI cases do not directly pay their attorneys. Instead, the SSA will withhold the attorney's fees from the successful claimant's award and transmit the fees to the lawyer. The SSA also provides reimbursement for attorney travel fees.²⁷¹ After a claimant wins an appeal, SSA awards the individual the benefits back-dated to when he or she originally would have been awarded them and pays out a lump sum. If the beneficiary had attorney representation, SSA deducts 25 percent of that amount (up to the maximum allowable fee of \$6,000) for the attorney's fee.²⁷² This arrangement guarantees these attorneys easy access to money in an uncompetitive process, incentivizes action to cause a delay in adjudicating a case, and prevents beneficiaries from being able to utilize their own benefits.

Building on the reforms in the Making DI Work for All Americans Act, the Task Force recommends implementation of several other reforms to the SSDI program:

Eliminate the Medical Improvement Review Standard. Once a beneficiary has been determined unable to work, *Eliminate the Medical Improvement Review Standard (MIRS)* prohibits that designation from being changed unless the beneficiary's medical condition has changed. However, as the state of the economy changes, some people that may not have been able to get a job when they began receiving SSDI benefits could now reenter the workforce, even if the underlying medical condition is unchanged. As such, the Task Force supports having the CDR process use the same standards for each review to simply determine whether or not a beneficiary can now reenter the workforce.

Give Employers a Stake in Reducing SSDI Costs. Employers and their employees are both better off when employees can stay in the workforce in some capacity. With this in mind, the Task Force supports implementation of a demonstration project to incentivize workplace accommodations. Specifically, it would allow the SSA to vary the employer-side SSDI payroll tax for companies based on how many of their employees go into the program in a way that is revenue neutral in the aggregate. This reform would be similar to what is now done under the Unemployment Insurance system. It would give employers an incentive to see their workers remain engaged in the workforce.

Require SSDI Applicants to Have Worked in Recent Years. In general, applicants for SSDI must have worked five of the

last ten years to be eligible for benefits. That means someone who has not worked in the last five years could be eligible for SSDI benefits. To focus the program on people who leave the workforce because of a new disability, applicants should be required to have worked in forty of the past sixty months (excluding the length of the current pandemic).

Utilize Private Disability Insurance. Compared with SSDI, private disability insurance offers better benefits and results in workers returning to work faster. It also accomplishes this at a cheaper cost than SSDI.²⁷³ Employers that offer long-term private disability insurance often work with the employee and the insurance company to provide workplace accommodations in the event a covered employee becomes disabled. These plans also often have comprehensive disability management programs that can help rehabilitate individuals and prepare them to reenter the labor force when possible. About 40 million private sector workers are covered by these types of plans.²⁷⁴ Steps should be taken to allow more workers to adopt private disability coverage, and to promote better integration of private insurance with the government-run SSDI system.²⁷⁵ Employers and employees could be allowed to forgo paying a portion of payroll taxes and instead use those funds to pay for private disability insurance. Another option could be to allow states to opt out of federal SSDI and instead produce a state-run program or a fully private system. Such reforms could reduce tax burdens, cut costs, and implement innovative methods of fulfilling the role of the SSDI Trust Fund.

Streamlining Programs through Pilot Projects

The Task Force supports the Help Americans in Need Develop Their Ultimate Potential (HAND UP) Act, introduced by Rep. Tom Reed, which would allow states to combine several welfare programs, including TANF, SNAP, the Social Services Block Grant, housing programs and workforce innovation programs, into a single streamlined program. This would give states more flexibility to administer assistance programs, but would still require states to encourage work and self-reliance with the goal of moving families and individuals out of poverty.

Under a variation of this proposal, the multitude of programs could be combined and the funding could be provided to a state in a single trust fund at a level based on the historical average across a business cycle. Using the trust fund, a state could choose to save funds during good years and draw down more funds when their economy is under performing. This would be paired with appropriate conditions, such as penalties for states that refuse to incorporate anti-dependency

requirements. Another option would be giving individuals a choice of programs for which they could be eligible while ensuring they do not receive duplicative benefits.

Prioritizing American Citizens

For over 100 years, the “public charge” doctrine has served as a cornerstone of U.S. immigration law. It also lies at the nexus of welfare reform and immigration policy. It can either promote the American worker or simply create more government dependency. According to this doctrine, the U.S. should deny admission and permanent residence to any individual likely to depend upon the government for subsistence. The concept is a simple one: our country should be open to those that will seek the American dream, not those that will seek to depend on the American taxpayer. The more that each American taxpayer is relied upon for the wellbeing of those that do not work, the more our nation promotes disengagement from the workforce. Particularly during times of economic uncertainty, our government must be cautious of admitting foreigners likely to become dependent on our welfare system and on the American taxpayers that fund it.

The welfare reforms of 1996 embraced this notion by limiting welfare benefits to citizens and certain categories of legal immigrants after having been in the U.S. for five years. The Task Force would build on these reforms by recommending that welfare funds only be available for U.S. citizens (including legal immigrants that are now naturalized U.S. citizens) and refugees for their first two years in the United States.

On February 24, 2020, the Department of Homeland Security (DHS) finalized a rule strengthening the criteria it uses to determine whether an alien is ineligible for permanent residence to the U.S. on account of the alien’s likelihood of becoming a public charge.²⁷⁶ Implementing this rule will encourage self-sufficiency among immigrants and protect the welfare system from excessive burden. The Task Force supports this rule as a step in the right direction and urges congressional codification. Unfortunately, on July 29, 2020, the U.S. District Court for the Southern District of New York enjoined the Department of Homeland Security from enforcing the final rule during the COVID-19 pandemic, a clear act of judicial activism.

