

**TAXPAYERS
PROTECTION
ALLIANCE**

Roadmap to Fiscal Sanity

118th Congress
March 2023



Table of Contents

Antitrust 4

Budget Reform 5

Climate Disclosure 6

Department of Defense 7

Economy 8

Energy 9

Food and Drug Administration. 11

Healthcare 12

IGO Watch 13

Intellectual Property 15

IRS Reform 16

Labor and Minimum Wage. 18

NASA 19

Postal 20

Privacy 21

Section 230. 22

Tax Reform. 23

Telecommunications and Broadband. 24

Trade and Tariffs 25

Conclusion and Recommendations 26

About the Taxpayers Protection Alliance

The Taxpayers Protection Alliance (TPA) is a rapid response taxpayer and consumer group dedicated to analyzing and researching the consequences of government intervention in the economy. TPA examines public policy proposals through a non-partisan focus, identifying how government waste, fraud, and abuse impacts taxpayers and consumers across the nation – regardless of the political party responsible. TPA holds government officials in the U.S. – and around the world – accountable through editorials, statements, coalition letters, public interest comments, and radio and television interviews. TPA serves as a resource for concerned taxpayers and make it its mission to reach out to them through these means as well as new media, utilizing blogs, social media, and video creation to do so. In addition to serving the overwhelming demand for principled opposition to many heavy-handed government proposals, TPA also provides constructive criticism and offers positive reform proposals based on TPA's free market, federalist philosophies. TPA seeks to empower taxpayers and consumers to let their concerns be known to elected and unelected officials alike and to encourage them to embrace bold solutions to restrain an ever-expanding government.

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Introduction

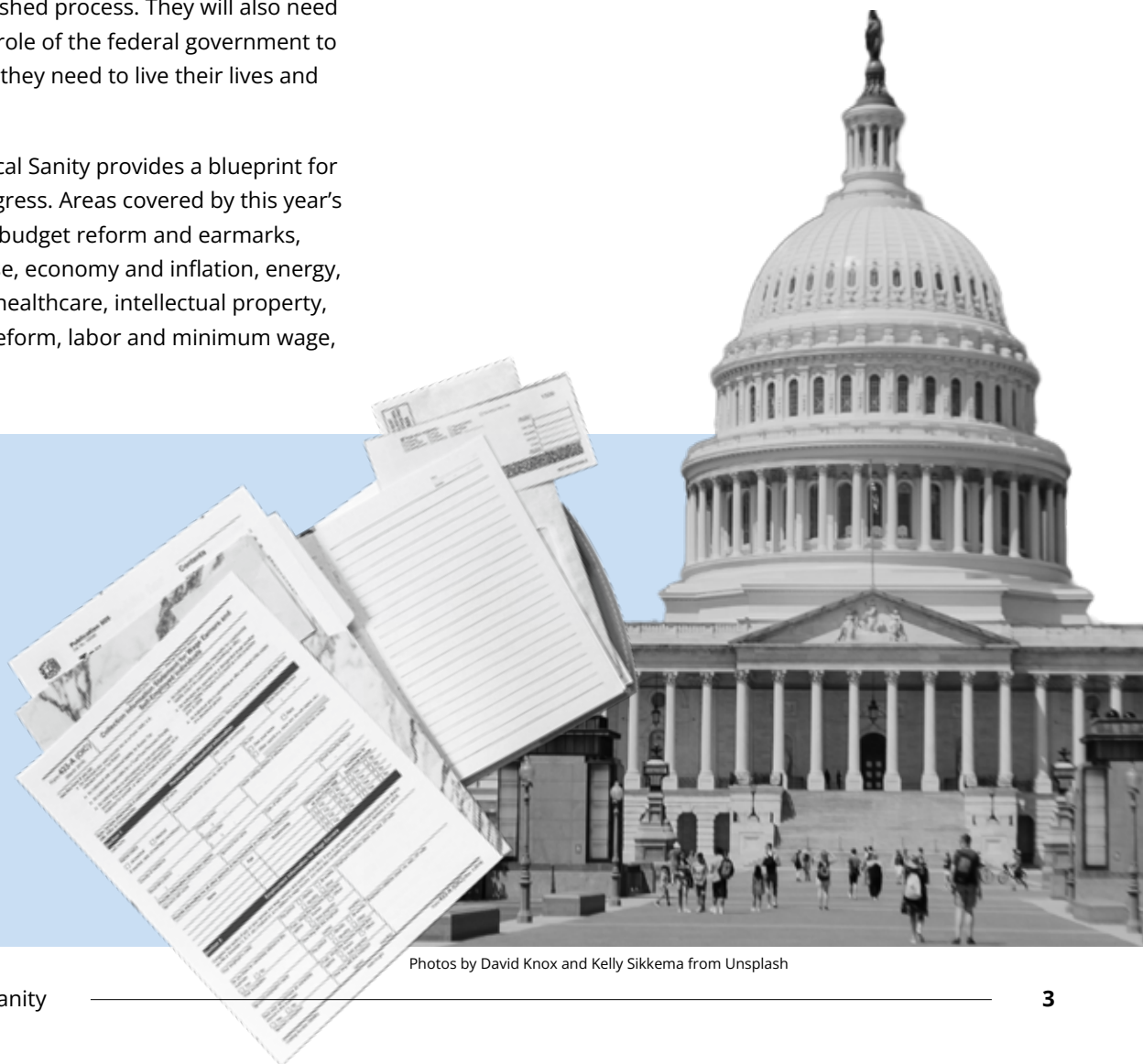
The 118th Congress came into session at a pivotal and perilous time. At the end of 2022, lawmakers passed a hastily conceived \$1.7 trillion government spending bill filled with pork-barrel spending and corporate welfare. However, this “compromise” belies deep divisions within Congress about the importance of fiscal reform. Lawmakers fail to see eye to eye on spending priorities and continue to break legislative impasses by simply agreeing to across-the-board spending increases. Americans have grown tired of this failed status-quo and demand that the 118th Congress address out-of-control deficits and inflation by reversing the rising tide of red ink. To get the nation’s fiscal house in order, Republicans, Democrats, and Independents will have to come together and make hard decisions about the fiscal health of the nation. This will include ushering in needed spending cuts to achieve a balanced budget for the first time in more than twenty years. Renewed fiscal discipline cannot and will not happen in a vacuum. Lawmakers need to address the underlying legislative process for spending bills and move away from the current, rushed process. They will also need to work to scale back the role of the federal government to give Americans the space they need to live their lives and prosper.

The 2023 Roadmap to Fiscal Sanity provides a blueprint for reform for the 118th Congress. Areas covered by this year’s edition include, antitrust, budget reform and earmarks, climate disclosure, defense, economy and inflation, energy, tobacco harm reduction, healthcare, intellectual property, international issues, IRS reform, labor and minimum wage,

NASA, privacy, Section 230, tax reform, telecommunications and broadband, trade and tariffs, and postal issues.

The 118th Congress can deliver significant, overdue reforms with historic implications for the American people. Or, lawmakers can get bogged down in dreadfully familiar partisan games and pass bloated spending bill after spending bill. Only special interests and the favored few would benefit from the continued status-quo. The choice is clear between fiscal calamity and renewed responsibility.

Washington’s out-of-control spending has long been a bipartisan problem. Fortunately, the 118th Congress can create a bipartisan antidote to poisonous politics. The needed reforms will be painful for many of Washington’s entrenched political players, but they are far from impossible. Continuing on the same path is far more risky and dangerous for taxpayers and consumers across the country.



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Antitrust

Background

On July 2, 1890, President Benjamin Harrison signed the Sherman Antitrust Act into law. Named for the late Senator John Sherman (R-Ohio), the groundbreaking new law prohibited anti-competitive agreements between companies or any unilateral, unfair action by one company to monopolize their market. The intent of the law was to stop activity (including arbitrary price fixing or supply limits) that inhibited trade. The law gave the Department of Justice (DOJ) authority to bring lawsuits, preventing such actions.

Despite the sweeping new power granted to the federal government, the Sherman Act was very rarely used in the first dozen years after its passage because of the narrow scope of focus. President Theodore Roosevelt came along and vastly expanded the government's antitrust efforts. This continued after his administration with the passage of the Clayton Antitrust Act and the Federal Trade Commission Act of 1914. The former specified more supposed anticompetitive conduct that could be regulated, and the latter established the Federal Trade Commission (FTC).

Despite varying interpretations of these laws over time, one thing has remained mostly consistent: antitrust action was supposed to be used for consumer protection. Supreme Court Justice Byron White wrote the opinion of the court in a unanimous 9-0 decision in *Spectrum Sports, Inc. V. McQuillan* (1993), saying, "The purpose of the [Sherman] Act is not to protect businesses from the working of the market; it is to protect the public from the failure of the market. The law directs itself not against conduct, which is competitive, even severely so."

Unfortunately, this consumer welfare approach has been abandoned. Legislators are introducing antitrust legislation to protect competitors instead of competition itself. And antitrust legislation is being used to target political enemies instead of adhering to the consumer welfare standard. The FTC is initiating lawsuits against companies for basic innovative activity. This is the unfortunate situation with antitrust as the 118th Congress convenes.



Legislators are introducing antitrust legislation to protect competitors instead of competition itself. And antitrust legislation is being used to target political enemies instead of adhering to the consumer welfare standard.

Agenda

All members of Congress need to commit to a return to the consumer welfare standard on antitrust. Congress should implement clear FTC & DOJ oversight to ensure that those agencies are adhering to that standard and not initiating lawsuits based on personal or political vendettas. Any action should be done in the interests of consumers. Congress should oppose legislation that incentivizes cartelization in the marketplace – and actual anticompetitive practice – like the *Journalism Competition and Preservation Act* being considered by many members. Congress must also be wary of legislation making sweeping additions to what can be considered anticompetitive, potentially threatening national security.

