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# How Congress Can Enable the Great American Economic Recovery

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**KEY TAKEAWAYS**

When stay-at-home orders can be lifted safely, the private sector will drive economic recovery, provided that bad policy does not get in the way.

Government-directed economic activity, misguided stimulus, poorly targeted checks, and unrelated state bailouts will derail the great American economic recovery.

To enable a quicker, stronger rebound, Congress should avoid economic distortions and remove barriers to working, hiring, entrepreneurship, and investment.

The COVID-19 pandemic and resulting public policy responses are unprecedented. Intentionally shutting down economic activity deemed non-essential by state governors to contain the spread of the novel coronavirus has had dramatic effects on the livelihoods of millions of Americans. The federal government and state governments have taken exceptional actions to support people and businesses affected by the pandemic containment measures. As the public health threat abates and shutdown orders and stay-at-home mandates are lifted, people will gradually be able to return to work and drive the economic recovery. Good public policy can help to enable a great American economic recovery.

Much of what Congress has done thus far has been focused on short-term solutions to immediate problems. The editors and authors of this *Backgrounder*, as well as some of their colleagues, have already


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recommended that Congress and the Administration focus on providing timely, targeted, and temporary relief with the aim of keeping workers attached to their jobs, averting widespread business failures, and responding directly to public health threats posed by COVID-19, the novel coronavirus disease that originated in Wuhan, China, in late 2019.[1]

First, Congress appropriated $8.3 billion through the Coronavirus Preparedness and Response Supplemental Appropriations Act to provide public health officials with additional resources and to expand small-business disaster loan assistance. Then, the President declared a coronavirus-related national emergency, which unleashed $50 billion in federal disaster assistance for states, localities, and territories. Next, Congress adopted the Families First Coronavirus Response Act, which provided tax relief for paid leave as well as additional resources for social programs, increasing federal spending and reducing federal revenue by $192 billion. Shortly thereafter, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, with $1.8 trillion in spending measures and tax relief, including the Paycheck Protection Program (PPP) to support businesses that keep their workers employed, expanded unemployment insurance, including a $600-per week added benefit through the end of July, and tax rebates for individuals, among other provisions.[2] Most recently, Congress expanded assistance for the PPP, which had run out of funds, and provided additional money for hospitals and testing, totaling $484 billion.[3]

The largest relief package to date, and the single-largest relief package in the history of the United States, the CARES Act has many shortcomings. These include misguided bailouts, poorly targeted relief for businesses and individuals, and encouraging excessive unemployment by offering more money to a majority of workers for becoming unemployed than they could earn by continuing to work.[4] Congress should fix its worst provisions, as outlined in another Heritage Foundation *Backgrounder*.[5]

The Federal Reserve has also undertaken a massive effort to keep the economy afloat with expansionary monetary policy actions. Between March 3 and April 9, the Fed cut its interest rate targets to near zero; removed banks' reserve requirements; dropped its primary credit rate to near zero (the lending rate at the Fed's discount window); injected trillions of dollars into short-term credit markets; announced a new $700 billion quantitative easing program (under which the Fed will purchase $500 billion in Treasuries and $200 billion in mortgage-backed securities); and created 11 new lending facilities.[6] It is currently impossible to know precisely in how much lending the Fed will engage through these lending facilities, but the Fed will be lending directly to commercial firms through one program and, through at least two other lending facilities, supplying funds for banks to lend hundreds of billions of dollars to small and medium-sized businesses.[7]

Fed lending to solvent but illiquid financial firms to provide more liquidity across a broad swath of financial markets is exactly what the Fed should do in a liquidity crisis. Lending directly to commercial businesses as they are failing is completely different. If Congress wants to provide money to failing firms, it should do so directly rather than passing the buck to the unelected officials who work at the Federal Reserve.

As of this writing, the cumulative deficit impact of coronavirus legislative relief exceeds $2.5 trillion. Now, lawmakers are debating which additional legislative measures to pursue in an attempt to provide further relief and spur the economic recovery. As America returns to business, Congress must remove the most pressing barriers to economic activity, including those that unnecessarily increase costs, limit access to crucial resources, and limit people's ability to work. Longer-run reforms to the administrative state, trade relations, health care markets, and fiscal sustainability will also be necessary to ensure a sustained recovery.