Also, the Task Force supports amending welfare funding formulas to exclude illegal alien populations when calculating the grants given to states. Further, the Task Force supports requiring that all people are checked through the Department of Homeland Security E-Verify system before being able to take

advantage of a federal job training program. This way, funding for federal job training programs would only go to people who can legally work in the U.S., ensuring these funds are invested in developing the American worker.

Protecting Beneficiaries Against Waste, Fraud, and Abuse

A disappointing consequence of the federal government spending so much on assistance programs is the predictable fraud that occurs. Fraud and waste also create an incentive to cheat, which degrades the work done by honest Americans and jeopardizes benefits for those who truly need them. Wasted funding also makes it exceedingly more difficult for lawmakers to remedy marriage penalties present in a number of programs and tax benefits, such as the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC). These penalties can have a disastrous impact on the formation of families and the creation of environments that promote self-sufficiency and responsibility.

For example, according to USDA, fraud is rampant in the SNAP program, growing 128 percent between 2010 and 2016.²⁷⁷ The EITC is also plagued with a high improper payment rate at 25.26 percent in FY 2019 equaling over \$17.3 billion.²⁷⁸ The IRS overpaid roughly \$7.2 billion in Additional CTC payments in FY 2019 as well.²⁷⁹ Medicaid’s improper payment rate of 14.9 percent is staggering, with \$57.3 billion in improper federal payments in FY 2019 alone.²⁸⁰ Medicaid’s annual improper payments are larger than almost all federal programs and almost three times the size of NASA’s entire annual budget. While not all improper payments are a result of fraud, improper payment rates are a useful indicator of fraud levels.

Congress exacerbated this problem within Medicaid during the pandemic response with so-called maintenance of effort (MOE) provisions enacted in the Families First Coronavirus Response Act. The MOE provision restricts a state’s ability to combat waste in their Medicaid program by prohibiting any changes to eligibility or benefits in exchange for a 6.2 percent increase in the federal Medicaid match rate during the pandemic. This means that a state could not remove anyone from their Medicaid program who was enrolled at the time or after the bill passed, even if an individual was no longer eligible or even committed fraud.²⁸¹ This change has resulted in a 5 to 7 percent increase in reported Medicaid membership growth over the last few months, attributable entirely to coverage of individuals who otherwise would be ineligible.²⁸² Congress must immediately undo these harmful provisions and afford states the ability to fight waste, fraud, and abuse in the programs they oversee.

Upon an application for benefits, agencies can and should stringently verify and crosscheck the criteria for eligibility, such as income, residency, identity, employment, citizenship status, and receipt of any current benefits to ensure the applicant is actually eligible for the program. Once a beneficiary is enrolled, the agency should regularly conduct reviews of the beneficiary's eligible information, including by crosschecking other government datasets. Finally, if the agency determines a beneficiary is no longer eligible, the beneficiary should be removed from the rolls and the agency should refer those who knowingly break the law to authorities for prosecution.²⁸³ At all times, agencies need to remember their mission is to keep people out of the welfare dependency trap and to move people to a productive life of self-sufficiency. Under no circumstance should success at a welfare agency be measured by how many people can be kept on the rolls.

The federal government should reduce fraud in state-administered programs by incentivizing state agencies and attorneys' general to investigate and prosecute welfare fraud. If states are allowed to retain a portion of the dollars recovered due to their actions against fraud and abuse, they will be more likely to crack down on it.

States should also be encouraged to withhold benefits from individuals who test positive for illegal drugs, as provided by Rep. David Rouzer's Drug Testing for Welfare Recipients Act. In March 2017, Congress and President Trump took an important step in this direction by enacting a Congressional Review Act resolution disapproving of an Obama-era Department of Labor regulation that blocked states from even performing limited drug testing for certain welfare applicants.²⁸⁴

Some welfare programs include "bonus payments" to states that may be well intentioned but can unfortunately harm the integrity of the programs. For instance, a bonus payment aimed at rewarding efficient administration of a program could have the unintended consequence of incentivizing state agencies to ignore improper payments. The SNAP program has reportedly paid performance bonuses for expanding enrollment.²⁸⁵ Performance bonuses should be thoroughly reviewed and eliminated if they jeopardize the integrity of programs.

Fraud, in the EITC and CTC, should be reduced by requiring the IRS to better verify income and verify that tax filers actually care for and have custody of the children they claim to receive higher benefits. Families claiming self-employment income should be required to provide better documentation, and the

IRS should be allowed to cross-check TANF, SNAP and public housing rolls to verify family size and income. Penalties should be increased for erroneous claims. Moreover, the EITC should be entirely cut off from individuals without a work-eligible Social Security number and for illegal immigrants issued a Social Security number under President Obama's executive amnesty, as proposed by Rep. Patrick McHenry's No Free Rides Act and Rep. Glenn Grothman's Preventing Illegal Immigrants from Abusing Tax Welfare Act. The savings from these reforms would allow lawmakers to create a stronger combined tax credit that does not contain a marriage penalty.

With our entitlement programs facing dire financial futures and more Americans receiving welfare benefits than ever before, we cannot afford to waste money simply because the federal bureaucracy writes checks to the wrong people or for the wrong amount. The agencies—at both the federal and state levels—that administer the dozens of welfare programs owe it to the American people to do better. These errors, waste, and fraud do not just cost taxpayers money; they divert resources away from helping those who need it most, creating a cycle of dependency that traps generations in poverty and depletes the American workforce.

Leveraging the Market to Pay for Success

The federal government operates nearly 90 means-tested programs, in addition to the dozens that states run with federal funding.²⁸⁶ Many of these programs seek to achieve a specific goal. For instance, the goal of the Job Corps program, which provides technical training to students, is to prepare participants to enter the workforce, enroll in a program of higher education, or join the military. However, providers are often paid by how many individuals they serve, whether or not the program works. The current funding structure allows failing programs to continue rather than reallocating the funds to more successful models.