Budget Reform & Earmarks

Background

Budget reform is one of the most important issues facing the 118th Congress. On January 1, 2023, the national debt was a staggering \$31 trillion, equating to more than \$94,000 per U.S. citizen or \$246,000 per taxpayer. Per the Department of the Treasury, in fiscal year (FY) 2022, the federal government spent \$6.27 trillion and collected \$4.9 trillion in revenue, resulting in a \$1.38 trillion deficit. Unfortunately for taxpayers and consumers, this is not a novel trend. The U.S. has only succeeded in balancing the budget five times in the last 50 years, with the most recent being a \$130 billion surplus in 2001. Moreover, the increase in federal debt, combined with rising interest rates, subsequently yields a higher cost to service the debt interest. In 2021, the interest cost of federal debt was \$352 billion. In 2022, interest on the debt ballooned to \$475 billion. The Congressional Budget Office (CBO) projects the cost of servicing national debt could reach \$1.2 trillion

or greater by 2032 if expeditious actions are not taken.¹ This untenable model is a significant failure to govern and with every passing year, more extreme action will need to be taken to reduce the national debt.

Earmarks are a spending tool used by Congress to directly allocate federal dollars to local pet projects, skirting the competitive grant process and entrusting review of projects to members directly, rather than executive agency experts. In 2011, the practice of earmarks was banned for its overt fiscal irresponsibility and propensity for corruption. However, despite the decade-long ban, earmarks returned in the 117th Congress. In FY22, Congress appropriated \$9.6 billion for 4,975 earmarks. In line with the warning of the late Sen. Tom Coburn (R-Okla.), who once stated that congressionally directed spending was a “gateway drug to a spending addiction,” the FY23 omnibus included 7,500 earmarks worth \$16 billion.

Agenda

The 118th Congress has an opportunity to protect taxpayers and consumers by taking necessary steps towards eliminating budget deficits and reducing the national debt without enacting tax increases. Congress should move away from the “pay-as-you-go” (PAYGO) system, which requires mandatory spending increases to be offset with either an equal decrease in mandatory spending or an increase in revenue. Instead, Congress should employ a “cut-as-you-go” (CUTGO) model, which still requires increases in mandatory spending to be offset with decreases in mandatory spending but removes the provision that allows them to be paid for with revenue increases. This would restrict Congress’ ability to rapidly grow the size and scope of the federal government. It should also remove the ability to waive budgetary requirements.

The 118th Congress should also consider budget rules and separate budgetary models that prevent the use of continuing resolutions and avoid shutdowns. The 117th Congress failed to pass legislation such as *S.Con.*

Res.41, *S.Con.Res.43*, and *S.2727*, any of which would take meaningful steps to eliminating deficits, reducing debt and avoiding government shutdowns. These models must also include debt interest in their calculations, presuming it as mandatory spending and subjecting it to CUTGO requirements.

To promote long-term fiscal planning and responsibility, Congress could employ a biennial budgetary model, where budgets are completed for two-year periods instead of annually. Further, Congress could expand the current 10-year projections to require the budgetary effects of authorizing measures to span 15-year or 20-year estimates. This would provide current and future lawmakers with greater information about the long-term fiscal effects of their proposals.

Finally, Congress must take swift action to reinstitute the ban on earmarks. These policy changes would ensure that taxpayer dollars are protected from the irresponsible spending habits of past and future Congresses.

¹ Congressional Budget Office, “The Budget and Economic Outlook: 2022 to 2032,” May 2022.



Climate Disclosure

Background

Following the Wall Street Crash in 1929, Congress created the Securities and Exchange Commission (SEC) in 1934 to protect investors and ensure fair securities markets.

In May 2021, President Biden signed the Executive Order on Climate-Related Financial Risk, which tasked several federal agencies with assessing climate risks as a part of their rulemaking processes. Subsequently, in March 2022, the SEC proposed a rule entitled “The Enhancement and Standardization of Climate-Related Disclosures for Investors”. This proposed rule would subject publicly traded companies to significant new reporting requirements that would include indirect greenhouse gas (GHG) emissions. Specifically, companies will be required to report on GHG emissions up and down the supply chain of their products, known as Scope 3 emissions.

The proposed rule will cost small and large companies hundreds of thousands of dollars per year to collect the new required Scope 3 data, despite it being wholly immaterial. Overall, the SEC’s own estimates show that the move will cost U.S. companies \$10.2 billion.²

Agenda

Congress must review and amend the U.S. Securities Act of 1933, and the Securities and Exchange Act of 1934 to ensure the SEC does not run afoul of the Major Questions Doctrine as recently preceded under *West Virginia v. EPA*. The collection of Scope 3 GHG emissions is ungermane to the statutory role of the SEC and would add significant burdens to U.S. companies conducting lawful securities practices.

At a time when investors have lost more than \$5 trillion in the S&P 500, Congress’ oversight powers should be turned towards the SEC for overstepping its statutory authority and attempting to subject companies to new, yet duplicative reporting requirements. Companies are already required to disclose material risks that could impact their financial standing to their investors. Congress must ensure that the SEC is remaining on track and protecting investors from financial risks, not serving as a disclosure arbiter for climate-related data.

² Vivien Lou Chen, “Growth scare’ strikes U.S. stocks as estimated \$5 trillion to \$8 trillion of household wealth evaporates in five months,” *MarketWatch*, May 20, 2022.

Department of Defense

Background

Each year (from 2015 to 2023), Congress has increased Department of Defense (DoD) spending. Total money appropriated for fiscal year (FY) 2023 is \$847 billion. This is the equivalent to 4.2 percent of the U.S.'s \$20.05 trillion gross domestic product (GDP) (as of 9/30/22). This marks the highest defense-to-GDP ratio since 2012.³ Furthermore, the FY 2023 funding passed by the 117th Congress allocates \$45 billion more than requested by the Biden administration in their DoD budget and is \$80 billion (10 percent) more than the FY22 DoD budget, after inflation adjustments. It will be the largest DoD budget since World War II.⁴ Two of the largest contributors to the ballooning DoD budget are the Pentagon's irresponsible unfunded priorities list (UPL) and the massive F-35 Lightning II Joint Strike Fighter (JSF) program.

As a part of the FY17 National Defense Authorization Act (NDAA) (P.L. 114-328), Congress began requiring the chiefs of staff of the Army, Navy, and Air Force, as well as the Marine Corps Commandant, to submit an annual report on unfunded priorities. UPLs quickly became a tool for the DoD to avoid the restraints of the President's Budget, with requests in FY21 totaling \$18 billion.⁵ For the FY23 DoD budget, the Pentagon submitted two UPLs to Congress, worth a total of \$49 billion.⁶

The Pentagon and Congress have historically failed to dilute U.S. taxpayer exposure to the myriad of cost overruns with investment from foreign partners

While UPLs have played a strong role in ballooning the defense budget, little compares to the DoD's most expensive weapons program ever – the F-35. Since the JSF program's inception in the 1990's, delays and cost overruns have turned the program into a taxpayer boondoggle. As of 2022, the lifecycle cost of the F-35 program stands at a staggering \$1.7 trillion, equivalent

to 5.6 percent of the national debt, or \$5,000 for every U.S. citizen. The program was originally devised as a cost-sharing opportunity between the United States Air Force (USAF), Marine Corps (USMC), and Navy (USN), as well as eight NATO countries, and five non-NATO partners. However, the Pentagon and Congress have historically failed to dilute U.S. taxpayer exposure to the myriad of cost overruns with investment from foreign partners.

Over the last decade, these failures have been abundantly clear, especially regarding the USAF's F-35A. The FY23 Omnibus, passed in December 2022, appropriates \$8.5 billion to add 61 F-35's to the Pentagon's fleet and restore 19 airframes. It also includes a further \$2.1 billion for modernization of the F-35. A significant oversight failure comes with the USAF's F-35 Adaptive Engine Transition Program (AETP), which seeks to develop and procure an adaptive cycle engine for the F-35 and replace the existing Air Force fleet's engines. In FY23, the AETP will cost taxpayers \$353 million, but the program will grow the 50-year lifecycle costs of the F-35 by over \$40 billion.

Agenda

Congress should take steps to repeal UPL requirements and increase transparency of military funding to detect and remove wasteful spending. Consistent with a cut-as-you-go (CUTGO) budgetary model, any increases in funding for DoD priorities should be offset with cuts to other programs. Further, Congress must improve upon its historical failure to conduct effective oversight on the F-35 JSF delays and cost overruns, as well as heavily funded, extraneous modification programs such as the AETP. These steps would limit the burden to taxpayers from wasteful defense spending.

³ Trading Economics, "United States – Military Expenditure (% of GDP)," Feb. 2023.

⁴ White House, "Historical Tables," accessed Feb. 2023.

⁵ Jason Sherman, "DOD brass tally \$18 billion FY-21 wish lists," *Inside Defense*, Feb. 21, 2020.

⁶ Julia Gledhill, "The Pentagon's second unfunded priorities list is an accountability travesty, Congress should act," *Breaking Defense*, Dec. 1, 2022.

Economy & Inflation

Background

In 2022, inflation dominated news headlines as American households were increasingly spending more for nearly all goods. Between January 2021 to October 2022, prices increased by 13.8 percent, costing the average American household approximately \$747 more per month. Unfortunately, the inflation outlook for the next two years does not look any better for American households. Even though inflation is anticipated to slow, it is still expected to be at high levels.

