

BACKGROUND

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Important Policy Riders for the FY 2016 Appropriations Bills

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Abstract

The Constitution unequivocally grants Congress the exclusive power to appropriate funds for the “necessary and proper” operations of government. James Madison wrote in The Federalist No. 58 that providing budgetary powers to Congress was a critical element in maintaining individual rights. Congress’s power of the purse resides in its authority to make laws. However, the Constitution does not distinguish between laws that provide funding and those that authorize programs. This ambiguity has resulted in rules established by the House and Senate, and reinforced through budget laws, distinguishing between bills that appropriate funds and those that authorize programs. Congress should use policy riders to advance important policy objectives. A team of Heritage Foundation policy experts recommends legislative and limitations policy riders that should be included in the regular appropriations bills for the remainder of FY 2016.

The Constitution unequivocally grants Congress the exclusive power to appropriate funds for the “necessary and proper” operations of government.¹ James Madison wrote in *The Federalist* No. 58 that providing budgetary powers to Congress was a critical element in maintaining individual rights: “The power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”²

Congress’s power of the purse resides in its power to make laws. However, the Constitution does not distinguish between laws that provide funding and those that authorize programs. The ambiguity derived from the Constitution has resulted in rules established

KEY POINTS

- Congress should prohibit funding for Obamacare’s risk corridor program until the program ends in 2017 to prevent a bailout of unprofitable qualified health insurance plans in the individual and small group markets.
- Congress should prohibit the EPA and the U.S. Army Corps of Engineers from expending any funds to implement the WOTUS rule, which is an attack on property rights and a power grab that seeks to regulate almost all “waters.”
- Congress should prohibit any funding implementing any agreement under the United Nations Framework Convention on Climate Change made without prior submission to the Senate.
- Congress should redirect federal funding from Planned Parenthood to centers that provide comprehensive health care without entanglement in abortion on demand.
- Congress should prohibit the Department of Homeland Security and the Department of Justice from providing money to “sanctuary cities,” which resist the enforcement of immigration law.

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by the House and Senate, and reinforced through budget laws, distinguishing bills that appropriate funds annually and those that authorize programs.³ According to the Government Accountability Office's (GAO) *Principles of Appropriations Law* (known as the Red Book), an appropriation provides an agency with the "direction to pay and a designation of funds to be used" to implement a program.⁴ At the same time, a law providing an authorization gives the agency the directive to carry out a program, but not necessarily the funds needed for its implementation.

There are rules in the House and Senate that place restrictions on the annual appropriations bills funding discretionary agencies and programs, which are enforced through points of order. These rules are typically ignored. For instance, the House has had a rule in place since 1837 prohibiting any appropriation for an unauthorized program,⁵ and yet, the fiscal year (FY) 2016 House Commerce, Science, and Justice bill funded 91 programs with expired authorizations.⁶ At the same time, "limitation riders" prohibiting or directing the use of funds for certain purposes are allowed under congressional rules and have been a part of all appropriations bills since the 1870s.⁷

Congress should use policy riders to advance important policy objectives.⁸ This *Backgrounder* rec-

ommends legislative and limitations policy riders that should be included in the regular appropriations bills for the remainder of FY 2016. The recommendations are categorized by appropriations subcommittee.

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies

Congress should:

Prohibit Funding for the USDA Catfish Inspection Program. The Food and Drug Administration (FDA) is responsible for inspecting both domestic and imported seafood. However, in the 2008 farm bill, a special exception was created that requires the U.S. Department of Agriculture (USDA) to inspect catfish. The program (still to be implemented), which the USDA has estimated will cost about \$14 million annually,⁹ will impose costly duplication because facilities that process seafood including catfish will be required to comply with both FDA and USDA regulations.

This widely opposed program will hurt consumers by limiting competition, and will likely harm industries by provoking retaliatory trade measures by foreign countries. Catfish inspection, like other seafood inspection, should remain with the FDA.¹⁰

1. U.S. Constitution, Article I, section 9, clause 7.

2. In *The Federalist* No. 58, James Madison wrote: "The House of Representatives alone can propose the supplies requisite for the support of government." http://thomas.loc.gov/home/histdox/fed_58.html (accessed October 16, 2015).

3. Bill Heniff, "Overview of the Authorization—Appropriations Process," Congressional Research Service *Report for Congress*, November 26, 2012, <http://www.senate.gov/CRSReports/crs-publish.cfm?pid=ODP%2BPLW%3C%22%40%20%20%0A> (accessed November 17, 2015).

4. U.S. Government Accountability Office, *Principles of Federal Appropriations Law: Annual Update of the Third Edition*, GAO-15-303SP, March 2015, <http://www.gao.gov/assets/670/668991.pdf> (accessed November 17, 2015).

5. Neal Devins, "Appropriation Riders," William and Mary Law School *Faculty Publications*, Paper 1635, pp. 67–69 (1994), <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2679&context=facpubs> (accessed November 17, 2015).

6. John Gray, "House Commerce, Justice, and Science (CJS) Appropriations: Congress Just Violated the Spending Cap," Heritage Foundation *Issue Brief* No. 4413, June 2, 2015, <http://www.heritage.org/research/reports/2015/06/house-commerce-justice-and-science-cjs-appropriations-congress-just-violated-the-spending-caps>.

7. Jacques B. LeBoeuf, "Limitations on the Use of Appropriations Riders by Congress to Effectuate Substantive Policy Changes," *Hastings Constitutional Law Quarterly*, Vol. 19, No. 2 (Winter 1992), p. 460, <http://www.hastingsconlawquarterly.org/archives/V19/12/LeBoeuf.pdf> (accessed November 17, 2015).

8. This assumes that if Congress cannot directly limit or prohibit funding, or enforce a specific policy, it also cannot do so indirectly through the appropriations process.

9. This USDA Food Safety and Inspection Service (FSIS) estimate includes the costs to both the federal government and industry. The government would bear 98 percent of the costs. The GAO had some concerns about this estimate. U.S. Government Accountability Office, "Seafood Safety: Responsibility for Inspecting Catfish Should Not Be Assigned to USDA," GAO-12-411, May 2012, <http://www.gao.gov/assets/600/590777.pdf> (accessed March 13, 2015). For example, the GAO explained: "FSIS indicated that it did not have complete information on the total number of domestic and foreign catfish processing facilities that would be affected by the proposed regulations." *Ibid.*, p. 20.

10. Daren Bakst, "Addressing Waste, Abuse, and Extremism in USDA Programs," Heritage Foundation *Backgrounder* No. 2916, May 30, 2014, <http://www.heritage.org/research/reports/2014/05/addressing-waste-abuse-and-extremism-in-usda-programs>.

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Withhold Funding for Federal Fruit and Vegetable Supply Restrictions. In June 2015, the United States Supreme Court decided *Horne v. Department of Agriculture*,¹¹ a case regarding the federal government's authority to fine raisin growers who did not hand over part of their crop to the government. The Court held that forcing growers to turn over their raisins was a taking of private property requiring just compensation.

While the "raisin case" received much attention because of the outrageous nature of the government's actions, it is far from unique. In particular, the USDA uses its power to enforce a number of cartels through industry agreements known as marketing orders. Fruit and vegetable marketing orders¹² allow the federal government to authorize supply restrictions (volume controls) limiting the

11. *Horne v. Department of Agriculture*, 135 S. Ct. 2419 (2015), http://www.supremecourt.gov/opinions/14pdf/14-275_c0n2.pdf (accessed November 17, 2015).