One policy option that is worth exploring is incorporating the pay-for-success components into existing programs. Funding programs based on goals allows the federal government to set program objectives and fund programs that can demonstrate success, allowing innovation to flourish and reducing the need for stringent federal regulation of programs carried out at the state and local level. One application of this idea allows states to issue Social Impact Bonds to finance specific projects to accomplish the goals of the program through non-governmental providers.²⁸⁷ State and private investors who purchase these bonds would be reimbursed by current federal

programs only if an independent evaluator finds the project is successful at meeting stringent pre-established goals. This approach minimizes the risk and maximizes the return for taxpayers. This would also work to integrate market efficiency into these projects, ensuring these programs help low income people find meaningful work. Instituting this concept is even more important and timely as we emerge from the market reorienting pandemic.

Several federal laws already include provisions that require or allow pay-for-success initiatives, including the Workforce Innovation and Opportunity Act (WIOA), the Every Student Succeeds Act, and the Carl D. Perkins Career and Technical Education Act. The Task Force recommends that Congress evaluate the effects of existing pay-for-success provisions and incorporate pay-for-success language into other federal programs where appropriate.

CONCLUSION

At the beginning of the 116th Congress, the RSC's American Worker Task Force set out with a simple goal in mind: to empower our workforce to meet its full potential. When the Task Force convened in 2019, the labor and economic landscape was drastically different than today. Policies advanced by the Trump administration and previous Republican-led Congresses allowed our economy to quickly recover from the sputtering Obama-Biden era and soar to unprecedented levels. But then the COVID-19 pandemic and related economic fallout hit, drastically changing the immediate labor market configuration.

As a result, the Task Force set about reevaluating the landscape and its supported policies to ensure the best possible set of recommendations. In doing so, it quickly became clear that the conservative policies we had already compiled to take our nation and its workers to the next level were more important than ever. They presented not only the best means of optimizing a strong economy, but also the best solutions to generating a timely economic rebound. They also served as the foundation for the development of new policies more specifically designed to address the unique challenges presented by the pandemic.

The Task Force knows that more prosperous days lay ahead for our nation. However, the level of prosperity and the speed with which we reach it depend on protecting the liberty and opportunity of our citizens. These two ingredients have been key to the success of our people and our nation. We urge current and future lawmakers to adopt the proposals contained in this report. Together, they will provide a path to Reclaiming the American Dream.

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Congress of the United States
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Washington, DC 20515-0906

April 27, 2020

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
H-232, U.S. Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
H-204, U.S. Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, U.S. Capitol
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
S-220, U.S. Capitol
Washington, D.C. 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

The Republican Study Committee's (RSC) Budget & Spending Task Force writes to express our deeply held conviction that as part of the overall effort of Congress to address the present COVID-19 pandemic, there is an urgent need for us to also address the inextricably related emergency that is our dangerous level of national debt.

In the wake of unprecedented government action to stop the spread of this virus and protect the lives of our people, Congress enacted the CARES Act to defray the cost those actions impose on hard-working Americans. Moving forward, it is equally important to limit the debt those extraordinary actions will occasion. Annual deficits were already expected to surpass \$1 trillion for FY 2020 and only grow in perpetuity. Recent COVID-19 legislation will now add trillions more debt in the next several years while federal revenues will nosedive in the midst of an economic downturn.

For these reasons, the RSC's Budget & Spending Task Force urges Congress to undertake two critical efforts to protect the fiscal health of our nation while it protects the physical health of its citizens:

1. Congress should offset future COVID-19-related deficits. Given the present fiscal crisis, the thought of any more debt-financed spending seems unimaginable. This is especially true considering the enormous burden our debt will already place on Americans for generations to come. For this reason, Congress should offset the debt impacts of any further COVID-19-related legislation. The RSC Budget & Spending Task Force's FY 2020 budget "Preserving American Freedom" contains more than \$10 trillion in specific programmatic deficit reducing reforms. There are more than enough recommendations contained in the budget to ensure that if further COVID-19 legislation is needed, it be carried out in a way that does not jeopardize the solvency of our republic. Reforms contained in the budget range from thoughtful, long-term approaches to contain entitlement spending to those designed to eliminate irresponsible federal spending on items such as the Kennedy Center, Brand USA, the Forest Products Laboratory, the Legal Services Corporation, the Corporation for Public Broadcasting, and the Stennis Center, among many others.

2. Congress should implement a long-term spending control mechanism. The last time the Congress took deliberate action to address our national debt was nearly ten years ago when it enacted the Budget Control Act (BCA) of 2011, which sought to reduce federal spending by over \$1 trillion. The BCA was enacted in the wake



of the Great Recession and after two consecutive years of deficits over \$1 trillion. Given the BCA's expiration at the end of next fiscal year and impending multi-trillion-dollar deficits, it is critical that Congress act to control our out-of-control spending. Any new mechanism should include restrictions on the growth of both mandatory and discretionary spending, avoid reliance on tax increases, and stabilize our nation's debt. The Task Force supports enacting a mechanism that would limit the annual growth of future spending to 60 percent of the growth in federal revenues (which would itself be capped as a percentage of GDP). Another debt-stabilization approach is a "debt brake" that ties spending to potential GDP, as the Maximizing America's Prosperity (MAP) Act, sponsored by Rep. Kevin Brady's (TX-08), would accomplish.

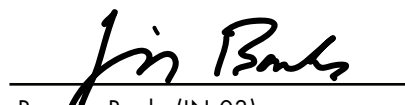
Moreover, the RSC's budget proposes a number of tools that each would contribute to the long-term stabilization of the national debt. For instance, it recommends automatic votes to consider the deficit reductions offered in a budget resolution, expanding the reconciliation process to include on and off-budget items and discretionary spending, requiring super-majority votes for emergency spending, and expanding mandatory sequestration.