While the COVID-19 pandemic was a significant stressor to international and domestic supply chains, economists such as Larry Summers (former President Obama's Chief Economic Advisor), concluded that the Biden administration's American Rescue Plan Act (ARPA) was the "least responsible economic policy in the last 40 years."⁷ In fact, some estimate that ARPA is responsible for around half of the inflation experienced in 2022.



In a veiled effort to combat crushing prices, Congress passed the Inflation Reduction Act in August 2022. Despite the name, the legislation does not reduce the impacts of inflation. Furthermore, per the Penn Wharton Budget Model, the "impact on inflation is statistically indistinguishable from zero."⁸

Agenda

The 118th Congress must take serious steps to reduce inflation. Congress must institute strict budgetary rules that reduce deficit spending. Reduced government spending will lower demand-side inflation and allow the government to focus on reducing the amount of outstanding national debt. Three regulatory areas Congress can address are energy, labor, and trade.

Taxpayer-funded subsidies for clean energy companies should be eliminated because they cost taxpayers billions in revenue and fail to spur growth in the sector. Energy demands are market-driven, and consumer savings are derived from companies growing in a stable regulatory environment rather than the government arbitrarily picking winners and losers. To that end, reforming the

National Environmental Policy Act's permitting processes is crucial to furthering domestic production by reducing the regulatory burden on new energy projects and companies; these cost savings will be passed down to customers.

Lowering barriers to entry for individuals and businesses will help real wages continue to grow without government-mandated minimum wage hikes. Promoting flexible work, such as the case for gig workers, is also crucial to lowering inflation as labor force participation increases.

Reducing barriers to international trade helps American companies compete domestically and internationally, to the ultimate benefit of the consumer. Increases to both economic input and output bolster supply chains and lower prices.

⁷ Jordan Williams, "Larry Summers blasts \$1.9 T stimulus as 'least responsible' economic policy in 40 years," *The Hill*, Mar. 20, 2021.

⁸ Jon Huntley and John Ricco, "Inflation reduction Act: Preliminary Estimates of Budgetary and Macroeconomic Effects," *Penn Wharton Budget Model*, Aug. 12, 2022.

Energy

Background

In 2006, China surpassed the U.S. as the world's largest energy producer.⁹ Since then, Congress has authorized several measures aimed at reorienting the U.S.'s energy sector towards renewable energy and away from fossil fuels.¹⁰ Despite the federal push for renewables, fossil fuels remain the dominant driver of U.S. energy production. In 2021, natural gas, crude oil, and coal accounted for 70.2 percent of all U.S. domestic production.¹¹ Alternatives such as nuclear, wind and hydro contributed just a combined 13.7 percent of production.¹²

In 1978, Congress instated the investment tax credit (ITC), aimed largely towards solar energy producers to incentivize more deployment of renewable energy sources. It was followed in 1992 by the production tax credit (PTC), which serves a similar function for wind projects. These tax credits were set to expire at the end of 2021. In 2019, the Congressional Research Service estimated that 2018 tax expenditures supporting renewable energy cost the government \$8.4 billion.¹³ This number was expected to drop to \$3.5 billion by 2028 with the expiration of the ITC and PTC. However, these tax credits were extended under the Inflation Reduction Act (IRA), passed in August 2021. Instead, U.S. taxpayers will be liable for between \$106 billion and \$260 billion in subsidies from 2022-2029.

A critical area not addressed by the IRA is permitting reform, specifically regarding environmental impact statements (EIS). Established under the National Environmental Policy Act of 1969 (NEPA) with the intent of reviewing the environmental impacts of proposed infrastructure and energy projects, EIS have become one of the most stringent barriers to progress in both sectors. The Council on Environmental Quality found in 2020 that the average EIS takes 4.5 years to work its way



through regulatory process and estimates suggest that the statements cost U.S. taxpayers \$1 billion per year. While the IRA invests \$370 billion in clean energy, Congress' failure to reform permitting means that those projects will share a similar fate to other renewable projects. Estimates show that 42 percent of projects subject to NEPA review are related to clean energy, while only 15 percent are fossil fuels.¹⁴

⁹ U.S. Energy Information Administration, "Total energy production 2021," accessed Feb. 2023.

¹⁰ U.S. Department of Energy, "Key Federal Legislation," *Alternative Fuels Data Center*, accessed Feb. 2023.

¹¹ U.S. Energy Information Administration, "U.S. energy facts explained," accessed Feb. 2023.

¹² Ibid.

¹³ Molly F. Sherlock, "The Value of Energy Tax Incentives for Different Types of Energy Resources," *Congressional Research Service*, Mar. 19, 2019.

¹⁴ Michael Mohr-Ramirez, "Clean Energy Week 2022: Powering Through the Red Tape," *Real Clear Energy*, Sep. 29, 2022.

Energy (Cont'd.)

Agenda

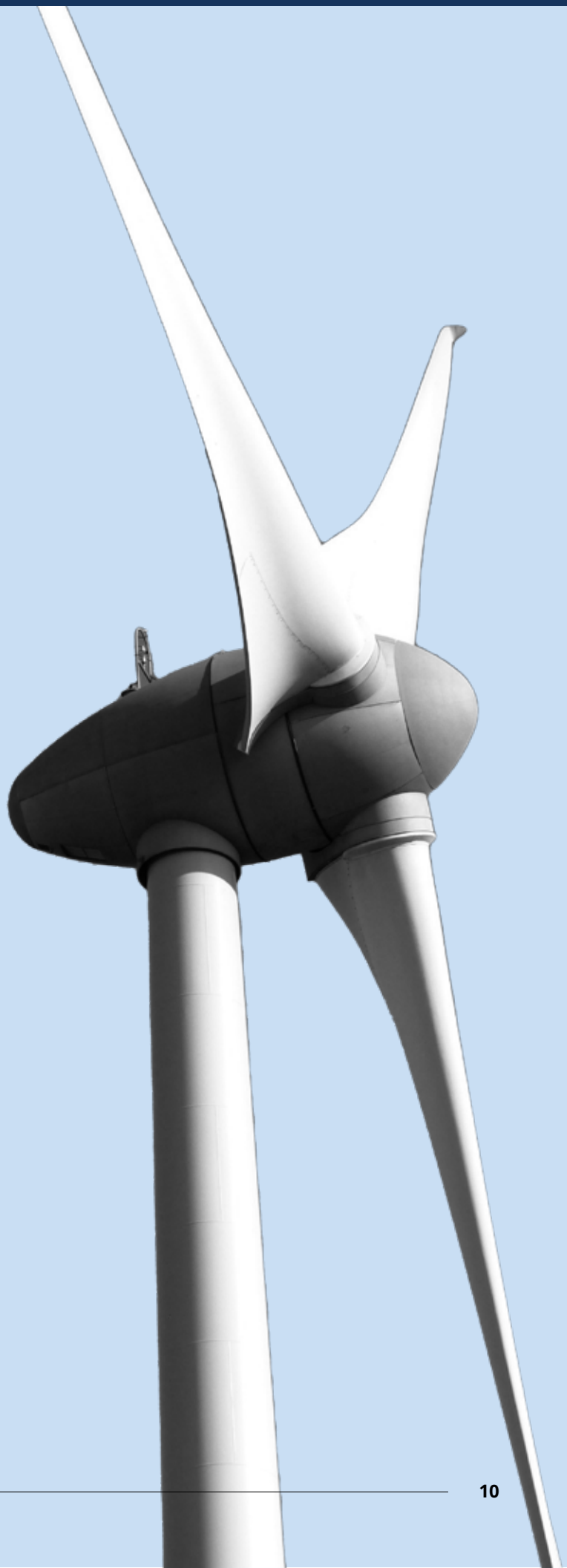
Retooling the U.S. energy sector will require the 118th Congress to take a holistic approach on production incentives, permitting, and oversight. Firstly, the legislature must recognize that energy demands are market-driven, and use of tax incentives like the ITC and PTC have caused the federal government to forego hundreds of billions in revenue in their decades of existence, all while failing to rapidly spur growth in clean energy. The ITC and PTC should be eliminated.

Secondly, if Congress wants to encourage investment in clean energy, it should ease the regulatory burdens caused by NEPA to clarify the role of the federal government in permitting. NEPA's permitting processes unduly repress domestic production of oil and natural gas while inefficiently promoting renewable energy. A consistent review process for domestic energy projects will encourage a stable regulatory environment and thereby spur diverse investment to bolster American supply.

Finally, Congress should conduct expeditious oversight of proposed executive rulemaking and international actions. For example, Congress should review the Environmental Protection Agency (EPA)'s proposed air quality standards, which would require new and existing construction and refining projects to lower their particulate matter air standards (PM2.5) by 17 to 25 percent. All costs associated with the EPA's proposed rule would be borne by the individual or company permitted to the project.¹⁵ This would have an immediate, detrimental impact on domestic energy production.

While not yet concrete rulemaking proposals, Congress should swiftly act to prevent the President from banning exports of U.S.-produced oil and natural gas and bans on use of plastics, both of which would harm U.S. national security interests, domestic industry, and consumers. It should also reject proposals to enact a windfall profits tax on oil and gas companies, which already failed in the 1980's and would continue to distort U.S. tax policy to allow the government to arbitrarily pick winners and losers.

¹⁵ U.S. Environmental Protection Agency, "EPA Proposes to Strengthen Air Quality Standards to Protect the Public from Harmful Effects of Soot," Jan. 6, 2023.