Further federal bailouts of state and local budgets and more general stimulus efforts threaten to derail the recovery by interfering with incentives that are crucial to getting America back to work while improperly adding to the federal debt burden. Lawmakers should resist the temptation to direct economic activity with checks from Washington or large-scale government purchases, focusing instead on clearing the path for American society to rise up from this crisis, renewed and strengthened, like a phoenix from the ashes.

## Removing Immediate Impediments to Economic Recovery

Congress should focus on removing unnecessary rules that increase the cost of doing business, and remove excessive restrictions on the ability of people to work.

Repairing broken supply chains, re-opening shuttered businesses, rehiring furloughed employees, establishing new businesses, and expanding those businesses that survived the crisis are all precursors to meeting any uptick in post-crisis demand. Given the freedom to work, trade, and invest, the private sector will drive the post-crisis recovery. Any unnecessary rules or permissions keeping businesses and employees from returning to work should be eliminated. In some cases, especially in health care sectors, many regulations have already been suspended temporarily; these temporary policies should be made permanent. No list is comprehensive, but policymakers should focus on the following reforms.

**Recommendations to Get Americans Back to Work.** Americans are enduring some of the highest levels of unemployment ever recorded as many businesses have been shuttered and cannot afford to keep paying payroll. For the labor market to rebound quickly, Congress should eliminate barriers that prevent workers and employers returning to work. Congress should:

- **Harmonize the government's multiple definitions of "employee."** Different tests and rules to determine who is, and is not, an employee of a company make it needlessly difficult for employers and workers to differentiate between employees and contractors. This increases costs and decreases employee flexibility for the growing number of independent contractors. If businesses can be held liable for the actions of contractors over whom they exercise little or no control, and if businesses can be required to provide employment-related benefits to workers who are only loosely attached to their operations, there will be fewer jobs for workers and fewer opportunities for entrepreneurs. Congress should clarify the test for independent contractor status under the Fair Labor Standards Act; the National Labor Relations Act; and the tax code using the "common law" test, which bases determinations on how much control an employer exerts over a worker. Similarly, Congress should codify the definition of a joint employer to apply only if one company exercises direct and immediate control over another company's employees.[8]

- **Establish a "safe harbor" for contractor benefits.** Amid COVID-19, some companies that have contract-based workers would like to provide them with benefit compensation, such as providing paid leave for ride-sharing drivers and Instacart shoppers who become sick with COVID-19 or who need to care for sick family members. But doing so risks triggering an employer–employee relationship that would include significant costs for businesses and deprive independent contractors of the flexibility and autonomy that they desire. Policymakers should provide a safe harbor for companies who choose to provide health-related and safety-related benefits to independent contractors so that they can protect their workers and the public at a time of increased need for safety and flexibility.[9] Such a safe harbor would enable gig economy platforms to provide their independent contract-based workers with valuable benefits, voluntarily, without risking that those workers become reclassified as employees.

- **Allow hourly wage workers to choose paid time off.** The Working Families Flexibility Act, introduced by Senator Mike Lee (R–UT) and Representative Martha Roby (R–AL) would eliminate the current prohibition on private employers from offering so-called comp time to their workers—that is, the choice between pay and paid time off when they work overtime hours. Being able to take time off when needed is extremely important—especially for parents of young children and individuals who care for older or sick family members. In fact, many Americans rank workplace flexibility as more important than pay. The recent health crisis and its effects (including illnesses, having children home from school and daycare, and temporary shutdowns and slow-downs) have highlighted the value of paid time off. Both during and beyond this global pandemic, lower-wage hourly workers should be granted the same right as state and local government workers to choose between paid time off and pay.[10]