To rebound from the COVID-19 pandemic, it will take the collective strength and effort of our entire nation. That same resolve will be needed to overcome the threat posed by our seemingly insurmountable debt. It is not too late for us to take the actions necessary to secure the future of America and our posterity—but that work must begin now.

Sincerely,



Rep. Mike Johnson (LA-04)
Chairman, Republican Study Committee



Rep. Jim Banks (IN-03)
Chairman, RSC Budget and Spending Task Force

CC:

The Honorable Donald J. Trump
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The Honorable Mike Pence
Vice President of the United States
Chair, White House Coronavirus Task Force
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The Honorable Charles Schumer
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United States Senate
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Washington, D.C. 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

The Republican Study Committee's Health Care Task Force has been closely monitoring the current COVID-19 pandemic, and we write to reaffirm our commitment to a targeted, effective, and thoughtful response to this unprecedented crisis.

After approving the largest spending authorization in American history, it is imperative that the focus of Congress remains fixed on ensuring those dollars are spent wisely and efficiently on the emergency response, correcting any unforeseen issues produced by prior legislation, and strengthening the capability of our health care system to counteract the virus.

At the same time, Congress must be faithful to its responsibility to defend our Constitution and preserve the inalienable rights to life, liberty and property. As conservatives, it is our particular responsibility to safeguard those rights and foundational principles for generations to come. Those are the same principles that have guided our great nation since its founding, and they guide us still today in our response to the novel coronavirus and in our ongoing fight to strengthen America's health care system. Now, more than ever, Americans need a system that puts the patient first, gives doctors and nurses the supplies they need, and removes the inherent barriers to innovation latent in our bureaucracy.

Phase III of the Congressional response to COVID-19, the recently passed Coronavirus Aid, Relief, and Economic Security (CARES) Act, included a number of policies based on those priorities. It bolstered the Strategic National Stockpile with needed medical supplies such as personal protective equipment (PPE), removed barriers to telemedicine at the Centers for Medicare and Medicaid Services (CMS), and streamlined Food and Drug Administration (FDA) regulations to confront the current drug and device shortages our nation faces.

Those measures build on the actions taken by the Trump Administration to streamline approvals, strengthen supply, and increase flexibility within our federal health programs. The administration's forward-thinking approaches, including policies such as relaxing the regulation of health savings accounts (HSA), expanding health reimbursement



arrangements (HRA), and increasing the availability of short-term limited duration (STLD) plans, will be essential for millions of Americans who now find themselves in need of choices as they face increasing economic uncertainty.

At the Republican Study Committee, we also take seriously our duty to expose and denounce any efforts to exploit the tragedy of this pandemic for partisan purposes. Before President Trump had even signed the \$2 trillion Phase III bill, top Democrats were already calling for a Phase IV package of legislation riddled with liberal wish list items unrelated to the current crisis. Before future legislative measures are considered, it is imperative that we gain a better understanding of both the threat being faced and the effects of the actions we have already taken. Only then can Congress act with wisdom and in a manner that does not waste the limited resources of American taxpayers.

If and when further action is required of Congress, such action must be targeted toward what is needed to combat COVID-19, now and in any subsequent waves. The following policy options would provide our health care system with the flexibility and stability it needs to address and overcome this challenge:

1. Suspend the requirement that HSAs be tied to a high-deductible health plan (HDHP).
2. Have the FDA fast-track the approval here of any device or drug already approved to test for COVID-19 in one or more allied countries.
3. Establish a Pharmaceutical Chief Negotiator at the United States Trade Representative (USTR) to identify and address protectionist measures that could disrupt supply chains or freeload on innovative investments. This new official would also use enforcement tools against foreign governments that exploit protectionist measures to devalue and impose price controls on American innovation.
4. Remove regulatory barriers to the production of drugs, pharmaceutical ingredients and medical devices in America to support the onshoring of manufacturing and reduce financial risk for manufacturers who relocate or expand production capacity in the United States. Allow businesses to fully and immediately expense their investments in research and development and physical capital.
5. Utilize EUREKA prize competitions to incentivize the rapid development of a therapeutic drug or drugs to treat COVID-19 now and in subsequent waves.
6. Suspend the ban on new physician-owned hospitals (POHs) to allow for hospital supply to catch up with the rapid uptick in demand for hospital services.
7. Encourage states to suspend certificate-of-need laws which restrict the ability of hospitals and hospital systems to add capacity, which can have devastating effects during a crisis.
8. Direct the Federal Aviation Administration to relax federal restrictions on drone deliveries of medical supplies.
9. Build upon the CARES Act and efforts of the Trump administration to further expand the availability of telemedicine services and encourage licensing reciprocity to allow for telemedicine delivery across state lines.
10. Ensure that new funding, subsidies, tax credits, and reforms cannot be used to provide access to elective abortions.

As a top priority, we must oppose any partisan health care policy proposals that are not directly related to the issues at hand. The early lessons from the public health response to COVID-19 show the most effective actions taken so far have been driven by private sector innovation and resulted from federal and state governments removing bureaucratic red tape. In contrast, the failings of big-government, single-payer systems in the United Kingdom and Italy should serve as a warning that more government barriers only hinder an effective response. Understanding



this, the Trump administration has enabled massive bureaucracies within HHS, CMS, and the FDA to move with unprecedented efficiency. These successes should be supported, not burdened with politically-driven wish lists and mandates.

Every day of this crisis we lose more of our beloved family members, friends, neighbors and fellow citizens. Still, the great tragedy this pandemic is accompanied by the solemn and hopeful reminder that we are all in this together. The virus sees no partisan lines, no state borders, no religion, race, or gender. It afflicts doctor and patient alike. And while it may inevitably transform humanity in many ways, certain principles will always serve as our nation's creed: all of us are created equal, and endowed by God with inalienable rights to life, liberty, property and the pursuit of happiness.