12. These marketing orders cover fruits, vegetables, and specialty crops. See Agricultural Marketing Service, "Marketing Orders for Fruits, Vegetables, and Specialty Crops," U.S. Department of Agriculture, <http://www.ams.usda.gov/rules-regulations/moa/fv> (accessed November 17, 2015). There are also milk marketing orders, but they are different from fruit and vegetable marketing orders. See Agricultural Marketing Service, "Federal Milk Marketing Orders," U.S. Department of Agriculture, <http://www.ams.usda.gov/rules-regulations/moa/dairy> (accessed November 17, 2015).

amounts that agricultural producers may sell. Marketing orders are bad enough, but, at a minimum, Congress should stop funding these volume controls that limit how much of their own fruits and vegetables private farmers may sell.¹³

Prohibit Funding for National School Lunch Program Standards. The USDA's new school lunch standards implementing the Healthy and Hunger Free Kids Act of 2010 have been a failure. These standards are a burden on schools and have resulted in many negative outcomes. For example, a January 2014 report by the Government Accountability Office (GAO) shows that since the implementation of the new standards, participation in the school lunch program has declined, there has been an increase in food waste among students, and some schools have dropped out of the program at least partially due to the new standards.¹⁴ The new standards have also imposed greater costs on schools, such that some have even have had to draw from their education funds to cover the new costs.¹⁵ No funding should be directed toward implementation and enforcement of these standards.

Commerce, Justice, Science, and Related Agencies

Congress should:

Restrict funding to the U.S. Census Bureau for the annual supplemental poverty measure (SPM) report. The SPM is a relative poverty measure; rather than determining whether a household is poor based on its income, as the official U.S. poverty measure does, the SPM determines a household's poverty status by comparing its income to the income of other households. The SPM undergirds a "spread-the-wealth" agenda, and it should be eliminated.¹⁶

Defense

Congress should:

Put a High Priority on Missile Defense. Iran's ballistic missile force, the largest in the Middle East, poses a growing threat to its neighbors. Washington should help Israel to strengthen its missile defenses and help the Gulf Cooperation Council (GCC) countries to build an integrated and layered missile defense architecture to blunt the Iranian missile threat. The U.S. Navy should be prepared to deploy warships equipped with Aegis ballistic missile defense systems to appropriate locations to help defend Israel and the GCC allies from Iranian missile attacks as circumstances demand. This will require coordinating missile defense activities among the various U.S. and allied missile defense systems through a joint communications system. The U.S. should also field missile defense interceptors in space for intercepting Iranian missiles in the boost phase, which would add a valuable additional layer to missile defenses.

End Renewable Energy Mandates in the Department of Defense. Such mandates undermine the incentive for producers of renewable energy to develop competitively priced products, thereby actually impeding marketplace diversity. In particular, under Section 2911(e) of Title 10 of the United States Code, the Defense Department is obligated to generate 25 percent of its electricity using renewable sources by 2025. This mandate, which is forcing the Pentagon to expend increasing resources on renewable energy rather than on military capability, should be ended immediately.¹⁷

Energy and Water Development, and Related Agencies

Congress should:

Maintain Funding for Yucca Mountain Nuclear Materials Repository Licensing Review. Deep geologic storage is necessary for any long-

13. Daren Bakst, "The Federal Government Should Stop Limiting the Sale of Certain Fruits and Vegetables," Heritage Foundation *Issue Brief* No. 4466, September 29, 2015, <http://www.heritage.org/research/reports/2015/09/the-federal-government-should-stop-limiting-the-sale-of-certain-fruits-and-vegetables>.
14. U.S. Government Accountability Office, "School Lunch: Implementing Nutrition Changes Was Challenging and Clarification of Oversight Requirements Is Needed," GAO-14-104, January 28, 2014, <http://www.gao.gov/products/GAO-14-104> (accessed November 18, 2015).
15. Daren Bakst, "Michelle Obama Is Ignoring the Problems Her New School Lunch Standards Have Caused," The Daily Signal, May 30, 2014, <http://dailysignal.com/2014/05/30/michelle-obama-ignoring-problems-new-school-lunch-standards-caused/>.
16. Robert Rector and Rachel Sheffield, "Obama's New Poverty Measure 'Spreads the Wealth,'" Heritage Foundation *Commentary*, November 9, 2011, <http://www.heritage.org/research/commentary/2011/11/obamas-new-poverty-measure-spreads-the-wealth>.
17. Jack Spencer, "Capability, Not Politics, Should Drive DOD Energy Research," Heritage Foundation *WebMemo* No. 3299, June 22, 2011, <http://www.heritage.org/research/reports/2011/06/capability-not-politics-should-drive-dod-energy-research>.

term nuclear waste management solution. Despite the Obama Administration's refusal to support the program, the 1982 Nuclear Waste Policy Act, as amended, legally mandates the Department of Energy (DOE) to carry forth a licensing process for just such a repository at Yucca Mountain, Nevada. There are more than sufficient resources¹⁸ set aside in the nuclear waste fund for precisely that purpose. The Nuclear Regulatory Commission (NRC) anticipates that the process will cost another \$330 million, an amount the President's budget did not request.¹⁹

Congress should provide \$50 million to the NRC for the next fiscal year and stipulate, as the FY 2016 House Energy and Water Appropriations bill did, that no funds may be spent on any alternative nuclear waste management plan, most notably the President's shortsighted "Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste," unless and until Congress passes legislation specifying otherwise. Further, a continuing resolution should clarify that no funds may be used for "actions that irrevocably remove the possibility that Yucca Mountain may be a repository option in the future."²⁰ Congress must not be complicit in the Obama Administration's refusal to follow the law and should therefore fund the Yucca Mountain repository licensing review.²¹

Financial Services and General Government

Congress should:

Prohibit Funding for the Export-Import Bank. The charter of the Export-Import Bank

(Ex-Im) was reauthorized by Congress on December 3, 2015. The bank provides discount financing to foreign firms and foreign governments for the purchase of American exports. The program primarily benefits multinational corporations and puts unsubsidized U.S. firms at a competitive disadvantage, and taxpayers at financial risk. Ex-Im provides taxpayer-backed financing for just 2 percent of U.S. exports. Subsidies for air transport comprise the vast majority of Ex-Im financing—primarily benefitting Boeing.

Ex-Im was capitalized with \$1 billion in taxpayer dollars, and its financing is backed by the full faith and credit of the United States, which means that taxpayers are on the hook for any losses that the bank fails to cover with reserves. There is no shortage of private financing available.²²

Eliminate the Funding for the Multi-State Plan Program. Under Section 1334 of the Affordable Care Act (ACA), Congress created the Multi-State Plan Program (MSP) to be administered by the Office of Personnel Management (OPM). OPM was to contract with at least two insurance companies to compete eventually with all other private health plans in the health insurance exchanges in every state.²³

In 2014, OPM contracted with only one large insurer, the Blue Cross and Blue Shield Association. In 2015, OPM added the so-called co-op plans to its roster of plans, even though these plans were financially unstable and about half have since collapsed. The MSP is not expanding market competition. In fact, the program sets standards designed to limit