- **Repeal the Davis–Bacon Act.** Since 1934, the Davis–Bacon Act has required contractors to pay "prevailing wages" on construction projects that receive federal funding and contracts (in excess of $2,000) for the construction, alteration, or repair of public buildings or public works. Reams of research have documented that the methods used to calculate prevailing wages are deeply flawed, and that the results bear no resemblance to actual wages.[11] In some cases, the Davis–Bacon Act rates are more than double market wages. The Congressional Budget Office has estimated that repealing Davis–Bacon would save taxpayers $1.4 billion per year through lower construction costs.[12] The compliance burden is particularly onerous on small businesses that have less margin to meet higher labor costs. In particular, the requirements unduly burden minority-owned, open-shop contractors to employ and train unskilled workers. Repealing the act would stretch taxpayer dollars and create tens of thousands more construction-related jobs—or the savings could be returned to taxpayers in the form of tax relief. Either one would be a major improvement to the profligacy of the Davis–Bacon Act.

**Recommendations to Reduce Supply Chain Costs.** The linchpins of modern commerce and economic prosperity are diverse and wide-ranging supply chains by which finished goods, component parts, and food are trucked and shipped across the country and around the world. Government interventions that delay or increase the costs of delivering critical goods will slow down the economic recovery. Additionally, for many small businesses, state sales tax systems can keep them from meeting the needs of an evolving marketplace. The following reforms can lower costs for American consumers. Congress should:

- **Repeal the Jones Act.** Section 27 of the Merchant Marine Act of 1920, colloquially known as the Jones Act, requires that shipments between two U.S. ports be on U.S.-built, U.S.-manned, and U.S.-owned vessels. The Jones Act drives up shipping costs, increases energy costs, stifles competition, and hampers innovation in the U.S. shipping industry. Originally enacted to sustain the U.S. Merchant Marine, the law has instead fostered stagnation in the U.S. maritime shipping industry. Furthermore, the Jones Act fleet is unable to meet the needs of the U.S. military, which routinely charters foreign-built ships to fulfill additional sealift needs. The U.S. economy and the U.S. military would be better served without the Jones Act.

- **Repeal the Foreign Dredge Act.** America's ports are important hubs of economic activity. On U.S. coasts and on inland waterways, such as lakes and rivers, ports are critical to move goods and connect businesses with consumers in the U.S. and around the world. Serving as an essential conduit for exports and imports, U.S. ports support many jobs and provide tremendous economic value for cities and communities. The Foreign Dredge Act of 1906 prohibits any foreign-built or chartered ships from dredging in the U.S. The result is to exclude the world's largest dredging companies that could provide better and cheaper service for dredging projects. While U.S. competitors have all deepened and widened their ports to accommodate state-of-the-art container ships, bulk carriers, and tank ships that significantly reduce transportation costs, the U.S has lagged far behind. The economic cost of this policy is estimated by the U.S. Army Corps of Engineers at $376 billion annually for America's top 20 ports, and is likely a conservative estimate.[13] The Foreign Dredge Act is a classic case of concentrated benefits and diffused costs where a few politically connected companies benefit at the expense of shippers, exporters, consumers, and the ports themselves. Repealing or amending the Foreign Dredge Act is an infrastructure modernization reform that will save taxpayers money, stimulate new investment, and create jobs.

- **Enact a physical presence standard for tax liability.** In 2018, the Supreme Court upheld a South Dakota law that requires out-of-state businesses to collect the state's sales taxes on goods sold to customers in the state, even if the business has no physical connection—or political recourse—in the customer's state. Small retailers now operate in a world without the protection of the physical-presence standard: Every small business that sells online now can be subject to the more than 10,000 different taxing jurisdictions around the country—each with its own tax rates and rules about what is taxable.[14] The regulatory compliance and tax assessment risks from state revenue collectors around the country was threatening to bankrupt many small retailers before the COVID-19 crisis. These rules are now prohibiting small distributers from retooling to ship new products during the crisis for fear of regulatory entanglement. Now is the time for Congress to protect vulnerable retailers by codifying a physical-presence test for tax collection.