Food and Drug Administration

Background

In 2022, the U.S. Food and Drug Administration (FDA) continued to be plagued by inefficiency and continued delays on authorizing hundreds of thousands of novel tobacco harm reduction products, mainly electronic cigarettes. Also, in 2022, the FDA was at the center of massive shortages in baby formula, causing undue harm to mothers and infants across the country. In the same year, the agency saw its long-standing Director for the Center for Tobacco Products retire. He was replaced by a bureaucrat from the Centers for Disease Control and Prevention, who has hinted that the tobacco division at FDA will move forward with far reaching and unnecessary flavored menthol and cigar bans. The agency is also likely to deny the hundreds of thousands of flavored e-cigarette products that remain in regulatory limbo.

The FDA continues to take a misguided, risk-adverse approach to drug approvals.

In addition, the FDA continues to take a misguided, risk-adverse approach to drug approvals. The agency has continued to treat medication sponsors critically for submitting evidence based on external controls comprised of historical datasets of patients. These sources of information are critical for assessing “orphan drugs” designed to treat rare diseases because of the difficulties in finding a sufficient number of volunteers to conduct clinical trials. Despite these issues, the FDA has spurned medications such as omburtamab with promising (albeit limited) data on disease survival rates.

Fortunately, there are indications that the agency is open to reform. In the summer of 2022, FDA Commissioner Robert Califf announced two independent reviews of the agency's food and tobacco programs, namely related to the baby food formula shortage and the continued lack of clarity on the regulation of e-cigarettes and other novel tobacco harm reduction products. The review of the foods program called

for an overhaul of the organizational structure and culture as well as identifying new funding opportunities. The review for the tobacco program urged the agency to become proactive as opposed to reactive and work with other agencies to eliminate illicit products from the market, and most importantly address “fundamental questions about the structure, function, funding and leadership.”¹⁶ There is little sign, however, that the agency is willing to critically examine its drug approval process.

Agenda

The FDA should liberalize its food evaluation process while ensuring a safe food supply bolstered by the latest technology. This would entail working closely with companies to keep harmful pathogens at bay via cost-effective approaches such as irradiation and phage treatment. The agency must also look at ways to mitigate issues that arise from shortages, often caused by the regulatory processes related to the introduction and marketing of products.

The FDA must also embrace reforms in the tobacco harm-reduction space. It is critical that the agency enables adults to have access to safer alternatives to combustible cigarettes. The FDA must eliminate the many barriers impeding harm reduction products to improve public health and prevent youth use of age-restricted products.

Finally, the agency should strive to improve its drug approval process. Welcome reforms would include allowing more external control data and relaxing existing statistical thresholds for approval. If a medication designed to treat a life-threatening illness has been shown to be safe but data on effectiveness is approaching statistical significance (e.g., p-value of .07), then the FDA should approve the medication and closely monitor the drug post-approval.

¹⁶ Regan-Udall Foundation, “Operational Evaluation of Certain Components of FDA's Tobacco Program,” Dec. 19, 2022.

Healthcare

Background

Much to the dismay of taxpayers and consumers, healthcare costs continue to climb. According to an analysis by PricewaterhouseCoopers, healthcare costs have climbed by nearly 7 percent annually in 2021 and 2022.¹⁷ Currently, healthcare expenditures total approximately \$5 trillion, or about one-fifth of the nation's gross domestic product (GDP). And, healthcare spending will approach \$7 trillion, or more than \$50,000 per household, by 2030. These significant sums and large spending increases are driven by widespread waste in the healthcare system and a lack of focus on the consumer.

About 90 percent of healthcare costs are paid for by third parties. This total includes private insurers or taxpayer-funded programs such as Medicaid, Medicare, Veterans Affairs, and the Indian Health Service. While low deductibles and high reimbursement policies reduce consumer exposure to healthcare costs in the short-term, they increase expenses in the long run by discouraging patients to “shop around” and find the treatments and medical centers with the best value. According to a 2022 study published in the *International Journal of the Economics of Business*, rising deductibles can significantly blunt the impact of overall healthcare spending by encouraging cost-sharing and sensible purchasing decisions.¹⁸ Consumer-centric care can keep costs in check by discouraging unnecessary medical screenings, which are estimated to cost taxpayers and consumers approximately \$200 billion per year.¹⁹

While private insurers could encourage consumers to have more “skin in the game,” in practice they’re prevented from doing so by government regulations. For example, the Affordable Care Act (ACA; aka Obamacare) continues to stifle innovation by mandating insurer coverage of costly colorectal cancer screenings instead of more cost-effective blood-in-stool tests (or a blended testing approach). In addition, Obamacare requires insurers to cover certain “preventative” services (e.g., tobacco use screening, obesity counseling, alcohol misuse counseling) free-of-charge to patients who may not want or need those services. These mandates result in climbing costs and fewer options for patients already feeling the impact of inflation throughout the economy.



The new Congress needs to focus on curbing costs and ensure patient access to high-quality healthcare services. Lawmakers can kickstart the reform process by ordering a comprehensive review of all mandates enacted under the ACA and agency rulemaking and eliminating the rules which limit patient decision-making. This process would likely result in increased availability of high-deductible plans and the curtailment of Obamacare's rules on “preventative” services. Additionally, Congress should ease rules and contribution limits on tax-free Health Savings Accounts and convert ACA subsidies into means-tested deposits into HSAs. These reforms would empower patients and beneficiaries to find the best treatments and doctors at affordable prices.

¹⁷ PricewaterhouseCoopers, “Medical cost trend: Behind the numbers 2022,” accessed Feb. 2023.

¹⁸ Molly Frean, and Mark V. Pauly, “Do Higher Deductibles Slow Health Spending Growth?” *International Journal of the Economics of Business* (2022): 1-19, accessed Feb. 2023.

¹⁹ Chad Terhune, “Putting a lid on waste: Needless medical tests not only cost \$200B—they can do harm,” *Fierce Healthcare*, May 22, 2017.

International

Background

TPA created International Governmental Organization (IGO) Watch to be a global coalition of individuals and non-profit groups demanding more accountability, transparency, and basic reforms from global bureaucracies such as the European Union, International Monetary Fund (IMF), International Labour Organization (ILO), Organization for Economic Co-operation and Development (OECD), United Nations (UN), World Health Organization (WHO), and the World Bank Group (WBG). During 2022, IGO Watch closely followed the activities of the UN subagency, the WHO, to ensure that the organization is effectively carrying out its mandate to promote global health and well-being. For example, IGO Watch paid particular attention to the WHO's efforts to undergo structural reforms, improve transparency of its processes as well as the ability to respond to health emergencies and better serve the needs of its member states. The UN receives over \$11 billion in taxpayer funding while the WHO receives more than \$580 million annually from U.S. taxpayers.

IGO Watch was also closely following the WHO's policies and activities related to key public health issues such as infectious diseases, non-communicable diseases, and health systems strengthening. The WHO continues to wage a war on harm reduction, including alternatives to smoking such as heated tobacco products and electronic cigarettes.

The UN has been widely criticized during the last year for its inability to appropriately respond to the ongoing war in Ukraine. This dispute showed the world that the UN Security Council lacks the courage or teeth to deal with modern global escalations, highlighting some of the biggest deficiencies in the way the UN system works. It also gave a long-overdue impetus to reform this international behemoth and to not end up in similar future situations.

Furthermore, the UN has come under scrutiny for its expenditures in other areas and the overgrown administrative apparatus. The UN has also been criticized surrounding China's membership in the UN Human Rights Council (UNHRC). There have been many reports of human rights violations in China, including the treatment of ethnic and religious minorities in Xinjiang and Tibet, the restriction of freedom of speech and assembly, and the persecution of human rights activists. Some critics argue that China's membership in the UNHRC prevents the council from taking strong action to address these abuses. This has led to calls for reform of the council's membership and decision-making process, to ensure that countries with poor human rights records are not able to use their membership to shield themselves from accountability.



Photo by Mathias Reding from Unsplash

International (Cont'd.)



Photo by Matthew Ten Bruggencate from Unsplash

Agenda

The 118th Congress needs to cut spending to the WHO, UN, and other IGOs. IGO Watch will continue to monitor the activities of large international organizations to hold these powerful bureaucracies accountable and ensure that they are operating in the best interest of the global consumers and taxpayers.

IGO Watch and TPA's Consumer Center will also be closely monitoring the WHO's actions on various consumer goods, from alternatives to smoking including e-cigarettes and heated tobacco products, to proposals on trans fats and salty foods and beverage taxes. The WHO continues to influence governments with restrictive policies and outright bans, which considerably harm consumers.

With the ongoing war in Ukraine, there will be increased scrutiny on the UN bodies, specifically the UN Security Council, which is responsible for maintaining international peace and security. One of UN priority areas in the next year is to ensure that the council can act effectively and efficiently, and in the best interest of the millions affected by this and similar catastrophic events worldwide.

Additionally, the UN needs to benefit from increased transparency and accountability in its actions and decision-making processes in the future. IGO Watch will be closely analyzing potential structural reforms within various UN bodies which would help build trust among member states and the international community, while ensuring that the UN is held accountable for its actions.

Intellectual Property

Background

Intellectual Property (IP) rights fuel economic growth by giving innovators the protections and assurances they need to bring their products to market. According to the Chamber of Commerce Global Innovation Policy Center's 2022 International IP Index, the U.S. has the most comprehensive IP protections across the globe. However, the report identified key issues with the American system that hamper growth and innovation. For patents, "uncertainty persists regarding patentable subject matter and patent nullity proceeding through the Patent Trial and Appeals Board (PTAB)."²⁰ Businesses and individuals can avoid paying innovators for their patent by going before the Board and getting the patent invalidated without the due protections provided by courts. PTAB does not presume patents to be legally-enforceable property and at least partially invalidates more than 80 percent of patents meriting a final written decision in a PTAB challenge.