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18. Nuclear Energy Institute, "Nuclear Waste Fund Payment Information by State," updated April 2015, <http://www.nei.org/Knowledge-Center/Nuclear-Statistics/Costs-Fuel,-Operation,-Waste-Disposal-Life-Cycle/Nuclear-Waste-Fund-Payment-Information-by-State> (accessed August 25, 2015).
 19. News release, "NRC: Yucca Mountain License Will Cost Another \$330 Million," Nuclear Energy Institute, March 5, 2015, <http://www.nei.org/News-Media/News/News-Archives/NRC-Yucca-Mountain-License-Will-Cost-Another-330-M> (accessed August 25, 2015).
 20. Full Committee Print of legislation: "Making appropriations for energy and water development and related agencies for the fiscal year ending September 30, 2016, and for other purposes," 114th Cong., 1st Sess., p. 55, <http://appropriations.house.gov/uploadedfiles/bills-114hr-fc-ap-fy2016-ap00-energywater.pdf> (accessed August 26, 2015).
 21. Jack Spencer and Katie Tubb, "Fooled Again: The Nuclear Waste Administration Act Preserves Futile Status Quo," Heritage Foundation *Backgrounder* No. 3045, August 5, 2015, https://s3.amazonaws.com/thf_media/2015/pdf/BG3045.pdf, and Jack Spencer, "Nuclear Waste Management: Minimum Requirements for Reforms and Legislation," Heritage Foundation *Issue Brief* No. 3888, March 28, 2013, http://thf_media.s3.amazonaws.com/2013/pdf/ib3888.pdf.
 22. Diane Katz, "Export-Import Bank: Propaganda versus the Facts," Heritage Foundation *Issue Brief* No. 4430, July 13, 2015, http://thf_media.s3.amazonaws.com/2015/pdf/IB4430.pdf.
 23. The Honorable Linda Springer et al., "The Office of Personnel Management: A Power Player in America's Health Insurance Markets?" Heritage Foundation *Lecture* No. 1145, February 19, 2010, <http://www.heritage.org/research/lecture/the-office-of-personnel-management-a-power-player-in-americas-health-insurance-markets>.

plan entry, and may decrease competition and further increase consolidation in the health insurance market.²⁴

Moreover, some multi-state plans can provide coverage of elective abortion, while remaining eligible for government subsidies. This is a significant departure from the widely accepted and long-standing policy that taxpayer money should not pay for coverage of elective abortions.²⁵

The MSP, like the co-op program, was a substitute for the “robust” public option, a government health plan to compete with private insurance, a key feature of the original version of health reform legislation championed by the Obama Administration. There is no need for the federal government to be sponsoring special health plans to compete against private health plans; the markets are already less competitive than they were before enactment of the law, and government-sponsored plans threaten to further accelerate that consolidation.

Protect Freedom of Conscience in the District of Columbia. Congress should prohibit the District of Columbia from using any federal or local funding to implement or enforce the Reproductive Health Nondiscrimination Act or Human Rights Amendment Act.

In 2014, the District of Columbia passed two bills, one that discriminates against pro-life groups, and the other that violates the religious liberty of religious schools in the District. The Reproductive Health Nondiscrimination Act could require pro-life organizations to hire individuals who advocate for abortion. The Human Rights Amendment Act could force Christian schools to violate their beliefs about human sexuality and recognize LGBT student groups or host “gay pride” days on campus.²⁶

Homeland Security

Congress should:

Ensure an effective vetting process for Syrian refugees to enter the U.S. There are serious concerns with the President’s proposal to accept additional Syrian refugees without assurances that adequate vetting is occurring. Congress must assert its authority and ensure an effective vetting process, such as requiring a risk based-assessment drawn from the considered judgment of the U.S. intelligence community for Congress to understand the risks entailed in accepting additional refugees. Congress also should require the Administration to develop a plan that documents proper screening and vetting for all the individuals being considered for resettlement in the United States. In addition, Congress must ensure that the Administration fully follows the law as established, with no deviations from or executive overreach outside existing statute, and fully consult with Congress on the development of the plan, its substance, and the execution of the operation.

Interior, Environment, and Related Agencies

Congress should:

Rein in the EPA’s Ozone Standard. The Environmental Protection Agency (EPA) finalized a new ozone standard of 70 parts per billion (ppb) in October 2015. This drastic action is premature. States are just now starting to meet the current 75 ppb standard. According to the Congressional Research Service, 123 million people live in areas that have not attained the current standards. In fact, 105 million people live in areas that are still considered nonattainment for the less-stringent 1997 ozone standard. When nearly 40 percent of the nation’s population lives in areas that have not met the current standard, adopting an even more stringent standard is, at best, premature.²⁷

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24. Robert Emmet Moffit and Neil R. Meredith, “Multistate Health Plans: Agents for Competition or Consolidation?” Mercatus Center *Working Paper*, January 13, 2015, <http://mercatus.org/publication/health-insurance-multi-state-plan-program-competition> (accessed November 17, 2015).
 25. Sarah Torre, “Obamacare’s Many Loopholes: Forcing Individuals and Taxpayers to Fund Elective Abortion Coverage,” Heritage Foundation *Backgrounder* No. 2872, January 13, 2014, <http://www.heritage.org/research/reports/2014/01/obamacares-many-loopholes-forcing-individuals-and-taxpayers-to-fund-elective-abortion-coverage>.
 26. Ryan T. Anderson and Sarah Torre, “Congress Should Protect Religious Freedom in the District of Columbia,” Heritage Foundation *Issue Brief* No. 4364, March 9, 2015, <http://www.heritage.org/research/reports/2015/03/congress-should-protect-religious-freedom-in-the-district-of-columbia>.
 27. Daren Bakst, “Statement Regarding Proposed Ozone Standards,” testimony before the Environmental Protection Agency, January 29, 2015, <http://www.scribd.com/doc/255666438/Bakst-Testimony-Ozone-Standards> (accessed November 17, 2015).

Open Access to Natural Resource Development. Congress should open all federal waters and all non-wilderness, non-federal-monument lands to exploration and production of all of America's natural resources. Congress should require the Department of the Interior both to conduct lease sales if a commercial interest exists (whether for offshore oil or for offshore wind), and to use its flexibility under its current authority (whether streamlining of red tape or lower royalties) to attract interest to federal lands.²⁸

Prohibit a Net Increase in Federal Lands. The federal estate is massive, consisting of some 635 million acres. The effective footprint is even larger because limitations on federal lands often affect the use of adjacent state and private lands, since government agencies lock up lands through informal designations and study areas. Regulatory pushes threaten to put almost all of the United States under some form of federal jurisdiction. Federal ownership and federal regulation of public lands restrict economic activity, and, in many instances, have created environmental problems due to mismanaged lands and lack of a proper incentive structure to maintain the properties.²⁹

Allow the Land and Water Conservation Fund to Expire Permanently. The federal government owns some 635 million acres of land throughout the United States—that is nearly 30 percent of the entire country, and nearly half of the western U.S. This massive amount of federal ownership has resulted in land mismanagement, stifled opportunities for recreation and resource production, and poor environmental management. Rather than placing more decisions under Washington's control, Congress should empower the states and local communities to protect their environments, maximize the value of the land, and create new opportunities for economic development.³⁰

Labor, Health and Human Services, Education, and Related Agencies

Congress should:

Redirect Funding from Planned Parenthood to Health Centers not Entangled with Abortion Services. Planned Parenthood Federation of America affiliates face serious and disturbing accusations that should spur Congress to redirect the organization's federal funding to other health centers for women. Some affiliates have been shown in videos selling the body parts of aborted babies, while others face accusations of waste, abuse, and potential fraud with taxpayer money, and still others of failing to report the sexual abuse of minor girls.³¹

No federal funds should go to Planned Parenthood Federation of America or any of its affiliates or health centers. Disqualifying Planned Parenthood affiliates from receiving Title X family planning grants, Medicaid reimbursements, and other grants and contracts should not reduce the overall funding for women's health care. The funds currently flowing to Planned Parenthood affiliates should be distributed to health centers that offer comprehensive health care without entanglement in abortion on demand.