**Recommendations to Increase Health Care Flexibility.** In response to the COVID-19 pandemic, Congress and the Administration have taken specific actions to waive, temporarily, certain health care restrictions. Some of these actions should be made permanent. There are also additional legislative actions that should be taken to enhance the nation's response to the current crisis. Congress should:

- **Make Medicare-related changes to telehealth services permanent.** Under current law, access to telehealth is limited for Medicare beneficiaries. The CARES Act temporarily waives several restrictions to allow Medicare patients broader access to telehealth services. Congress should make these provisions permanent. Medicare's top-down micromanagement of benefits and services is slow to adopt innovative approaches to the delivery of care from which many who receive their health care in the private sector already benefit. Instead of limiting Medicare beneficiaries' access to telehealth care and services, the Medicare program should encourage and expand the use of these options.

- **Codify targeted regulatory changes.** The Administration has suspended or relaxed a number of regulatory requirements in response to the COVID-19 emergency.[15] Many of these changes should be made permanent either through official regulatory change or legislatively.

Some key changes include waiving certain telemedicine requirements, waiving certain provider licensure requirements to expand access to providers, waiving certain scope of practice requirements to allow a broader group of providers to offer services, and waiving certain physician self-referral[16] and facility requirements to artificial barriers to competition, as well as extending these flexibilities to the Medicaid program. The same is true at the state level. Governors have used their executive power to waive regulations during this emergency.[17] Regulatory changes related to broadening access to telehealth in the state, expanding access to providers through modifications to licensure and scope of practice rules, and suspending facility restrictions such as certificate of need laws, are all worth making permanent at the state level.

- **Expand the flexibility of health savings accounts (HSAs).** The CARES Act included a provision to allow patients to use HSAs to pay for over-the-counter medications without a prescription. Congress should provide even greater flexibility for use of HSAs by (1) clarifying that HSAs can be used in conjunction with direct primary care arrangements;[18] (2) allowing HSAs to be used for health care sharing ministry arrangements;[19] and (3) removing the requirements that HSAs be linked to a high-deductible health plan[20] and other restrictions.[21]

- **End the moratorium on physician-owned hospitals.** The Affordable Care Act imposed new rules and restrictions on physician-owned hospitals. These changes ban the creation[22] or expansion of physician-owned hospitals. Congress should remove these limitations.[23] Ending the moratorium would remove an artificial restriction on the supply of facilities and expand critical access to care.

- **Reform the federal supplemental payments to hospitals.** Today's structure for offsetting hospital costs for providing indigent care and graduate medical education is opaque and poorly targeted. Congress should re-organize the existing funding sources based on patients and students served, and shift the distribution of those funds to the states. This would allow states to better target resources based on need and would increase transparency and accountability of financing at the federal and state level.

**Recommendations to Lower Unnecessary Environmental Barriers to Production.** Americans want a clean, healthy, and safe environment. The major environmental statutes are costly, outdated, and fail to achieve their objectives efficiently or effectively. Rather, they are often used by activists to block and delay significant new public and private investments. Congress should reform outdated and unnecessary regulations and shift more responsibility for environmental protection to the states, which are better equipped to customize policies for local conditions than Washington. The following reforms would remove some of the barriers to economic development that achieve little to no environmental benefit. Congress should:

- **Reform the National Environmental Policy Act.** Republicans and Democrats alike are calling for new infrastructure projects to create jobs and revive the economy post-COVID-19. Rather than spending more taxpayer dollars, regulatory reform is the key to unlocking infrastructure investment, as construction typically entails a maze of red tape.[24] Reform of the National Environmental Policy Act (NEPA) would reduce the regulatory burden that otherwise would inhibit the nation's recovery. The NEPA requires federal agencies to assess the potential environmental effects of public works projects.[25] The broad mandate provokes virtually endless bureaucratic wrangling and legal challenges, which delay projects and raise costs. There has been no comprehensive reform of the NEPA since 1978, and thus the law clashes with current scientific and economic realities. The Trump Administration has proposed a variety of reforms[26] that merit prompt approval, including:

    - Only allowing analyses of effects that are "reasonably foreseeable" and have a "close causal relationship" to the proposed action;

    - Barring analyses of "indirect" and "cumulative effects" as bases for agency actions;

    - Limiting environmental reviews to "not more than six months" and permit decisions to 90 days;

    - Allowing NEPA analyses to use materials prepared for compliance with other regulations;

  - Assigning a lead agency to prepare a single impact analysis and a single record of decision to be signed by all agencies; and
  - Revising the statute of limitations for NEPA decision from six years to six months.