Various other policies limit the effective enforcement of IP rights. The Food and Drug Administration (FDA) often evaluates patent products as part of its premarket approval processes, but the clock on these IP protections typically starts running far before products are approved. Companies may find that their IP rights have all-but-expired after they have finished fulfilling agency testing requirements and answering the FDA's questions. It took the FDA an astounding 11 years to approve a zero-calorie sweetener called sucralose (commonly sold as "Splenda"), yet the product's creator received only two years of patent life back for more than a decade's worth of regulatory burden.

Copyright and trademark holders also face multiple obstacles in enforcing their IP. To demonstrate infringement in court, copyright holders generally need to show that the other work is "substantially similar" to their own. But this often involves arbitrary determinations that are wholly inconsistent across multiple jurisdictions. Trademark holders can rely on more empirically grounded surveys to demonstrate infringement, but surveys submitted by parties and evaluated by courts often lack the necessary controls to establish consumer confusion. IP holders face a great deal of uncertainty in determining how their evidence will be evaluated by judges and jurors.



Photo by Junior Ferreira from Unsplash

Agenda

Lawmakers can strengthen IP rights by making courts, rather than PTAB, the primary arbiter for enforcement disputes. IP should be treated like any other property right, with holders presumed to be the rightful owners of their own ideas and innovations. To rein in PTAB, Congress would need to either repeal the 2011 America Invents Act entirely or curb the statute to limit inter parties review to exceptional circumstances. Policymakers should also ensure that IP holders' rights are not limited or exhausted by agency approval processes. Finally, lawmakers should work with the Copyright Office and Patent and Trademark Office to clarify appropriate survey evidence that could be used in defending IP claims.

Congress must also seek substantive reform and oversight of the International Trade Commission (ITC). The ITC's broad consideration of patent infringement cases and its generous use of exclusion orders leave American companies vulnerable to international patent trolls, who merely patent products looking for a settlement. The current modus operandi at the ITC encourages and emboldens these patent trolls.

²⁰ Global Innovation Policy Center, U.S. Chamber of Commerce, "2022 International IP Index," Feb. 23, 2022.

IRS Reform

Background

When President Biden signed the Inflation Reduction Act (IRA) on August 16, 2022, the Internal Revenue Service (IRS) was allocated \$80 billion. This doubled the budget of the IRS. Despite claims these funds will be used to modernize the agency and provide better customer service, the majority of this expanded budget is directed towards the hiring of new agents and the enforcement of tax law. In fact, \$45.6 billion will be used for enforcement purposes and \$25.3 billion for operations support including rent, facilities, printing, postage and security. Only \$3.2 billion is allocated for taxpayer services such as filing and account services, prefilling assistance and education. Also, \$15 million was allocated to study the viability of a government-run tax prep system. Any system run by the government will be expensive and a major conflict of interest.

The largest issues at the IRS remain unaddressed. On May 19, 2022, the Government Accountability Office (GAO) published a study, finding that between FY2012 and FY2021, the IRS completed 1,694 investigations into the “willful unauthorized access of tax data by employees” with 27 percent, or about 450 cases being in violation.²¹ This is especially concerning given that, in June 2021, ProPublica published the confidential tax documents of thousands of prominent Americans.²² Despite claims by the Biden administration that investigating the ProPublica and other IRS leaks would be a top priority, no charges have been filed.²³

The IRS’s gross neglect in securing Americans’ private information also extends to its own cybersecurity standards. On July 18, 2022, the Treasury Inspector General for Tax

Administration (TIGTA) found that while the IRS’s Cybersecurity Program was “generally aligned with applicable FISMA requirements, OMB policy and guidance, and NIST standards and guidelines... due to program components that were not at an acceptable maturity level, the Cybersecurity Program was not considered fully effective.”²⁴ The same report found that the IRS’s Cybersecurity Program was not effective in 17 of 20 metrics.

Furthermore, the IRA failed to address the glaring customer service issues at the IRS. In February 2022, the Taxpayer Advocate Service at the IRS published a report finding that in fiscal year 2021 (FY21), only 11 percent of the 282 million calls to the agency reached a customer service representative.²⁵

Finally, the IRS’s own audit data shows that the agency disproportionately targets low and middle-income earners with investigations. In 2015, when the IRS began scaling back its audits, rates dropped by 75 percent for earners making more than \$1 million. On the other hand, that number only dropped 33 percent for moderate-to-low-income filers. This is further evidenced by comparing the heat maps of the U.S.’s most impoverished counties with the IRS’s Earned Income Tax Credit (EITC) audit spread.^{26, 27}

Despite the agency’s glaring flaws, some members of Congress have proposed that the IRS should also prepare and file Americans’ taxes for them. Legislation such as the *Tax Filing Simplification Act* would see the federal government replace the role of certified public accountants (CPA’s) and free or low-cost online software.

21 U.S. Government Accountability Office, “IRS Security of Taxpayer Information: Characteristics of Employee Unauthorized Access and Disclosure Cases,” May 19, 2022.

22 Jesse Eisinger, Jeff Ernsthansen and Paul Kiel, “The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax,” *ProPublica*, Jun. 8, 2021.

23 Tucker Higgins, “Attorney General Garland vows billionaire tax leak to ProPublica will be ‘top of my list’ to investigate,” *CNBC*, Jun. 9, 2021.

24 U.S. Treasury Attorney General for Tax Administration, “TIGTA Says IRS Cybersecurity is Lagging,” *TaxNotes*, Jul. 18, 2022.

25 Taxpayer Advocate Service, “NTA Blog: Hello, Is Anyone There? Taxpayers and Practitioners Continue to Experience Frustration Over Lack of Adequate Phone Service,” Feb. 1, 2022.

26 Poverty USA, “Maps & Data,” accessed Feb. 2023.

27 Paul Kiel and Hannah Fresques, “Where in The U.S. Are You Most Likely to Be Audited by the IRS?,” *ProPublica*, Apr. 1, 2019.

IRS Reform (Cont'd.)



Photographs in the Carol M. Highsmith Archive, Library of Congress, Prints and Photographs Division

Agenda

The IRA sends a clear message to taxpayers regarding the federal government's posture on taxation. Even though taxpayers are unable to reach the IRS with tax questions and are afforded no assurances that their personal information will be secure when they file, taxpayers (especially lower income filers) will be at more risk of hearing from one of the new 87,000 new enforcement agents.

Congress must rescind the \$80 billion in funding authorized by the IRA and instead prioritize providing taxpayers with the security and service they deserve. The 118th Congress should also remove the tax code changes made by the IRA, which the Joint Committee on Taxation (JCT) has shown will increase the average tax burden for every American making more than \$30,000. Congress should address the IRS's longstanding, onerous culture of targeting low and middle-income taxpayers with audits.²⁸

Congress must also reject any proposal that would give the IRS the power or authority to do its own tax prep. Several of such proposals have found their way to the floors of Congress in the past few years. The IRS has no incentive to find Americans the savings or exemptions that would maximize their returns. And, in the event of a dispute, the burden of proof would shift to the taxpayer to demonstrate harm. This is just another way the IRS can take advantage of everyday Americans with no access to high powered legal teams.

There should also be meaningful oversight of the way the IRS handles sensitive information. With the leaks of private taxpayer data and a report showing the IRS does not properly dispose of old information, the American people are at risk. Congress must hold the agency accountable and initiate hearings with witnesses about what is being done to address these concerns.

²⁸ Joint Committee on Taxation, "JCT Distribution Table of Inflation Act of 2022," Jul. 29, 2022.

Labor and Minimum Wage

Background

The 7.1 percent annual inflation rate in 2022 has undoubtedly hurt American workers and families' ability to afford basic goods. In fact, recent studies show that 64 percent of working Americans have struggled to make ends meet and 47 percent of working parents have looked for a second job.²⁹ Given the increase in demand for work, especially among working families, flexibility in hours has become a key component in staying afloat during difficult economic downturns.

Unfortunately, the Department of Labor (DOL) is seeking to use rulemaking authority to target independent contractors (also known as gig workers). The DOL's October 2022 proposed rule entitled the "Employee or Independent Contractor Classification Under the Fair Labor Standards Act" would roll back a January 2021 rule that created a relaxed regulatory framework for companies to employ gig workers without being required to provide them full-time employee benefits under the Fair Labor Standards Act.

Separately, the National Labor Relations Board (NLRB) proposed a rule in September 2022 titled "Standard for Determining Joint-Employer Status" which would replace a 2020 joint-employer rule and create an expanded standard for when two companies share the conditions of employment for employees.^{30, 31} The 2022 proposed rule would return employers to an uncertain regulatory environment and vastly increase their liability to labor law violations. The new rule would affect all temporary staffing agencies, employers who use franchise models, and others who use indirect staffing means.

Additionally, the Biden administration mandated – by executive order (EO) – that all federal agency employees be guaranteed a minimum wage of \$15 per hour.³² As such, roughly 67,000 government employees received a raise at the taxpayers' expense. Nearly 80 percent of covered employees work at the Department of Defense.

Agenda

The 118th Congress should rightfully clarify the DOL and NLRB's lack of statutory authority regarding these rulemaking attempts. Congress should enact legislation that codifies the January 2021 independent contractor rule and the 2020 joint-employer rule so that gig workers from tutors to rideshare drivers, franchise owners and temporary staffing agencies have regulatory certainty and can thrive in a flexible environment without federal intervention.