Restrict Risk-Corridor Funding. Section 1342 of the Affordable Care Act directs the Secretary of Health and Human Services to operate a risk-corridor program to limit the profits and losses of qualified health plans in the individual and small-group markets. However, the provision does not specify a source of funding for the program. As part of the Consolidated and Further Appropriations Act of 2015,³² Congress restricted funding for the risk-corridor program to money collected from participating profitable health plans. Congress should prohibit risk-corridor funding in order to prevent the program from being bailed out by the Administration.

28. Nicolas D. Loris, "What Contributes to Gas Prices and Solutions to Help," Heritage Foundation *Backgrounders* No. 2949, September 14, 2014, <http://www.heritage.org/research/reports/2014/09/what-contributes-to-gas-prices-and-solutions-to-help>.

29. Katie Tubb and Nicholas Loris, "The Federal Lands Freedom Act: Empowering States to Control Their Own Energy Futures," Heritage Foundation *Backgrounders* No. 2992, February 18, 2015, <http://www.heritage.org/research/reports/2015/02/the-federal-lands-freedom-act-empowering-states-to-control-their-own-energy-futures>.

30. Nicolas D. Loris, "Land and Water Conservation Fund: Wrong Solution for Public Land Management," Heritage Foundation *Backgrounders* No. 4482, November 12, 2015, <http://www.heritage.org/research/reports/2015/11/land-and-water-conservation-fund-wrong-solution-for-public-land-management>.

31. Sarah Torre, "Congress Should End Federal Funding to Planned Parenthood and Redirect It Toward Other Health Care Options," Heritage Foundation *Issue Brief* No. 4462, September 22, 2015, <http://www.heritage.org/research/reports/2015/09/congress-should-end-federal-funding-to-planned-parenthood-and-redirect-it-toward-other-health-care-options>.

32. Public Law 113-235.

Direct the Department of Education to Rescind the “Gainful Employment” Regulations Promulgated on For-Profit Higher-Education Institutions. The Higher Education Act stipulates that in order to be eligible for federal student aid, colleges must prepare students for “gainful employment in a recognized occupation.” The U.S. Department of Education has aggressively promulgated rules concerning gainful employment during the Obama Administration, and as of July 1, 2015, a gainful employment regulation primarily affecting for-profit institutions went into effect. The rule could limit opportunities for non-traditional students in particular, who may choose a for-profit institution because of its flexibility and affordability. A new Administration should enable private for-profit and vocational colleges to continue to serve students who have been historically underserved by traditional universities by repealing the gainful employment regulations that went into effect on July 1, 2015.

Protect Freedom of Conscience in Health Care. Congress should maintain all existing pro-life policy riders that prevent federal funding from being entangled with the provision, coverage, or advocacy of abortion both here and abroad. In addition, Congress should codify prohibitions on government agencies and programs funded with federal money discriminating against health care providers, organizations, and health insurance plans because they do not perform, pay for, refer, or provide coverage for abortions. Congress should also allow victims-of-conscience violations to be vindicated in court.

Since 2004, the Weldon Amendment has prohibited federal, state, and local governments that receive certain federal funds from discriminating against health care entities, including health care plans that decline to “provide, pay for, provide coverage of or refer for abortions.”³³ Enforcement of the conscience policy, however, is left to the discretion of officials in the Department of Health and Human Services, which has a poor track record of moving quickly (if at all) on complaints.³⁴

The need to codify these conscience protections and provide victims a better path to relief is urgent. In August 2014, the Department of Managed Health Care in California mandated that almost every health plan in the state include coverage of elective abortions, including those plans offered by religious organizations, religious schools—even churches.³⁵ Requests to Health and Human Services officials to review the state’s mandate have so far gone unanswered by the Obama Administration. Policymakers should not wait for more assaults on conscience before protecting the freedom of every American to provide, find, or offer health care and health insurance coverage that aligns with his values.

Stipulate the Use of Fair-Value Accounting. In order for taxpayers to have a clear understanding of the costs of federal higher-education subsidies, policymakers should direct the Department of Education to use fair-value accounting. Fair-value estimates take market risk into account, and are a better reflection of the true costs of federal higher-education subsidies for student loans. Without the use of fair-value accounting, it is difficult to know whether federal loan programs are using non-subsidizing interest rates, which they should use in order for the loans to break even. Absent fair-value accounting, it is impossible to know the extent to which student loan programs are providing a subsidy to borrowers. Congress should require the Department of Education to use fair-value accounting estimates calculated by the Congressional Budget Office and adjust loan rates accordingly, and on a yearly basis.

Eliminate the Cap on Coverdell Savings Accounts. Coverdell savings accounts help families save for their children’s K–12 education (such as private school tuition) by allowing interest on funds deposited into the accounts by families to accrue tax-free, as long as it is put toward approved education expenditures. Although this is a beneficial savings vehicle for families who want to save to pay for their own children’s education expenses, annual account contributions are capped at \$2,000, limiting their

33. Consolidated Appropriations Act of 2009, Public Law 111-117.

34. “The Need for the Abortion Non-Discrimination Act,” United States Conference of Catholic Bishops, October 23, 2015, <http://www.migrate.usccb.org/issues-and-action/religious-liberty/conscience-protection/index.cfm> (accessed November 17, 2015).

35. Kelsey Harkness, “Pastor: As Father of Four Adopted Children, Being Forced to Cover Abortions Is ‘Repulsive Beyond Words,’” *The Daily Signal*, December 11, 2014, <http://dailysignal.com/2014/12/11/pastor-father-four-adopted-children-forced-cover-abortions-repulsive-beyond-words/>.

power to help defray private school and other K-12 expenses. The annual contribution cap on Coverdell accounts should be eliminated.

Halt Implementation of the Union-Persuader Regulations. The Office of Labor-Management Standards (OLMS) is considering regulations requiring almost all lawyers who consult with companies during union organizing drives to file detailed financial disclosure forms. These forms would require listing all clients and detailing the substance of communications with them. This disclosure violates the attorney-client confidentiality standards to which the American Bar Association holds its members. They would discourage lawyers from providing legal advice to companies during union organizing battles and increase the likelihood that businesses commit unfair labor practices. Congress should deny funding for OLMS to promulgate or enforce these new “persuader” regulations.³⁶

Halt Implementation of OSHA Recordkeeping Regulations. The Occupational Safety and Health Administration (OSHA) has proposed to publicly report the workplace injuries that occur at major employers, identifying the employers and incident by name. This disclosure could lead to revealing the identities of workers injured on the job and would discourage businesses from accurately reporting on-the-job injuries. Congress should deny funding for OSHA to promulgate or enforce these recordkeeping regulations.