- **Repeal biofuel mandates.** This is no time for regulatory indulgences that will inhibit recovery, such as the renewable fuel standard (RFS). The RFS requires refineries to meet quotas of (so-called) biomass in the fuel supply (peaking at 36 billion gallons in 2022).[27] The regime was enacted in 2005 during the George W. Bush Administration to lessen "dependence on foreign oil." In light of growing U.S. crude production, justification for the mandate has evolved to the reduction of greenhouse gas emissions (GHGs). In actuality, the RFS has only succeeded in raising fuel prices and the costs of food and animal feed, as corn, potatoes, soybeans, and other crops are diverted to ethanol and other biodiesel production. There has been a dramatic decline in oil imports—as a result of technological innovation, not the RFS. GHG emissions have also declined—from the increased use of cleaner-burning natural gas. Therefore, there is no longer any justification for the RFS. Indeed, current circumstances call for Congress to repeal the mandate.

**Recommendations to Increase Access to Capital to Get Businesses Up and Running.** Entrepreneurs will drive the post-pandemic recovery by re-opening existing businesses and taking risks on new ideas to fill new needs in the post-crisis world. Entrepreneurs can access funds for their business by either borrowing or seeking an equity investment from investors. The current federal regulatory regime creates unnecessary barriers for small businesses that need access to capital. The following reforms can help expand the options for funding a small business revival. Congress should:

- **Simplify the U.S. Securities and Exchange Commission's (SEC's) exemption and disclosure framework.** Under federal securities laws, any offer or sale of a security must either be registered with the SEC or eligible for, and comply with, the rules governing an exemption. The SEC has estimated that "the average cost of achieving initial regulatory compliance for an initial public offering is $2.5 million, followed by an ongoing compliance cost, once public, of $1.5 million per year."[28] Thus, virtually all small and medium-sized companies must rely on an exemption. There are currently at least 14 different exemptions with differing and complex rules.[29] The simplest and most commonly used exemption is Regulation D. In 2019, small and medium-sized companies raised $1.7 trillion—about 8 percent of gross domestic product—using Regulation D.[30] Regulation D offerings are generally, but not exclusively, limited to affluent accredited investors. Other exemptions include Regulation A (the small-issues exemption) and Regulation CF (crowdfunding).

The SEC and Congress should work together to create a reasonable, harmonized, and scaled disclosure regime for Regulation D, Regulation A, Regulation CF, and other exemptions, and for small public companies.[31] This will entail both regulatory and statutory reforms. It would reduce regulatory costs, improve fairness, and aid entrepreneurial capital formation. The SEC has recently taken the first step toward this result by releasing a "Concept Release on Harmonization of Securities Offering Exemptions" that sought public comment on nearly 150 ways to improve the rules governing exempt offerings. The SEC has recently formally proposed some improvements to the rules governing entrepreneurial capital formation.[32] These proposed rules would improve the offering-integration rules, permit "demo days," and increase the amount that issuers are allowed to raise using Regulation CF or Regulation A. They also incrementally improve the harmonization of some disclosure requirements and bad-actor disqualification provisions.

- **Let entrepreneurs raise capital using finders and private placement brokers.** Entrepreneurs should be allowed to use finders or private placement brokers to help them find capital in exchange for a fee.[33] Representative Ted Budd (R–NC) has introduced H.R. 3768, the Unlocking Capital for Small Businesses Act of 2019, which would accomplish this result. Small business owners often need help finding accredited investors willing to invest in, or loan to, their business. The SEC currently adopts the position that this is illegal unless the finder registers as a broker-dealer and is regulated by the Financial Industry Regulatory Authority (FINRA) and the SEC like an investment banker.