We stand ready to work with you to protect those rights.

Sincerely,



Rep. Mike Johnson (LA-04)
Chairman, Republican Study Committee



Rep. Roger Marshall, M.D. (KS-01)
Chairman, RSC Health Care Task Force

CC:
The Honorable Donald J. Trump
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Washington, D.C. 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

The Republican Study Committee's (RSC) National Security & Foreign Affairs Task Force writes to express our belief that China must be held accountable for any harmful actions it may have taken related to the COVID-19 pandemic.

The Task Force is deeply concerned over reports that since the earliest accounts in December 2019 of the virus that originated in Wuhan, China, the Chinese government may have concealed critical information from the world about COVID-19. Vice President Mike Pence has even stated that China was aware of the dangers related to the virus as early as November. It has also been reported that when Dr. Li Wenliang tried to warn the Chinese public, about COVID-19, he was arrested by the Chinese authorities and eventually died in prison. Because China refused to allow journalists and scientists into Wuhan soon after the virus emerged, our nation and others were hindered in our initial responses. Incredibly, Chinese officials then spread disinformation to blame the United States for the virus, even claiming that COVID-19 was created by the U.S. military. For all these reasons, there are legitimate concerns regarding the accuracy of all data emanating from China.¹

The present pandemic should also cause policymakers to investigate a number of aspects of U.S.-China relations, including possible undue Chinese influence within international institutions such as the World Health Organization (WHO), which have defended China's response to the pandemic. As the number of cases and the death toll soared, the WHO took months to declare the COVID-19 outbreak a pandemic.

¹ Culver, David, As China Goes Back to Work, Many Wonder If the Country's Coronavirus Recovery Can Be Trusted, CNN (Apr. 3, 2020) <https://www.cnn.com/2020/04/02/asia/china-coronavirus-numbers-trust-intl-hnk/index.html>.



It is essential that Congress takes the following measures to hold China accountable for any harmful actions it may have taken with respect to the current pandemic:

1. Authorize sanctions against any foreign official who is found to have been involved in a COVID-19 cover-up, as would be authorized by the Li Wenliang Global Public Health Accountability Act, sponsored by Rep. John Curtis and Sen. Tom Cotton.²

- End all visas for Chinese government officials and their children to come to the U.S. whether for education, leisure, or other purposes, until China retracts its statements blaming the U.S. for the virus.

- Counter Chinese propaganda and disinformation efforts by enacting H.R. 1811, the Chinese Government and Communist Party's Political Influence Operations Act, sponsored by Rep. Chris Smith and Sen. Marco Rubio. This bill directs the Department of State to devise a long-term strategy to counter the Chinese government's political influence operations and requires a report on Chinese influence operations in the U.S.

- Prohibit the distribution of China Daily, a publication owned by the Chinese Communist Party, to congressional offices and require the Department of Justice to investigate China Daily's compliance with the Foreign Agents Registration Act. China Daily plays an important role in China's ongoing disinformation efforts and yet is delivered to congressional offices alongside American newspapers.³

- Limit the Foreign Agent Registration Act (FARA) exception for academic activities to apply only if the activities do not promote the political agenda of a foreign country. This would ensure that Confucius Institutes, which are Chinese government-controlled language institutes on U.S. college campuses, are not used to promote Chinese political narratives. Also, reduce the threshold required for universities to disclose foreign contributions from \$250,000 to \$50,000. Both proposals are included in the Foreign Influence Transparency Act, introduced by Task Force Chair Rep. Joe Wilson (SC-02).

- Press the Chinese government to permit access to China for the U.S. Centers for Disease Control and Prevention (CDC) to better respond to COVID-19 pandemic.

- Require the State Department to investigate the disappearance of three Chinese citizen journalists who sought to expose the impact of the coronavirus on the Chinese city of Wuhan and enact sanctions on those found responsible for the disappearances under the Global Magnitsky Act, as requested in a letter authored by Rep. Jim Banks (IN-04).⁴

- Undertake a congressional probe of the WHO, its response to the COVID-19 pandemic, and its relationship with China. Build off President Trump's funding freeze by basing future federal funding decisions on the results

² Press Release, Curtis Teams Up with Senators Cotton, Hawley, on Li Wenliang Global Public Health Accountability Act, Congressman Curtis (Apr. 2, 2020) <https://curtis.house.gov/press-releases/curtis-teams-up-with-senators-cotton-hawley-on-li-wenliang-global-public-health-accountability-act/>.

³ Katherine Tully-McManus, Why Is a Chinese Propaganda Newspaper Delivered to Congress? Rep. Jim Banks Wants to Know, ROLL CALL (September 30, 2019) <https://www.rollcall.com/2019/09/30/why-is-a-chinese-propaganda-newspaper-delivered-to-congress-rep-jim-banks-wants-to-know/>.

⁴ Press Release, Banks Calls For Investigation Into Three Missing Chinese Journalists, U.S. Congressman Jim Banks, April 1, 2020. <https://banks.house.gov/news/documentsingle.aspx?DocumentID=1651>.




of congressional and administration investigations along with adoption of reforms to instill independence, transparency, and accountability at the WHO.

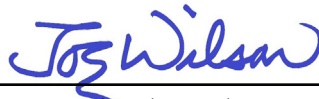
- Ensure Taiwan’s membership in the WHO by passing H.R. 237, sponsored by Rep. Ted Yoho (FL-03), to direct the Secretary of State to deliver a strategy to Congress regarding how the U.S. will work to regain observer status in the WHO.
- Enact H.R. 2744, the USAID Branding Modernization Act, sponsored by Rep. Michael McCaul (TX-10), to authorize USAID to use American branding and insignia when providing foreign assistance. China has taken advantage of the crisis to distribute foreign assistance throughout the world using its own branding which makes it even more imperative that U.S. assistance is branded.