Halt Implementation of New Overtime Regulations. The Wage and Hour Division (WHD) of the Department of Labor has proposed requiring businesses to pay overtime rates to salaried employees earning less than \$50,000 a year. Employers will offset these higher costs with base salary cuts, leaving total pay little changed. However, these regulations will force employers to log salaried employ-

ees’ hours. This will sharply restrict many salaried employees’ ability to work remotely because businesses have difficulty logging hours worked outside the office. This will reduce the flexibility of workers’ hours and make it more difficult to juggle work and family lives. Congress should deny funding for the WHD to promulgate or enforce these new overtime regulations.³⁷

Stop the National Labor Relations Board (NLRB) from Using the Joint Employer Redefinition. For decades, the NLRB held that two employers jointly employed a worker—and had to bargain with a union—if they both exercised immediate and direct control over the employee’s work. The Obama NLRB redefined that standard to determine that joint employment exists when a company has “potential,” “unexercised,” and “indirect” control over working conditions. This makes most businesses that hire contractors and franchised brands joint employers of their contractors’ and franchisees’ employees. If it survives legal scrutiny, this redefinition will gut the franchise business model. If corporate brands are legally responsible for their franchisees’ hiring actions, they need to control them. They will respond by replacing locally owned franchises with corporate stores, eliminating a key source of access to small-business ownership. Congress should deny funding to the NLRB for prosecuting any unfair labor practices under its new joint employer standards.³⁸

Give Workers Time to Make an Informed Choice in Union Elections. The NLRB recently implemented “ambush election” rules, shortening the time for union elections to approximately three weeks.³⁹ Workers should have more than three weeks to consider arguments on both sides and make an informed choice. Congress should deny the NLRB funding to implement the “ambush election” regula-

36. John Malcolm, “Labor Department’s Persuader Rule Undermines Employers’ Rights and Threatens the Attorney-Client Relationship,” Heritage Foundation *Backgrounder* No. 2838, August 26, 2013, <http://www.heritage.org/research/reports/2013/08/labor-departments-persuader-rule-undermines-employers-rights-and-threatens-the-attorneyclient-relationship>.

37. James Sherk, “Salaried Overtime Requirements: Employers Will Offset Them with Lower Pay,” Heritage Foundation *Backgrounder* No. 3031, July 2, 2015, <http://www.heritage.org/research/reports/2015/07/salaried-overtime-requirements-employers-will-offset-them-with-lower-pay>.

38. James Sherk, “Beyond Burgers: The NLRB’s Decision Is Comprehensively Awful,” *National Review*, August 29, 2015, <http://www.nationalreview.com/article/423257/beyond-burgers-nlrbs-decision-comprehensively-awful-james-sherk?target=author&tid=900732> (accessed November 17, 2015).

39. James Sherk, “Proposed Union Rules Harm Workers and Job Creation,” Heritage Foundation *Backgrounder* No. 2584, July 20, 2011, <http://www.heritage.org/research/reports/2011/07/proposed-union-rules-harm-workers-and-job-creation>.

tions and require the board to take at least five weeks between the election petition and final vote, unless both the union and employer agree otherwise.⁴⁰

Stop Gerrymandered Bargaining Units. Historically, unions organized bargaining units composed of workers with a community interest, such as the hourly workers under the direction of the same general manager. The NLRB has recently begun allowing unions to organize workers by job title. For example, the NLRB recently ordered a union election among just the cosmetics and fragrance employees at a Macy's department store. No other workers in the store were allowed to vote. This new standard allows unions to gerrymander bargaining units to exclude employees who think the risks of unionizing outweigh the benefits. If the union calls a strike it will nonetheless affect jobs. Unions should not have the power to selectively disenfranchise workers who oppose unionizing. Congress should deny the NLRB funding to hold elections in micro-bargaining units, or to prosecute charges of unfair labor practice for employers refusing to recognize micro-bargaining units.⁴¹

Legislative Branch

Congress should:

Eliminate Funding for Special Congressional Subsidies for Health Insurance in the Affordable Care Act's Health Insurance Exchange. Under Section 1312 D of the ACA, Congress voted itself out of insurance coverage in the Federal Employees Health Benefits Program (FEHBP) and required Members and staff to obtain their health coverage through the law's health insurance exchange program.⁴²

When Members of Congress realized that, in enacting Obamacare in 2010, they had voted themselves and their staffs out of their own health coverage, many urgently tried to find a way out of their

predicament, preferably in the form of an administrative solution that would avoid the embarrassment of a recorded vote on the floor of the House or the Senate.⁴³

President Obama provided regulatory relief in 2013: the provision of special taxpayer subsidies for Congress and staff to offset their higher insurance costs in the law's new health insurance exchange. On August 7, 2013, the Office of Personnel Management ruled that Members of Congress and staff, even though they are no longer enrolled in the FEHBP, would henceforth receive FEHBP subsidies for coverage *outside* the FEHBP in the exchanges. The Administration took this regulatory action without statutory authority under either the Affordable Care Act or Title V, the law that governs the FEHBP. In effect, to reduce the additional costs of health coverage in the exchange, OPM provided a special set of subsidies to Members and staff that are not available to any other class of American citizens. The Administration's decision was both illegal and inequitable.⁴⁴

State, Foreign Operations, and Related Agencies

Congress should:

Require Senate Participation in the Paris Protocol Agreement. Congress should make no funds available to implement, administer, or enforce the United Nations Framework Convention on Climate Change. Any agreement made must be submitted as a treaty to the Senate. President Obama has committed the U.S. to greenhouse gas emissions cuts of 26 percent to 28 percent (from 2005 levels) by 2025 as part of a United Nations climate agreement in Paris. To achieve the goal, the Obama Administration proposed a package of regulations, which it is already well underway in implementing: fuel efficiency mandates for cars and trucks, ener-

40. James Sher and Ryan O'Donnell, "Labor Union Snap Elections Deprive Employees of Informed Choice," Heritage Foundation *WebMemo* No. 2371, March 31, 2009, <http://www.heritage.org/research/reports/2009/03/labor-union-snap-elections-deprive-employees-of-informed-choice>.

41. Sher, "Proposed Union Rules Harm Workers and Job Creation."

42. Edmund F. Haislmaier, "Administration Disregards the Law and Gives Special Obamacare Deal to Congress," *The Daily Signal*, August 7, 2013, <http://dailysignal.com/2013/08/07/administration-disregards-the-law-and-gives-special-obamacare-deal-to-congress/>.

43. Robert E. Moffit, "Congress and Obamacare: A Big Double Standard," *Human Events*, November 11, 2013, <http://humanevents.com/2013/11/11/congress-and-obamacare-a-big-double-standard/> (accessed November 17, 2015).

44. Robert E. Moffit, Edmund F. Haislmaier, and Joseph A. Morris, "Congress in the Obamacare Trap; No Easy Escape," Heritage Foundation *Backgrounder* No. 2831, August 2, 2013, <http://www.heritage.org/research/reports/2013/08/congress-in-the-obamacare-trap-no-easy-escape>.

gy efficiency mandates, methane emissions regulations, an executive order to cut emissions and energy use by the federal government, and the capstone Clean Power Plan regulating state carbon dioxide emissions.

The U.S. should not supply funds in any fashion to the U.N. climate agreement or climate banks unless and until the Senate is provided the opportunity to give advice and consent to an international climate change agreement. The U.S. should commit to free-market principles that will provide affordable, reliable energy, as opposed to government-picked technologies and energy sources. These have a greater and long-lasting impact on alleviating poverty and creating economic opportunities for impoverished communities.⁴⁵

Expand Sanctions on Iran. Congress should immediately reinstate all U.S. sanctions on Iran suspended under the Vienna Agreement and work with Congress to expand sanctions, focusing on Iran's nuclear program; support of terrorism; ballistic missile program; interventions in Syria, Iraq, and Yemen; human rights violations; and holding of four American hostages ((1) *Washington Post* reporter Jason Rezaian, (2) Christian pastor Saeed Abedini, (3) former U.S. Marine Amir Hekmati, and (4) former FBI agent Robert Levinson, who has been covertly held hostage by the Iranian regime since 2007).

The next Administration should designate Iran's Islamic Revolutionary Guard Corps (IRGC) as a foreign terrorist organization and apply sanctions to any non-Iranian companies that do business with the IRGC's extensive economic empire. This measure would help reduce the IRGC's ability to exploit sanctions relief for its own hostile purposes.