Congress must also vigorously protect the rights of independent contractors. Legislation such as the Protecting Out Right to Organize (PRO) Act have garnered significant support but would decimate contractors and franchise businesses. It would also pre-empt the rights of workers in certain states to decline to join a union and pay dues. The Supreme Court decision in *Janus v. AFSCME* enshrined the ability to self-determine union membership as a constitutionally protected right. Congress' actions on labor-related issues must reflect this.

The Senate, in particular, should reject nominees who would seek to erode these rights from unelected positions within the Department of Labor. Recently, one such nominee – David Weil – failed to garner support in the Senate for a nomination to the Wage and Hour Division. This trend should continue into the 118th Congress and beyond.

The new Congress should wield its ability to review and repeal EO's to roll back the Biden administration's minimum wage mandate. While the American people struggle to get by, there is no excuse for the administration to be giving tens of thousands of its employees a raise at taxpayer expense. Congress should require government salaries to be in line with the market rate for similar work.

²⁹ Qualtrics, "Side Hustles, Extra Shifts, or a New Job – Inflation Forcing Workers to Raise Their Incomes," Oct. 17, 2022.

³⁰ National Labor Relations Board, "Joint Employer 2022," accessed Feb. 2023.

³¹ National Labor Relations Board, "Joint Employer Status Under the National Labor Relations Act," *Federal Register*, Feb. 26, 2020.

³² U.S. Office of Personnel Management, "RELEASE: OPM Announces \$15 Minimum Wage for U.S. Federal Civilian Employees," Jan. 21, 2022.

National Aeronautics and Space Administration (NASA)

Background

For the past half-century, the National Aeronautics and Space Administration (NASA) has inspired millions of Americans to study and explore the cosmos. However, recent missions and plans for renewed manned exploration will result in significant costs for taxpayers. In particular, the current Artemis missions to the moon have led to repeated budget increases for the agency and cost overruns. The FY23 budget for NASA is \$11.84 billion.

Currently, NASA relies on a powerful rocket, the Space Launch System (SLS) to launch its lunar expeditions. When the rocket was first being designed in 2011, NASA projected that the rocket would only take five years to develop and cost “only” \$6 billion. Not surprisingly, development costs ballooned to \$20 billion, along with a \$4 billion per launch bill for taxpayers. As NASA Inspector General (IG) Paul Martin noted in a March 2022 meeting of the House Subcommittee on Space and Aeronautics, the per launch price tag is “unsustainable” and “does not include development costs required to get the Artemis program to this point in time.”³³

NASA’s high and rising costs extend far beyond rocket-related expenses. The IG found that NASA has already spent \$40 billion to get astronauts back to the moon and will likely spend nearly \$100 billion total on the endeavor. Even if this mission is “successful” and astronauts manage to build a lunar base and conduct research free from harm, the goalposts for manned missions will shift at taxpayers’ expense. Combined mission (and settlement) costs to the moon and Mars could easily rival interest payments on the national debt – which are projected to grow significantly due to rising expenditures and climbing interest rates.

America’s space agency continues to insist on bank-breaking manned missions despite unmanned robotic probes being a fraction of the cost. Cambridge cosmology and astrophysics professor and astronomer royal Martin Rees rightly notes, “the practical case (for human spaceflight) gets weaker and weaker with every advance in robotics and miniaturization.”³⁴ NASA

has also acknowledged the advantages: “[r]obots don’t need to eat or sleep or go to the bathroom. They can survive in space for many years and can be left out there – no need for a return trip!”³⁵



Agenda

Lawmakers should press NASA to prioritize probes – not manned missions – in future space exploration plans. While even unmanned exploration is costly and involves investment in rocket technology, Congress can at least keep a close eye on cost overruns and tie future funding to accurate, conservative spending projections from NASA. Additionally, Congress should encourage the private sector to undertake its own space exploration missions. Private innovation has already put significant downward pressure on rocket launch costs and laid the groundwork for a space tourism industry. Lawmakers can encourage this progress by curbing Federal Aviation Administration launch regulations and working on a private property framework for alien worlds and asteroids.

³³ Michael Sheetz, “NASA’s massive moon rocket will cost taxpayers billions more than projected, auditor warns Congress,” CNBC, Mar. 1, 2022.

³⁴ Cian O’Luanaigh, “No need for manned spaceflight, says astronomer royal Martin Rees,” The Guardian, Jul. 26, 2010.

³⁵ U.S. National Aeronautics and Space Administration, “Why do we send robots to space?” Feb. 5, 2021.

Postal Policy

Background

For the past two decades, the U.S. Postal Service (USPS) has faced significant fiscal and operational issues. The agency has lost approximately \$100 billion since 2007 and is projected to lose another \$60-70 billion by 2030.³⁶ Declining first-class mail volume has been a significant contributor to this fiscal collapse. The USPS delivered about 50 billion pieces of first-class mail in 2021, compared to more than 100 billion pieces in 2000.³⁷ Stagnating revenues cannot cover rising operational expenses, which now surpass \$80 billion annually. These surging costs stem from a variety of factors, ranging from underperforming post offices to growing labor costs.

The USPS has more than 30,000 retail locations, but many of these post offices don't bring in enough revenue to cover expenses. According to a 2021 analysis by the agency's Inspector General (IG), "Forty-two percent of post offices did not generate sufficient retail revenue in FY 2019 to cover the cost of operations.... Among nearly 13,000 underwater post offices, one-quarter are within three miles of another post office, and more than half are within five miles."³⁸ Closing even a small proportion of these non-isolated, underwater post offices could save the USPS hundreds of millions of dollars per year.

Even profitable post offices pursue unprofitable business lines such as money orders. The USPS continues to sell these financial products despite private companies offering them at a lower price point and with fewer corresponding operational expenses. A 2022 report by the IG notes, "Postal Service money order costs exceeded revenue in three of the last five years with window service and debit card costs as the largest costs associated with money orders."³⁹ Even as the USPS continues to lose money from this basic financial service, lawmakers have called on the agency to offer banking products such as loans and checking and savings accounts. This would likely further exacerbate the agency's fiscal issues and lead to a taxpayer bailout.

Other lines of postal business face declining profitability due to dubious accounting. The agency's pricing of "competitive" products (e.g., packages) assumes that most of USPS' institutional costs cannot be attributed to package deliveries despite the agency's parcel-centric investments, rising package-related injuries, and the labor-intensiveness of package deliveries. The agency will face difficulty balancing its books until parcel pricing reflects these considerations.

The USPS' most significant cost-driver is its inflexible labor policies. Worker expenses comprise more than 75 percent of total agency expenses, and the agency has made little attempt to reduce compensation costs. Even when the agency hires temporary workers to handle the influx of holiday mail, "temps" are regularly converted to full-time roles at significant expense to taxpayers and consumers. Meanwhile, powerful postal labor unions have made it very difficult to fire employees, discipline workers or rely on more affordable labor.

Agenda

Lawmakers must work with agency leadership to enact real reforms at the USPS. An ambitious consolidation campaign could target underwater post offices for closure while ensuring consumer access to nearby remaining post offices. Congress should audit postal finances and identify business lines that are either losing money or priced out of lockstep with operating costs. Lawmakers should also push the USPS to revamp their hiring policies and emphasize truly temporary positions that need not be converted to full-time roles. These reforms could save taxpayers and consumers significant resources and mitigate the risk of a taxpayer bailout.

³⁶ Jory Heckman, "USPS expects to raise mail rates again next year, warns it remains in 'financial hole,'" Federal News Network, Aug. 9, 2022.

³⁷ U.S. Postal Service, "First-Class Mail Volume Since 1926," accessed Feb. 2023.

³⁸ Office of Inspector General, U.S. Postal Service, "Revenue and Costs in the Retail Network," Report Number RISC-WP-21-003, April 12, 2021.

³⁹ Office of Inspector General, U.S. Postal Service, "U.S. Postal Service Money Order Trends and Cost Coverage," Report Number 22-057-R23, Oct. 20, 2022.

Privacy

Background

The data privacy of the American people seems to be facing more threats than ever before. The nation faces many threats from foreign actors attempting to gain access to key financial information. According to the Federal Bureau of Investigation's (FBI) annual Internet Crime Complaint Center report, cybercrime costs to U.S. businesses and individuals rose from

\$4.2 billion in 2020 to \$6.9 billion in 2021.⁴⁰ These adversaries have already demonstrated the capability to penetrate digital infrastructure of government agencies and critical infrastructure, such as the case with the Colonial Pipeline hack in May 2021. It is reasonable to imagine that smartphones and computers across the nation are also vulnerable.

Congress continues to debate the scope of any potential privacy-related legislation. Yet, questions about what rights consumers are entitled to and what safeguards must be in place for digital service providers are key points that must be addressed by policymakers, agency staff and stakeholders. Currently, the Federal Trade Commission (FTC) also has an open notice on a potential data privacy rulemaking that could come during 2023.



Agenda

Congressional lawmakers, as well as agency staff, should avoid creating any new constitutional “rights” with their privacy efforts. The Constitution – and the Bill of Rights – were written as restrictions on governmental authority. The provisions spelled out there do not limit private actors. Private companies have broad leeway to operate as they see fit on platforms, which are their property. The government does not have the same right to impose such restrictions.

Data collection is a modern iteration of common business practices used over the years. Any successful entrepreneur or businessman conducts market research to know how best to sell that product or to determine which services have sufficient demand. Data collection is simply market research on a bigger scale and with more sophisticated technology.

Some consumers may want their data to be collected to give them a more tailored online experience. Others may desire a more private approach. The key in a government solution is to ensure that both parties have the option to pursue the service and level of comfort they desire. Any

approach tailored toward the latter group will harm the experiences and liberties of the former in the process. Lawmakers must let consumers decide individually what’s best for them and not cater to the lowest common denominator.