Failing to investigate and hold the Chinese Communist Party accountable for actions found to have hidden or exacerbated the COVID-19 pandemic would be a mistake. China is already using the crisis as an opportunity to act as “both the arsonist and the firefighter⁵,” by exacerbating the crisis and attempting to play rescuer through the provision of medical goods. We urge that Congress undertake these important items quickly in the wake of the current pandemic.

Sincerely,



Rep. Mike Johnson (LA-04)
Chairman, Republican Study Committee



Rep. Joe Wilson (SC-02)
Chairman, RSC National Security & Foreign Affairs Task Force

CC:

The Honorable Donald J. Trump
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The Honorable Mike Pence
Vice President of the United States
Chair, White House Coronavirus Task Force
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⁵ Sobolik, Michael, Don’t Let the Chinese Communist Party Use the Coronavirus to Its Advantage, NATIONAL REVIEW, (Mar. 29, 2020). <https://www.nationalreview.com/2020/03/coronavirus-pandemic-chinese-communist-party-trying-escape-blame-take-advantage-recovery/>.





Congress of the United States
House of Representatives
Washington, DC 20515-0906

April 27, 2020

The Honorable Nancy Pelosi
Speaker of the House
United States House of Representatives
H-232, U.S. Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
H-204, U.S. Capitol
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The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, U.S. Capitol
Washington, D.C. 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
S-220, U.S. Capitol
Washington, D.C. 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

The Republican Study Committee's American Worker Task Force has been closely monitoring the current COVID-19 crisis facing everyday Americans. In the days ahead, perhaps more than ever before, our nation must cultivate a labor market that eases the transition from unemployment to a paycheck.

For more than a year, the Task Force has been examining policy ideas to target the problems and factors that adversely affect America's job market. While the main reason many people may find themselves out of a job at this time has changed, many of the institutional and legal barriers that have hindered employment opportunities will unfortunately remain unmoved. That is, unless we work together to reduce and eliminate them.

As our nation will soon begin the process of reviving the economy, we believe the adoption of our proposals is more important than ever. Our solution-oriented policies take a worker-centric approach to achieve strong employment outcomes for American workers, and they can provide a platform as we move forward.

While we have developed, collected and reviewed hundreds of ideas, we believe the following are practical and innovative strategies to mitigate the pandemic's impact and facilitate our nation's economic and employment recovery:

1. Enact the NEW GIG Act. The COVID-19 crisis has highlighted the gig economy's importance like never before and hit many of these workers particularly hard. At a time when many gig economy workers are struggling to make ends meet, Congress should reduce barriers that hinder them from making a living. One way to do so would be to enact the NEW GIG Act, sponsored by Rep. Tom Rice (SC-07). The bill would ensure that a worker is classified



as an independent contractor for income and employment tax purposes so long as they meet three objective tests set forth by the legislation: (1) the worker is treated as an independent contractor and not an employee; (2) the customer is not treated as the employer; and, (3) if a third party facilitates payments and transactions, the third party is not treated as the employer.

2. Promote Worker Upskilling Opportunities through Tax Deductibility. While federal tax policy allows for large deductions for some types of investment spending, these deductions are very limited for education services for workers, such as upskilling. The imbalance for these deductions harms workers and disincentivizes hiring and job training. Congress should equalize the tax treatment of all types of investment by allowing businesses to deduct their investments in education services for their workers that train them for higher employment. This would move the tax code further towards pro-growth optimization and would remove this harmful imbalance against employees.

3. Enact the Restoring Board Immunity Act. Every day across the country, thousands of people are prevented from entering industries due to onerous occupational licensing laws. Members of the regulatory boards who establish the standards for the licenses are often members of the regulated profession. Moreover, strict occupational licensing laws are regressive making it difficult for “the most economically disadvantaged among us to acquire a license due to the time, fees, and education necessary to acquire one. The result is that millions of would-be workers are locked out of the workforce because they lack the means to obtain a license.”¹ Thus, the Task Force recommends enactment of the Board Immunity Act, introduced by Sen. Mike Lee (R-UT), which would grant anti-trust immunity to actions by these boards only if they adopt reforms designed to prevent runaway occupational licensing restrictions.

4. Suspension of Occupational Licensing Requirements for Health Care Workers Across State Lines. In the present health care crisis, occupational licensing barriers put up by states can mean life or death since key personnel cannot easily shift between outbreak epicenters. For nurses and doctors, their credentials are already certified by a trusted national organization in addition to states’ individual licensing boards. A number of states have already taken the wise step of reducing licensure barriers for practicing medicine within their borders.² The Task Force stresses the importance of other states undertaking these actions as well.

5. Enact the Working Families Flexibility Act. While many employees seek higher pay as their top priority, a growing number of American workers place a higher value on the ability to spend more time with family. During an emergency, employers may need certain workers to perform longer hours. Under current law, private employers are required to pay employees overtime at 1.5 the employee’s regular rate of pay, and do not have the opportunity to offer comp time instead. To provide employees with more options, the Task Force recommends implementing the Working Families Flexibility Act, introduced by Sen. Mike Lee (R-UT), to provide more flexibility for employers and employees with regard to compensatory time off. Under the bill, employers would have the option of offering comp time or overtime pay. Employees could voluntarily elect to receive comp time in lieu of overtime pay, which would empower employees to select the option that best fits their individual needs. This could allow employees significant time off that may be needed to address issues at home during the present crisis or in its aftermath.