Washington should also cite Iranian violations of the accord as reason for re-imposing U.N. sanctions on Iran, thus enhancing international pressure on Tehran and discouraging foreign investment and trade that could boost Iran's military and nuclear programs. It is critical that U.S. allies and Iran's trading partners understand that investing or trading with Iran will subject them to U.S. sanctions even if some countries refuse to enforce U.N. sanctions.

Strengthen U.S. Alliances, Especially with Israel. The nuclear agreement has had a corrosive effect on bilateral relationships with important U.S. allies in the Middle East, particularly those countries that are most threatened by Iran—Israel and Saudi Arabia. Rather than sacrificing the interests of allies in a rush to embrace Iran, as the Obama Administration has done, the next Administration should give priority to safeguarding the vital security interests of the U.S. and its allies by maintaining a favorable balance of power in the region to deter and contain Iran. Washington should help rebuild security ties by boosting arms sales to Israel, Saudi Arabia, and other members of the Gulf Cooperation Council that are threatened by Tehran, taking care that arms sales to Arab states do not threaten Israel's qualitative military edge in the event of a flare-up in Arab-Israeli fighting.

To enhance deterrence against an Iranian nuclear breakout, Washington also should transfer capabilities to Israel that could be used to destroy hardened targets, such as the Fordow uranium-enrichment facility, which is built hundreds of feet beneath a mountain. The only non-nuclear weapon capable of destroying such a target is the Massive Ordnance Penetrator (MOP), a precision-guided, 30,000-pound "bunker buster" bomb. Giving Israel these weapons and the aircraft to deliver them would make Tehran think twice about risking a nuclear breakout.

The U.S. and its European allies also should strengthen military, intelligence, and security cooperation with Israel and the members of the GCC—an alliance of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, founded in 1981 to provide collective security for Arab states threatened by Iran. Such a coalition could help both to contain the expansion of Iranian power and to facilitate military action (if necessary) against Iran.

Prohibit Funding of International Abortion Groups and Eliminate Funding for the United Nations Population Fund (UNFPA). Congress should set a cap for federal funding of international family planning programs and ensure that no money is sent to organizations that perform or promote abortion.

45. David W. Kreutzer, "A Cure Worse than the Disease: Global Economic Impact of Global Warming Policy," Heritage Foundation *Background* No. 2802, May 28, 2013, <http://www.heritage.org/research/reports/2013/05/a-cure-worse-than-the-disease-global-economic-impact-of-global-warming-policy>.

In January 2009, President Obama rescinded the Mexico City policy⁴⁶—a 1984 directive by the Reagan Administration that prohibited certain federal dollars from going to international organizations that promote or perform abortions. Since then, the U.S. has allocated at least \$3.6 billion in funding for international family planning programs without the necessary safeguards of the Mexico City policy. That leaves groups like International Planned Parenthood Federation, which reported that its member associations performed over 1 million abortions in 2013 alone,⁴⁷ eligible for funding by U.S. taxpayers.

Congress should eliminate funding for UNFPA. From 1985 to 2008, the U.S. withheld funding to UNFPA under the Kemp–Kasten Amendment, which allows the President to prohibit U.S. international aid from supporting programs that promote coercive abortion procedures or involuntary sterilization.⁴⁸ However, the Obama Administration restored funding to UNFPA in January 2009. The U.S. has since sent over \$250 million in taxpayer dollars to the organization, despite continued assertions that the UNFPA has been involved in China’s coercive one-child policy.⁴⁹

Enforce the U.S. Cap on Contributions to United Nations Peacekeeping. The President is requesting \$2.5 billion for Contributions for International Peacekeeping Activities, which pays for the U.S. share of the U.N. peacekeeping budget. This is a 43 percent increase over FY 2014. Some of this increase reflects increased costs associated with newly established or expanded missions. However, a significant portion of the increase results from the Administration seeking to pay 28.4 percent of the U.N. peacekeeping budget instead of the 25 percent maximum signed into law in 1994 by President Bill Clinton. A decade ago, Congress

agreed to pay U.S. arrears under the 1999 Helms–Biden agreement in return for assurances that the U.N. would lower the U.S. peacekeeping assessment to 25 percent. Instead, the U.N. has raised the U.S. assessment repeatedly since 2010. Congress and the Obama Administration encouraged these reversals through amendments to U.S. law allowing payments above 25 percent. The U.S. should resume pressure on the U.N. to lower the U.S. peacekeeping assessment to 25 percent by refusing to pay more than this amount, and by tying payment of any resulting arrears to adoption by the U.N. of a maximum peacekeeping assessment of 25 percent.⁵⁰

Maintain the Prohibition on Funding U.N. Organizations that Grant Full Membership to the Palestinians. Current law prohibits U.S. funds from going to international organizations that grant full membership to the Palestinian territories. Although the Palestinians have threatened to seek membership in other U.N. specialized agencies, the only organization currently affected by this prohibition is the U.N. Educational, Scientific, and Cultural Organization (UNESCO), which granted the Palestinians full membership in 2011. The Administration has been seeking authority to waive this restriction since then. Waiving the restriction would reward UNESCO for its imprudent action and remove the most significant incentive for other organizations not to grant membership to the Palestinians.⁵¹

Cut Funding for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). UNRWA was established more than 60 years ago as a temporary initiative to address the needs of Palestinian refugees and to facilitate their resettlement or repatriation. It has become a permanent institution providing services to multiple generations of Palestinians, a large

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46. Barack Obama, “Mexico City Policy and Assistance for Voluntary Population Planning,” *Presidential Memorandum*, January 23, 2009, <https://www.whitehouse.gov/the-press-office/mexico-city-policy-and-assistance-voluntary-population-planning> (accessed November 17, 2015).
 47. International Planned Parenthood Federation, *Financial Statement 2014*, June 2015, <http://www.ippf.org/resource/Financial-statement-2014> (accessed November 17, 2015).
 48. Daniel Briggs, “The Kemp-Kasten Provision and UNFPA Funding,” *Americans United for Life*, April 23, 2010, <http://www.aul.org/2010/04/the-kemp-kasten-provision-and-unfpa-funding/> (accessed November 17, 2015).
 49. Steven W. Mosher, “China’s One-Child Policy and the UNFPA: A Silent But Deadly Partnership,” Charlotte Lozier Institute, testimony, July 10, 2012, <http://archives.republicans.foreignaffairs.house.gov/112/HHRG-112-FA16-WState-MosherS-20120709.pdf> (accessed November 17, 2015).
 50. Brett D. Schaefer, “U.S. Must Enforce Peacekeeping Cap to Lower America’s U.N. Assessment,” Heritage Foundation *Backgrounder* No. 2762, January 25, 2013, <http://www.heritage.org/research/reports/2013/01/us-must-enforce-peacekeeping-cap-to-lower-americas-un-assessment>.
 51. Brett D. Schaefer and James Phillips, “Provocative Palestinian U.N. Actions Require Strong U.S. Response,” Heritage Foundation *Issue Brief* No. 4329, January 12, 2015, <http://www.heritage.org/research/reports/2015/01/provocative-palestinian-un-actions-require-strong-us-response>.

majority of whom live outside refugee camps, enjoy citizenship in other countries, or reside in the Palestinian-governed territories. Despite the presence of and activities funded through UNRWA, the Palestinian refugee problem has only grown larger, in part due to UNRWA's expanding definition of "refugee." The U.S. should encourage reform and replacement of UNRWA to facilitate its original purpose.⁵²