What lawmakers can do is combat fraud and deception. If a private company is misleading consumers about the extent to which their data is collected or how it is used, reasonable government oversight is warranted. This is the proper role for the federal government to fill.

The government should also police itself. There needs to be stringent oversight of attempts by government agencies to pressure private companies to turn over their consumers’ data. Congress and watchdog agencies need to ensure proper legal channels are followed before any sensitive information of a third party is turned over to the government.

Simply, the government should allow and encourage the market to reward companies that meet the privacy standards deemed best by consumers.

⁴⁰ Chris Brook, “Cybercrime Cost the U.S. \$6.9 billion in 2021,” *Data Insider*, Sep. 2, 2022.

Section 230

Background

In 1996, Congress passed 47 U.S. Code § 230, more commonly known as Section 230. In recent years, much controversy and confusion has surrounded this relatively simple statute. The core of the law reads, “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” In other words, the law says that people are responsible for what they post online, not necessarily the websites where they are posted or who shares them.

Section 230 was passed to provide some certainty to a burgeoning tech sector after courts began to establish counterproductive precedents in civil suits against online service providers. In one case a website was held liable for content on its site because it chose to exercise its First Amendment and property rights to moderate content. In another case, a website that did not actively police content was not held liable. In effect, website owners would be disincentivized from exercising their rights and cleaning up their corner of the internet for fear of immediately assuming liability for anything they may have missed. With an incomprehensible amount of data being created and uploaded across the internet every second, it is simply impossible for any entity to be able to police content correctly 100 percent of the time. The courts had simply made it too dangerous for website owners to be good stewards of their own property, incentivizing websites to allow any and all content, no matter how objectionable. Section 230 corrected this perverse incentive.

Sen. Ron Wyden (D-Ore.), one of the co-authors of this provision, explains he created Section 230 to be both a “sword and a shield.”⁴¹ The sword is giving companies the ability to take down potentially harmful content without fear of being sued for other content. The shield emphatically states that the companies are not responsible for content hosted on their websites. The posters – and only the posters – are responsible for what they put online for the purposes of civil litigation.

This approach is no small part of what has allowed the tech

sector to become the economic staple it is today. Studies indicate the presence of Section 230 is responsible for contributing roughly \$44 billion to the U.S. economy annually.⁴²

Unfortunately, some lawmakers have misunderstood the thrust of Section 230 and are attempting to severely limit it or revoke it altogether. This is being done in the name of combatting censorship, on the premise that Section 230 is an unfair subsidy of some sort, or allows for too much harmful conduct. These claims could not be further from the truth.

Section 230 explicitly protects all “provider[s] or user[s] of an interactive computer service[s]” and thus in no way is special treatment, especially as more and more of daily life and the economy become digitized. Without Section 230, online service providers would have to become far more restrictive in the content they allow or take a hands-off approach. Either way, the speech of average users would suffer because even in the latter case their speech would be drowned out by the deluge of spam and other objectionable content that would flood websites, inevitably driving audiences away as well. Parts of the internet would become extremely restrictive and others would be relegated to online sewers without any of the kinds of accessible and acceptable platforms we know today. An internet without Section 230 is an internet at the exact kinds of extremes reformers believe they’re combatting.

Agenda

Very simply, lawmakers need to resist the urge altogether to revoke Section 230 in any way, shape, or form. They must also be careful that any reforms being undertaken do not undermine the original intent of the law. Bills like the EARN IT Act would give the President and the Attorney General far too much power to dictate speech online or to selectively grant exemptions depending on behavior. This is a very slippery slope, especially in light of recent reporting of federal agencies and lawmakers pressuring online platforms to police content towards their own ends.

⁴¹ Senator Ron Wyden, “I wrote this law to protect free speech. Now Trump wants to revoke it,” *CNN Business*, Jun. 9, 2020.

⁴² Christian M. Dippon, “Economic Value of Internet Intermediaries and the Role of Liability Protections,” *Real Clear Policy*.

Tax Reform

Background

In 2017, lawmakers passed the Tax Cuts and Jobs Act (TCJA). This monumental piece of legislation lowered taxes for more than 90 percent of families, boosted incentives for innovation, and halved business operating costs. As a result, the U.S. economy significantly expanded and more than 700 companies announced salary increases, benefit boosts, and/or new hiring campaigns. Unfortunately, many of the provisions that led to increased growth and prosperity have begun to expire. Businesses that benefitted from 100 percent bonus depreciation for equipment and machinery will only be able to deduct 80 percent of short-lived assets in 2023. This amount will further decrease in each subsequent year, falling to 60 percent in 2024 and 40 percent in 2025 before phasing out completely in 2026. This artificial cliff for bonus depreciation will make companies reconsider rolling out new investments in the U.S.

At the beginning of the 2022 tax year, businesses lost the ability to deduct interest expenses totaling 30 percent of Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA).

Some TCJA-related phase-outs and expirations are already having a negative effect on economic growth. At the beginning of the 2022 tax year, businesses lost the ability to deduct interest expenses totaling 30 percent of Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA). Companies are now limited to deducting interest expenses up to 30 percent of Earnings Before Interest and Taxes (EBIT). This “change in acronyms” significantly limits companies’ ability to write-off borrowing costs at a time when interest rates have climbed to their highest level in a generation. Businesses struggling to retain skilled workforces must now choose between maintaining payrolls and investing in future growth/capacity.

To make matters even worse, President Biden and his congressional allies took tangible steps in August 2022, via the Inflation Reduction Act (IRA) to raise taxes across-the-board in a futile attempt to pay for trillion dollar deficits. The IRA enacted a 15 percent corporate minimum tax (book minimum tax). An analysis by the Joint Committee on Taxation (JCT) found that American manufacturing would bear 49.7 percent of the additional burden, for an estimated \$52.6 billion tax increase in 2023.⁴³ Furthermore, the National Association of Manufacturers (NAM) found that the book minimum tax would cost 218,108 jobs and reduce real GDP by \$68.45 billion.⁴⁴

Agenda

Lawmakers must act swiftly to make multiple expiring provisions of the TCJA permanent. Setting bonus depreciation at 100 percent and keeping interest expense deductions at 30 percent of EBITDA are critical to maintain a competitive tax code and avoid economic backslide. Additionally, Congress should consider how to expand on the promise of tax reform by further reducing rates and simplifying the tax code. This can include further increasing the standard deduction and boosting contribution limits for tax-free savings vehicles such as Health Savings Accounts.

Lawmakers should repeal the provisions of the IRA that negatively impact businesses and taxpayers. Eliminating the 15 percent book tax will help U.S. companies prosper. Instead, Congress should seek to reduce business tax rates, which would allow companies to lower costs, expand hiring, and ward off an economic downturn.

⁴³ United States Congress Joint Committee on Taxation, “Proposed Book Minimum Tax Analysis by Industry,” Jul. 28, 2022.

⁴⁴ National Association of Manufacturers, “Book Tax Would Disproportionately Burden Manufacturers,” Jul. 29, 2022.

Telecom & Broadband

Background

These are unprecedented times for taxpayer-funded broadband expansion in the U.S. Through enacted legislation such as the Infrastructure Investment and Jobs Act (IIJA) that provide funds directly for high-speed internet growth and the American Rescue Plan Act (ARPA) that offers taxpayer money for infrastructure projects including broadband, taxpayers are shelling out hundreds of billions of dollars to close the digital divide. In all, 16 federal programs offer more than \$400 billion for internet projects, with funds administered at every level of government. As part of determining how best to distribute these funds, the Federal Communications Commission (FCC) is fine-tuning a national broadband map that the National Telecommunication and Information Administration (NTIA) will use to determine where to send money through the IIJA's

Broadband Equity, Access and Deployment (BEAD) program. Unfortunately, BEAD emphasizes government-owned networks (GONs), which frequently hemorrhage taxpayer money. TPA has studied these types of networks intensively, finding in a 2020 report that GONs rarely get the number of customers they anticipate.⁴⁵ This results in taxpayers or electric ratepayers making up the financial shortfall.

Meanwhile, the FCC's spectrum auction authority – which has allowed the commission to sell-off unused spectrum so that providers can help expand wireless applications since its enactment in 1993 – is set to expire in March. Freeing up spectrum is important for both licensed and unlicensed applications and is helping foster 5G growth.

Agenda

Congress should review the notice of funding order (NOFO) for BEAD because NTIA implemented stipulations that could be counter-productive to the goal of 100 percent connectivity. The NOFO includes a strong prioritization for fiber when other technologies such as fixed wireless have been helpful in serving the most rural regions. It also includes requirements for unionized workforces, which presents problems such as a lack of qualified workers, as only 10 percent of skilled labor in the industry is unionized. The NOFO also heavily promotes GONs, which – as frequently reported by TPA – often fail and leave taxpayers or electric ratepayers on the hook for the debt used to build them. Lastly, the BEAD program, which will distribute more than \$42 billion in taxpayer

money, currently has an exemption from the federal Freedom of Information Act (FOIA). When taxpayer money is being spent on government internet projects, it is important that taxpayers know how their funds are being used. Congress should enact the Broadband Buildout Accountability Act, which would remove this exemption.

Congress also should make the extension of the FCC's spectrum auction authority a priority in 2023. That authority has been a boon for not only closing the digital divide, but also for the expansion of radio, mobile and satellite services. Congress should extend this authority either in a standalone bill or as part of an appropriations bill.



⁴⁵ Taxpayers Protection Alliance, "GON with the Wind: The Failed Promise of Government-Owned Networks," May 13, 2020.