6. Enact the RAISE Act to Reward High Performing Workers. In times of emergency, certain industries and their employees are in higher demand and endure higher levels of stress than normal. Under current law, union

¹ Shosana Weissman & C. Jarrett Dieterle. Moving to a new state and finding a job could soon be a lot easier, R STREET INSTITUTE (Feb. 14, 2020) <https://www.rstreet.org/2020/02/14/moving-to-a-new-state-and-finding-a-job-could-soon-be-a-lot-easier/>.

² Federation of State Medical Boards, COVID Advocacy Summary, (accessed Apr 20, 2020) <http://www.fsmb.org/advocacy/covid-19/>.



contacts set both a wage floor and a wage ceiling. As a result, individual workers cannot be given raises, including performance-based raises, by their employers. The Task Force recommends allowing employers operating under a union contract to award bonuses and pay raises to employees without having to obtain permission from union bosses. The Rewarding Achievement and Incentivizing Successful Employees Act (RAISE Act), introduced by Rep. Dusty Johnson (SD-AL), would allow employers to pay individual workers more than is specified in the union contract, which could provide much-needed compensation during the current crisis and eventual economic recovery.

7. Enhance Portability of Housing Vouchers. Presently, portability restrictions on the Housing Choice Voucher program make it difficult for beneficiaries to use their benefit outside of the jurisdiction of their local Public Housing Authority (PHA). These restrictions can limit the ability of an individual to accept employment that would offer a path to self-reliance and economic stability, if the job offer requires the individual to move outside of their local PHA jurisdiction. Congress should temporarily relax restrictions on Housing Choice Voucher portability, so that Americans who are economically displaced by government policies related to the COVID-19 pandemic may use vouchers to secure housing where they are able to secure job opportunities. Specifically, HUD should be temporarily required to grant portability requests, even when the 12-month residency requirement is not met, if the move is required for a new job (i.e., a “special family need”). Any costs that may be associated with this pro-work proposal can be addressed through the \$1.935 billion in additional FY 2020 funding made available for Tenant-based Rental Assistance and the Public Housing Operating Fund in the CARES Act.

Additionally, Congress should allow a certain portion of a recipient’s Section 8 vouchers to be used to cover moving expenses and to put down a security deposit to acquire housing. This expanded use would alleviate burdens on people who seek to move to new communities to better their economic livelihood and become more self-reliant.”

8. Extend Financial Aid Eligibility for Short-Term Programs. Congress should allow short-term career and technical education programs to access the same federal funding opportunities, especially Pell Grants, for which traditional four-year college students and long-term technical education program students qualify. In times of economic uncertainty, lawmakers should seek ways to afford Americans ample opportunities to develop their talents in a way that results in a meaningful career with less student loan debt. These faster programs could help more people transition from the swollen unemployment rolls into well-paid jobs much more efficiently and serve as a better response to crisis than traditional 4-year degree programs. In particular, the Task Force recommends enactment of the Pell Flexibility Act, introduced by Rep. Jim Banks (IN-03).

9. Allow Access to 529 Education Savings Accounts for Homeschooling Expenses. The COVID-19 outbreak revealed the relative weakness in the ability of many school systems to provide educational services and instruction while students are forced home. Parents have been required to fill the need with their own resources, which were already stretched due to the economic downturn. A smart and relatively easy-to-implement solution would be to allow Internal Revenue Code Section 529 educational savings plans to pay for these unexpected homeschooling expenses. Gaps in a student’s educational development can be detrimental and this could help many parents address critical homeschooling needs with funds already set aside for education.


10. Expand the Rental Assistance Demonstration (RAD) Program under HUD. In times of crisis such as these, local public housing authorities may not be nimble enough, or may be too overwhelmed, to properly service their increased volume of requests. To encourage private investment in public housing, Congress should expand the Rental Assistance Demonstration (RAD) Program and remove the statutory cap on the program to continue to allow



housing authorities to leverage public and private debt and equity to reinvest in public housing stock. Congress should also explore other ways to increase the rate of voluntary conversions by PHAs of their public housing units to voucher-based housing.

11. Ensure an All-of-the-Above Approach to Ending Homelessness. Congress should not allow this crisis to further prevent successful providers of homelessness assistance from serving their communities. The CARES Act includes language preventing homeless service providers funded by the HUD Emergency Solutions Grants (ESG) program from requiring program participants to utilize supportive services (e.g., job training, financial literacy, substance abuse treatment). This excludes emergency shelter programs and faith-based organizations who successfully rely on a model of accountability. Data suggest an exclusive reliance on the 'Housing First' model may not be as successful as a comprehensive approach that includes wraparound services. Congress should embrace an all-of-the-above approach, and direct funding through a competitive process based on history of transitioning people out of homelessness. Additionally, Congress should reject efforts by some to cancel HUD's Continuum of Care (COC) grant competition in a veiled effort to require an exclusive reliance on 'Housing First' policies.

The RSC's American Worker Task Force believes these practical solutions can offer hope and stability to our nation and its workers now and as it begins the path to recovery. We will continue our work in developing many more ideas and strategies to help expand and enhance the American job market.



Rep. Mike Johnson (LA-04)
Chairman, Republican Study Committee



Rep. Andy Barr (KY-06)
Chairman, RSC American Worker Task Force

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Congress of the United States
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Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

The members of the Republican Study Committee's (RSC) Government Efficiency, Accountability & Reform (GEAR) Task Force write with regard to continued legislative efforts to address the COVID-19 pandemic and its effects. Our Task Force remains committed to offering solutions to create a more efficient American government that operates with accountability to citizens and allows American ingenuity to flourish.¹

These principles are especially important in this time of unprecedented crisis and the recovery period that will follow. We believe future legislation related to COVID-19 should contain policies which empower our federal workforce, optimize the utility of existing government facilities, and streamline federal rules to facilitate our nation's economic recovery. In light of those objectives, subsequent legislation considered by the House of Representatives in response to the COVID-19 pandemic should help advance these ideas:

1. Streamline Federal Hiring and Optimize Pay for High-Skilled Employees. The challenge of responding to the COVID-19 pandemic has brought out the best in many of America's federal personnel. These patriotic civil servants, along with countless experts in the private sector and generous volunteers, have done their best to respond to an extraordinary global crisis.