Expand Food Aid Reforms. U.S. law requires that most food assistance be purchased from U.S. producers and shipped on U.S.-flagged vessels. This policy is inefficient, costly, and shortsighted. To increase efficiency and responsiveness, the President is seeking to exempt 25 percent of this food assistance from these requirements, which the Administration estimates could result in an additional 2 million beneficiaries with the same resources. While these reforms are welcome, the proposal falls far short of the potential benefit. Congress should eliminate these requirements entirely to maximize the impact of these programs and, through efficiency gains, trim the budget while benefiting more people.⁵³

Oppose International Monetary Fund (IMF) Reforms. The budget seeks congressional support for changes in the financial structure and governance of the IMF negotiated in 2010. The package would shift resources from an IMF supplementary fund, the New Arrangements to Borrow, to the IMF's quota resources where the U.S. has less influence than it does now. It would also allow the IMF membership to overrule the President's candidate for the U.S. seat on the IMF executive board.⁵⁴

Increase Oversight of International Organizations. United Nations system revenues nearly tripled between 2002 and 2012, and the U.N. received a

total of more than \$312 billion over that period. The U.S. has been and remains the U.N. system's largest contributor, providing an average of about one-fifth of total contributions annually over that period—totaling approximately \$60 billion in eight years. Congress should demand that the Administration conduct a cost-benefit analysis of U.S. participation in all international organizations, enact a permanent annual reporting requirement for all U.S. contributions to the U.N. system to be conducted by the Office of Management and Budget, and establish a dedicated unit for international organizations in the Office of Inspector General for the Department of State.⁵⁵

Provisions that Fall Under More than One Appropriations Subcommittee

Congress should:

Maintain Existing Definition of "Fill Material" or "Discharge of Fill Material" under the Clean Water Act (CWA) Regulations. Under the Clean Water Act, permits may be required for certain activities that could impact waters across the U.S. The Army Corps of Engineers and the Environmental Protection Agency may redefine "fill material" or "discharge of fill material" in a manner that would require mining companies to secure Section 402 permits, as opposed to Section 404 permits, for various mining activities.⁵⁶ While there are certainly obstacles to securing Section 404 permits, Section 402 permits are even more stringent, and industry groups have argued that it would effectively prohibit numerous mining activities.⁵⁷ Existing regulations provide ample environmental protection without imposing unnecessary restrictions that could harm the mining industry and the communities that bene-

52. Brett D. Schaefer and James Phillips, "Time to Reconsider U.S. Support of UNRWA," Heritage Foundation *Backgrounder* No. 2997, March 5, 2015, <http://www.heritage.org/research/reports/2015/03/time-to-reconsider-us-support-of-unrwa>.

53. Bryan Riley and Brett D. Schaefer, "Congress Should Reject Proposed Food Aid Shipping Mandate," Heritage Foundation *Issue Brief* No. 4228, May 23, 2014, <http://www.heritage.org/research/reports/2014/05/congress-should-reject-proposed-food-aid-shipping-mandate>.

54. James M. Roberts, "Congress Should Block the Morally Hazardous IMF 'Reform' Package," Heritage Foundation *Issue Brief* No. 4124, January 14, 2014, <http://www.heritage.org/research/reports/2014/01/us-congress-should-block-the-hazardous-imf-reform-package>.

55. Brett D. Schaefer, "U.S. Should Demand Increased Transparency and Accountability as U.N. Revenues Rise," Heritage Foundation *Issue Brief* No. 4154, February 26, 2014, <http://www.heritage.org/research/reports/2014/02/as-un-revenues-rise-the-us-should-demand-increased-transparency-and-accountability>.

56. Laura Barron-Lopez, "COP Omnibus Rider Keeps Administration from Tightening Mining Rule," *The Hill*, January 16, 2014, <http://thehill.com/policy/energy-environment/195621-gop-rider-in-omnibus-bill-would-tighten-rules-on-waste> (accessed April 28, 2015). See also Kate Sheppard, "Appropriations Bill Would Block New Mountain Removal Fill Rules," *The Huffington Post*, January 14, 2014, http://www.huffingtonpost.com/2014/01/14/omnibus-coal-mining_n_4598628.html (accessed April 28, 2015).

57. Claudia Copeland, "Controversies over Redefining 'Fill Material' Under the Clean Water Act," Congressional Research Service *Report for Congress*, August 21, 2013, <http://www.fas.org/sgp/crs/misc/RL31411.pdf> (accessed April 28, 2015).

fit from mining operations.⁵⁸ *Subcommittees: Energy and Water; Interior and Environment*

Limit Application of the Recapture Provision for Dredge-and-Fill Permits. Under the CWA, Section 404 permits are not required for normal farming activities, construction of stock ponds, and other related activities. However, there are exceptions, including under what is referred to as the “recapture” provision.⁵⁹ In recent testimony, the American Farm Bureau Federation explained this provision:

[W]here discharges of dredged or fill material are used to bring land into a *new use* (e.g. making wetlands amenable to farming) and *impair the reach or reduce the scope* of jurisdictional waters, those discharges are not exempt. The Agencies have broadly interpreted the “recapture” provision to apply even when the “new use” is simply a change from one crop to another crop.⁶⁰

By limiting the application of the recapture provision, Congress can help to prevent the weakening of the exemptions that are critical for farmers and ranchers.⁶¹ *Subcommittees: Energy and Water; Interior and Environment*

Restrict Federal Grants to Sanctuary Cities. Congress should prohibit the Department of Homeland Security and the Department of Justice from providing grant money to cities that resist the enforcement of immigration law, known as sanctuary cities. Federalism gives local governments some latitude in choosing to oppose or not assist the federal government in enforcing immigration law, but the federal government does not have to reward or

pay for the results of such policies. *Subcommittees: Homeland Security; Commerce, Justice, Science, and Related Agencies*

Deter Nuclear Proliferation. For more than five decades, Washington has opposed the spread of sensitive nuclear technologies, such as uranium enrichment, even for its allies. By unwisely making an exception for Iran, the Obama Administration in effect conceded the acceptability of an illicit uranium-enrichment program in a rogue state. In fact, the Administration granted Iran’s Islamist dictatorship better terms on uranium enrichment than the Ford and Carter Administrations offered to the Shah of Iran, a U.S. ally in the 1970s. *Subcommittees: State, Foreign Operations, and Related Activities; Energy and Water*

Prohibit Government Discrimination in Tax Policy, Grants, Contracting, and Accreditation. Congress should prohibit funding of any federal agency or program that discriminates against any individual or group in tax policy, grants, contracts, licensing, or accreditation, based on the individual or group’s belief that marriage is the union of one man and one woman or that sexual relations are reserved for such a marriage.⁶² Preventing discrimination in this way does not relieve the federal government of its duty to provide any benefit or service under federal law. *Subcommittees: all*

Prohibit Any Agency from Regulating Greenhouse Gas Emissions. The Obama Administration has proposed and implemented a series of climate change regulations, pushing to reduce greenhouse gas emissions from vehicles, heavy-duty trucks, airplanes, hydraulic fracturing, and new and existing power plants. More than 80 percent of America’s

58. Robert Gordon and Diane Katz, *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform* (Washington, D.C: The Heritage Foundation, 2015).

59. Specifically: “Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced.” 33 U.S. Code § 1344 (f)(2), <https://www.law.cornell.edu/uscode/text/33/1344> (accessed April 30, 2015).

60. Ellen Steen, “Statement of the American Farm Bureau Federation Regarding: The Definition of ‘Waters of the United States’ Proposed Rule and Its Impact on Rural America,” testimony before the Subcommittee on Conservation, Energy, and Forestry, Committee on Agriculture, U.S. House of Representatives, March 3, 2015, <http://agriculture.house.gov/sites/republicans.agriculture.house.gov/files/images/Steen%20Testimony.pdf> (accessed April 29, 2015) (emphasis in original).