Trade & Tariffs

Background

In 1930, just eight months after the onset of the Great Depression, President Herbert Hoover signed the Tariff Act of 1930, also known as the Smoot-Hawley Tariff Act into law. The bill greatly increased tariffs on imports to protect American companies (and agriculture more specifically) from foreign competition during a very volatile economic time.

Foreign nations naturally responded with tariffs on American products, making it more difficult for American producers to ship their goods overseas, greatly decreasing the market size for U.S. products and services. It also denied many Americans access to cheaper foreign goods, raising the cost of living at a time when so many already could not make ends meet.

This could have been easily avoided. Very shortly before President Hoover signed the bill into law, 1,028 of the nation's leading economists urged him to veto the legislation. They argued rightly that if the bill became law, the cost of living would rise, the world would retaliate, and foreign nations would be unable to repay loans, harming American investors. All these maladies came to pass and more.

Though Smoot-Hawley is perhaps the starkest example, restrictions on free trade are restrictions on economic activity; the impacts are felt in America and around the globe. In under five years, world trade decreased by 66 percent from pre-Smoot-Hawley levels. Over the same period, U.S. unemployment rose 600 percent. Europe shared a similar fate; unemployment in the United Kingdom increased 130 percent, with France and Germany experiencing a 200 percent rise. It is clear the tariffs brought unnecessary economic consequences on the United States.

Unfortunately, after several decades of relative consensus on the merits of free trade, there is emerging bipartisan sympathy for tariffs once more. Lawmakers on both sides of the political aisle claim the U.S. is being "ripped off" due to trade deficits or that free trade unfairly disadvantages American companies.

This trend has manifested itself in repeated calls by both President Trump and President Biden to heavily subsidize American industries while imposing duties on foreign imports. This continued protectionism has frayed many international relationships with America's most important trading partners and led to an increase in prices, contributing to the record inflation so many Americans are now experiencing.

Agenda

Simply put, American lawmakers should remember the lessons of the past and resist urges to place restrictions on international trade. Outsized focus on trade deficits is misplaced. Every American technically has a trade deficit with their local grocery store, in that consumers buy more from grocery stores than the grocery stores buy from the average consumer. Yet, most all Americans would likely say their grocery store is vital to providing necessary products for their lives. This is by no means a "rip off."

Further, lawmakers should understand that while many American companies compete directly with foreign providers of goods and services, the U.S. relies on the goods and services overseas companies produce. A company that relies on cheaper or uniquely made foreign goods is no less American than a company that competes with that foreign provider. Just as free market competition within America's borders bolsters the economy, competition across national borders is no different.

Congress and the administration should seek, at every opportunity, to liberalize trade with foreign countries, opening job and commerce opportunities for millions of Americans.

Conclusion & Summary of Recommendations to Congress

In the two years that the 118th Congress will be in session, lawmakers will deliberate on a wide array of issues that impact taxpayers and consumers. TPA offers the following recommendations to Congress to improve fiscal responsibility, government transparency, national security, economic well-being, and consumer choice. Ultimately, all of these issues will require bipartisan action from Republicans and Democrats to create meaningful, lasting change for the future of the U.S.

Budget Reform

- Replace the “pay-as-you-go” (PAYGO) budgetary rules with a “cut-as-you-go” (CUTGO) policy to ensure increases in mandatory spending are offset by cuts to other obligatory areas and not increases in revenue;
- Pass legislation such as S.Con.Res.41, S.Con.Res.43 and S.2727 to prevent government shutdowns and curtail the use of continuing resolutions;
- Expand the current 10-year projections to require the budgetary effects of authorizing measures to span 15-year or 20-year estimates; and
- Reinstate the ban on earmarks.

Climate Disclosure

- Review and amend the U.S. Securities Act of 1933 and the Securities and Exchange Act of 1934 to ensure the SEC is not running afoul of its statutory authority by implementing burdensome climate disclosure standards.

Antitrust

- Ensure any antitrust legislation promotes the consumer welfare standard;
- Implement clear FTC & DOJ oversight to ensure the agencies are adhering to the consumer welfare standard; and
- Oppose legislation such as the Journalism Competition and Preservation Act (JCPA), American Innovation and Choice Online Act (AICOA) and Open App Markets Act (OAMA), which distort antitrust law, and threaten consumers' cybersecurity and online safety for children.

Defense

- Repeal unfunded priority list (UPL) requirements as instituted under P.L. 114-328;
- Ensure CUTGO policy also applies to defense spending so that the DoD must effectively prioritize projects; and
- Conduct effective oversight of runaway F-35 funding and rein in extraneous modification programs such as the AETP.

Conclusion & Summary of Recommendations to Congress

Economy and Inflation

- Implement strict budgetary rules to reduce deficit spending;
- End taxpayer-funded subsidies for energy companies and reform the NEPA permitting processes to promote domestic production;
- Lower barriers to entry into the labor market by promoting flexible work and opposing minimum wage hikes; and
- Reduce barriers to international trade by lowering and eliminating tariffs.

Energy

- Eliminate the ITC and the PTC to save taxpayers up to \$260 billion over the next decade;
- Reform NEPA's EIS to ensure effective, consistent review of domestic production projects;
- Conduct expeditious oversight on overreach in executive rulemaking, such as the EPA's proposed air quality standards; and
- Oppose the banning of exports of U.S.-produced oil and natural gas and imposition of undue windfall profits taxes on oil and gas companies.

Food and Drug Administration

- Require the FDA to liberalize its food evaluation processes by working with companies to use cost-effective approaches such as irradiation and phage treatment to counter harmful pathogens;
- Eliminate barriers to tobacco harm-reduction products, which are proven to be safe alternatives to combustible cigarettes; and
- Improve the FDA's drug approval process by allowing more external control data and relaxing existing statistical thresholds for approval.

Healthcare

- Order a comprehensive review of all mandates authorized under the ACA and agency rulemaking, and eliminate the rules and legislative provisions that limit patient decision-making; and
- Ease rules and contribution limits on tax-free Health Savings Accounts and convert ACA subsidies into means-tested deposits into HSA's.

International

- Cut the more than \$11.5 billion in taxpayer subsidies that Congress sends annually to the WHO, the UN and other IGOs; and
- Mandate transparency and accountability requirements from IGOs in order to receive U.S. funding.

Conclusion & Summary of Recommendations to Congress

Intellectual Property

- Strengthen IP rights by making courts, rather than PTAB, the primary arbiter for enforcement disputes;
- Repeal the 2011 America Invents Act entirely or curb the statute to limit inter parties review to exceptional circumstances;
- Ensure that IP holders' rights are not limited or exhausted by agency approval processes;
- Work with the Copyright Office and Patent and Trademark Office to clarify appropriate survey evidence that could be used in defending IP claims; and
- Reform and oversee the ITC's broad consideration of patent infringement cases and its generous use of exclusion orders that leave American companies vulnerable to international patent trolls.

Labor and Minimum Wage

- Codify the January 2021 independent contractor rule and the 2020 joint-employer rule so that Americans have free and fair access to flexible work in the gig economy;
- Oppose legislation such as the PRO Act that would decimate independent contractors and franchise businesses, as well as pre-empt the rights of workers in certain states to decline to join a union and pay dues;
- Reject Department of Labor nominees who would use their unelected positions to erode the rights of Americans; and
- Review and repeal labor-related executive orders, such as the Biden administration's minimum wage mandate, and require government salaries to be in line with the market rate for similar work.

IRS Reform

- Rescind the \$80 billion in funding authorized by the IRA;
- Remove the tax code changes made by the IRA;
- Address the IRS's longstanding, onerous culture of targeting low and middle-income taxpayers with audits;
- Reject proposals that would create an obvious conflict of interest by giving the IRS the power or authority to do consumer tax preparation; and
- Conduct effective oversight of how the IRS handles sensitive taxpayer information, beginning with the agency's failure to enact FISMA standards.

National Aeronautics and Space Administration (NASA)

- Prioritize probes, rather than manned missions, in future space exploration;
- Identify cost overruns and tie future funding to accurate, conservative spending projections from NASA; and
- Curb FAA launch regulations and work on a private property framework for alien worlds and asteroids to encourage the private sector to undertake its own space exploration missions.

Conclusion & Summary of Recommendations to Congress



Tax Reform

- Make TCJA provisions such as setting bonus depreciation at 100 percent and keeping interest expense deductions at 30 percent of EBITDA permanent;
- Further reduce tax rates and simplify the tax code; and
- Repeal the 15 percent book tax in the IRA.

Section 230

- Oppose efforts to revoke Section 230 protections; and
- Oppose legislation such as the EARN IT Act, which would give the President and the Attorney General far too much power to dictate speech online and selectively grant exemptions depending on behavior.

Privacy

- Avoid creating new constitutional “rights” with legislative privacy efforts and allow consumers and companies to jointly decide the service and level of comfort they desire;
- Combat corporate fraud and deception in data collection practices; and
- Oversee attempts by federal agencies to pressure private companies to turn over consumers’ data.

Postal Policy

- Audit postal finances and identify business lines that are either losing money or priced out of lockstep with operating costs; and
- Push the USPS to revamp their hiring policies and emphasize truly temporary positions that need not be converted to full-time roles.

Telecommunications and Broadband

- Conduct oversight on the NOFO for the BEAD program, authorized by the IIJA, to avoid counterproductive stipulations from the NTIA;
- Enact the Broadband Buildout Accountability Act to apply Freedom of Information Act standards to the BEAD program;
- Extend the challenge deadline for NTIA’s national broadband map; and
- Extend the FCC’s spectrum action authority.

Trade and Tariffs

- Reduce existing tariffs;
- Limit the ability of presidents to unilaterally impose new restrictions and tariffs.