Still, the need for more highly trained and specialized workers to join the federal ranks has been made apparent. The CARES Act specifically waived the Title 5 federal hiring requirements for the Secretary of Housing and Urban Development (HUD) and the Chairman of the U.S. Securities and Exchange Commission (SEC) to allow for

¹ RSC GEAR Taskforce, Government Efficiency, Accountability, and Reform Taskforce, Power, Practices, Personnel: 100+ Commonsense Solutions to a Better Government, THE REPUBLICAN STUDY COMMITTEE (February 2020), https://rsc-johnson.house.gov/sites/republicanstudycommittee.house.gov/files/GEAR%20Report_Single%20Spread%20FINAL_0.pdf



streamlined hiring. This commonsense provision must be expanded. Thus, the Task Force recommends that federal managers across government be empowered to recruit and hire the most talented individuals who can fill these vital roles to ensure our workforce is better equipped for emergency response.² The Task Force also recommends reform of the General Schedule (GS) wage scale to allow for improved compensation for individuals with critical skills and the expanded use of meritorious bonuses to reward excellent performance by federal employees.³

2. Enact the Eliminate Agency Excess Space Act. Beyond unleashing the federal workforce, the government should optimize the utility of existing federal infrastructure to combat COVID-19. In particular, the Task Force recommends enactment of the Eliminate Agency Excess Space Act,⁴ sponsored by Rep. Greg Murphy (NC-03). This bill would eliminate antiquated laws that limit the sale, lease, or donation of federal office space. This simple reform would ease the transfer of unused federal buildings to support health care workers serving on the front lines of the COVID-19 crises.

3. Enact the Stopping Improper Payments to Deceased People Act. The CARES Act provides standard Economic Impact Payments of \$1,200 for many Americans. The Task Force urges that these funds be administered carefully to minimize the chance of fraud or waste that plagues other government programs. Particularly relevant is the fact that in 2015 the Social Security Administration Inspector General found 6.5 million deceased individuals who were still active recipients of Social Security benefits.⁵ Because current recipients of Social Security benefits will not be required to file an abbreviated tax form to receive the \$1,200 tax rebates,⁶ there is reason for concern that these payments will be made to deceased individuals. Thus, the Task Force recommends the enactment of H.R. 2543, Stopping Improper Payments to Deceased People Act, introduced by GEAR Chairman Rep. Greg Gianforte (MT-AL) and Rep. Cheri Bustos (IL-17).⁷ This legislation would grant all federal agencies the same access to the death data base and would require states to share their death data with the Social Security Administration. This would remove the gaps in data that lead to countless dollars being wasted on improper payments to deceased individuals.

4. Streamline the Permitting Process. While the federal government continues to focus on combatting the COVID-19 pandemic, it is also important it consider how to best facilitate a speedy economic recovery by streamlining government regulatory processes. We cannot allow government red tape to unnecessarily slow down job creation, project management, and private investment.

Specifically, the Task Force urges enactment of two important pieces of legislation: (1) the Critical Habitat Improvement Act,⁸ a bill that would require critical habitat designations be made only with land where the Secretary of the Department of Interior (DOI) has identified what elements are necessary for the survival of an endangered species, thus limiting burdensome restrictions on land use; and (2) the Federal Permitting and Jobs Act,⁹ a bipartisan bill that would streamline National Environmental Policy Act (NEPA) by creating a two-year deadline for agencies to finalize permitting determinations and codifying Executive Order 13807, which allows for the executive Steering Council to help overcome any obstacles in an individual permitting process, if an agency or applicant seeks

² Id at 51.

³ Id at 58-60.

⁴ Eliminate Agency Excess Space Act, H.R. 6128, 116th Cong.

⁵ Office of Inspector General, Numberholders Age 112 or Older Who Did Not Have a Death, SOCIAL SECURITY ADMINISTRATION (Mar. 2015) https://oig.ssa.gov/sites/default/files/audit/summary/pdf/Summary%2034030_0.pdf

⁶ <https://home.treasury.gov/news/press-releases/sm967>

⁷ Stopping Improper Payments to Deceased People Act of 2019, H.R. 2543, 116th Cong.

⁸ Critical Habitat Improvement Act of 2019, H.R. 5591, 116th Cong.

⁹ Federal Permitting Reform and Jobs Act of 2019, H.R. 3671, 116th Cong.



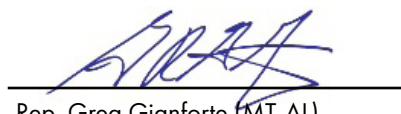
assistance. Both of these pro-growth pieces of legislation are critical to guiding our nation back to the historic production and prosperity it so recently enjoyed.

In so many cases, the existing burden of bureaucracy and overregulation has unnecessarily hindered the ability of the federal government to respond to this evolving crisis. Federal agencies have had to waive hundreds of rules and mandates that otherwise would have contributed to loss of life, economic uncertainty, and an exploding federal deficit.¹⁰ These latest examples have highlighted the need for significant regulatory reform in the future to better equip our nation to deal with emergencies. These reforms can have real life or death consequences, and time is of the essence.

Sincerely,



Rep. Mike Johnson (LA-04)
Chairman, Republican Study Committee



Rep. Greg Gianforte (MT-AL)
Chairman, RSC GEAR Task Force

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¹⁰ IMorales, List: 150 Regulations Waived to Help Fight COVID-19, AMERICANS FOR TAX REFORM (Apr. 4th, 2020), <https://www.atr.org/rules?amp>