61. Gordon and Katz, *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform*.

62. “People of Faith Deserve Protection from Government Discrimination in the Marriage Debate,” Heritage Foundation *Factsheet* No. 160, July 2, 2015, <http://www.heritage.org/research/reports/2015/07/people-of-faith-deserve-protection-from-government-discrimination-in-the-marriage-debate>.

energy needs are met through conventional carbon-based fuels. Restricting opportunities for Americans to use such an abundant, affordable energy source will only bring economic pain to households and businesses—with no climate or environmental benefit to show for it. The cumulative economic loss will be hundreds of thousands of jobs and trillions of dollars of gross domestic product. *Subcommittees: Interior and Environment; Energy and Water*

Prohibit Funding for WOTUS. The EPA and Army Corps’ controversial “waters of the United States” (WOTUS) rule would greatly expand the types of waters that could be covered under the Clean Water Act from certain man-made ditches to so-called waters that are actually dry land most of the time. The appropriations process is particularly critical for addressing this rule because President Obama has already indicated that he would veto stand-alone legislation to repeal the rule.⁶³ Absent congressional action, this attack on property rights and state power could soon move forward. Fortunately, the Sixth Circuit Court issued a stay,⁶⁴ blocking implementation of the rule, but this may be short-lived; the court has not yet determined if it even has jurisdiction in the case.⁶⁵ *Subcommittees: Energy and Water; Interior and Environment*

Enforce Data Quality as Congress Intended. No funds should be used for any grant for which the recipient does not agree to make all data produced under the grant publicly available in a manner consistent with the Data Access Act, and in compliance with the standards of the Information Quality Act. The Data Access Act requires federal agencies to ensure that data produced under grants to and agreements with universities, hospitals, and nonprofit organizations is available to the public. The Information Quality Act requires the Office of Management and Budget “to promulgate guidance to agencies ensuring the quality, objectivity, utility, and integrity of information (including statistical

information) disseminated by Federal agencies.”⁶⁶ However, the Office of Management and Budget has unduly restricted the Data Access Act, and there is little accountability that could ensure agency compliance with the Information Quality Act. Credible science and transparency are necessary elements of sound policy.⁶⁷ *Subcommittees: Interior and Environment; Energy and Water; Commerce, Justice, Science*

Withhold Grants for Seizure of Private Property. On June 23, 2005, the United States Supreme Court held in *Kelo v. City of New London* that the government may seize private property and transfer it to another private party for economic development. This type of taking was deemed to be for a “public use” and allowed under the Fifth Amendment of the United States Constitution. Congress has failed to take meaningful action in the decade since this landmark decision and should provide property owners in all states necessary protection from economic-development and closely related takings, such as blight-related takings.

Since there is a subjective element to determining whether a taking is for economic development, the condemnor should be required to establish that a taking would not have occurred but for the economic-development reason. Local governments often use broad definitions of “blight” to seize private property, including seizing property that is not blighted but is located in an allegedly blighted area. Only property that itself is legitimately blighted, such as posing a concrete harm to health and safety, should be allowed to be seized. Congress should withhold grants for infrastructure development to states or other jurisdictions that invoke eminent domain to seize private property for economic development, unless the condemnor can demonstrate that the taking would have occurred but for economic development and is for a public use, or to address blight unless the property itself poses

63. U.S. Office of Management and Budget, “Disapproving EPA/Army Rule on Waters of the United States,” *Statement of Administration Policy*, November 3, 2015, https://www.whitehouse.gov/omb/114/legislative_sap_date_2015 (accessed November 17, 2015).

64. *State of Ohio et al. v. U.S. Army Corps of Eng’rs et al.*, Nos. 15-3799/3822/3853/3887, Order of Stay (6th Cir. 2015), <http://www.ca6.uscourts.gov/opinions.pdf/15a0246p-06.pdf> (accessed November 18, 2015).

65. Daren Bakst, “What You Need to Know About the EPA/Corps Water Rule: It’s a Power Grab and an Attack on Property Rights,” Heritage Foundation *Backgrounder* No. 3012, April 29, 2015, <http://www.heritage.org/research/reports/2015/04/what-you-need-to-know-about-the-epacorps-water-rule-its-a-power-grab-and-an-attack-on-property-rights>.

66. Consolidated Appropriations Act of 2001, Public Law 106-554, §515.

67. Gordon and Katz, *Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform*.

a concrete harm to health and safety.⁶⁸ *Subcommittees: Agriculture, Rural Development, Food and Drug Administration; Commerce, Justice, Science; Energy and Water Development; Financial Services and General Government; Interior and Environment; Labor, Health and Human Services, Education; Legislative Branch; State, Foreign Operations; Transportation, Housing and Urban Development.*

Block Dietary Guidelines Based on the Dietary Guidelines Advisory Committee Scientific Report. Every five years, the Department of Agriculture and the Department of Health and Human Services issue dietary guidelines to advise the public on healthy eating.⁶⁹ The Dietary Guidelines Advisory Committee (DGAC) submitted its scientific report, which helps to inform the final guidelines, in February 2015.⁷⁰ Throughout the DGAC process, there has been a focus on non-dietary issues, such as sustainability, climate change, and other environmental factors. Practically, any new Dietary Guidelines will have no legitimacy because the DGAC was allowed to veer off its mission and act more like environmental activists than experts focusing on the best nutritional

advice for Americans. If there are to be new guidelines, the agencies should be required to go back to the drawing board with a new DGAC process that focuses exclusively on nutrition. *Subcommittees: Agriculture, Rural Development, Food and Drug Administration; Labor, Health and Human Services, Education*

End All Energy Subsidies. No taxpayer dollars should be used for energy production, storage, efficiency, infrastructure, or transportation for non-government consumers, including the extension of existing programs. Targeted energy subsidies significantly obstruct the long-term success and viability of the very technologies and energy sources that they were intended to promote. Instead of relying on a process that rewards competition, taxpayer subsidies prevent a company from truly understanding the price point at which the technology will be economically viable. An energy sector based on free enterprise would benefit consumers by delivering reliable, affordable energy while eliminating government favoritism to special interests.⁷¹ *Subcommittees: Energy and Water; Agriculture, Rural Development, Food and Drug Administration*

68. Daren Bakst, "A Decade After Kelo: Time for Congress to Protect American Property Owners," Heritage Foundation *Background* No. 3026, June 22, 2015, http://www.heritage.org/research/reports/2015/06/a-decade-after-kelo-time-for-congress-to-protect-american-property-owners#_ftn1.

69. U.S. Department of Agriculture, Center for Nutrition Policy and Promotion, "Dietary Guidelines for Americans," December 11, 2013, <http://www.cnpp.usda.gov/dietaryguidelines.htm> (accessed November 17, 2015).

70. U.S. Department of Health and Human Services, "Scientific Report of the 2015 Dietary Guidelines Advisory Committee," February 2015, <http://health.gov/dietaryguidelines/2015-scientific-report/> (accessed November 17, 2015).

71. Nicolas D. Loris, "No More Energy Subsidies: Prevent the New, Repeal the Old," Heritage Foundation *Background* No. 2587, July 26, 2011, <http://www.heritage.org/research/reports/2011/07/no-more-energy-subsidies-prevent-the-new-repeal-the-old>, and Nicolas Loris and Curtis Dubay, "What's an Oil Subsidy?" Heritage Foundation *WebMemo* No. 3251, May 12, 2011, <http://www.heritage.org/research/reports/2011/05/whats-an-oil-subsidy>.