- **Allow peer-to-peer (P2P) lending to small businesses.** P2P lending represents a way of making financial intermediation for consumer and small-business loans much more efficient to the benefit of consumers, small-business owners, and small lenders. There is a very strong need to cut down the regulatory weeds and allow the potential efficiencies of Internet lending and borrowing to take place. The key substantive, non-legal point here is that a loan is a loan, not a security.[34] Whether that loan is from a bank, a credit union, a non-bank lender, or an individual via a P2P lending portal should not matter. Under the current regulatory regime and SEC practice, loans to small businesses by banks, credit unions, finance companies, or individuals not using a P2P lending platform are almost always treated as exempt from registration requirements; loans via P2P lending platforms are not. This fundamentally irrational disparity in treatment creates a major regulatory impediment to small-business lending using P2P lending platforms, harming both small-business borrowers and individual lenders seeking a better return. It also protects banks from competition from non-bank financial intermediation and protects the two incumbent consumer P2P lending platforms from competition from new entrants. Congress should exempt P2P lending from the federal and state securities laws. Congress should also amend Title III of the Jumpstart Our Business Startups Act to create a category of crowdfunding security called a "crowdfunding debt security" or "peer-to-peer debt security" that is then subject to reduced initial and periodic reporting requirements.[35]

- **Broaden the definition of "accredited investor."** Generally, an accredited investor is a financial institution or an individual with an income of at least $300,000, or a residence with an exclusive net worth exceeding $1 million. Accredited investors may invest in Regulation D offerings. Under Regulation D, an investor who has the "knowledge and experience in financial and business matters" to be "capable of evaluating the merits and risks of the prospective investment" may also invest under certain circumstances.[36] In practice, sophisticated investors without high incomes or net worth are unable to invest in the companies with the most profit potential because this standard is amorphous. The SEC or Congress should change the definition of "accredited investor" for purposes of Regulation D to include persons who have met specific statutory bright-line tests that determine whether they are "sophisticated." People that fall in the sophisticated-but-without-high-income-or-net-worth category are disproportionately young. It also means that young entrepreneurs seeking to raise capital from their non-wealthy peers find it more difficult to raise capital. This could increase the number of people eligible to invest in Regulation D offerings by several million. Examples of bright-line tests that could be adopted include (1) passing a test demonstrating the requisite knowledge, such as the General Securities Representative Examination (Series 7), the Securities Analysis Examination (Series 86), the Uniform Investment Adviser Law Examination (Series 65), or a newly created accredited investor exam; (2) meeting a relevant educational requirement, such as an advanced degree in finance, accounting, business, or entrepreneurship; or (3) acquiring relevant professional certification, accreditation, or licensure, such as being a certified public accountant, chartered financial analyst, certified financial planner, or registered investment adviser.[37]

- **Eliminate artificial barriers to credit union lending to small businesses.** Section 107A of the Federal Credit Union Act[38] imposes a limit on credit union business lending (which is almost exclusively small-business lending). The limit is equal to 1.75 times the Section 216 net worth requirement of 7 percent. Thus, no more than 12 ¼ percent of loans can be to small businesses. This arbitrary limit should be repealed.

- **Improve anti-money-laundering laws.** Existing Bank Secrecy Act (BSA) requirements, also known as anti-money-laundering (AML) rules, impose large costs on society, intrude on privacy, and fail any reasonable cost-benefit metric.[39] In the current crisis, the AML "know your customer" and Financial Crimes Enforcement Network (FinCEN) "customer due diligence" (CDD) rules are a major reason why banks are reluctant to deal with a small business with whom they do not have a substantial existing relationship. If they open accounts or lend to businesses in violation of these onerous and time-consuming requirements, they face large fines. AML rules have a particularly adverse impact on small businesses and the poor.[40] Congress should reverse FinCEN's CDD rules and make other improvements.

## Recommendations for Structural Reforms to Sustain a Strong Economic Rebound

Congress should not stop at removing immediate barriers to economic recovery. A broader pro-growth agenda that tackles systematic impediments to investment, innovation, and employment will be crucial to sustain a strong economic rebound. The Administration should continue to roll back past expansions of existing laws. Congress should enact systemic reforms to the administrative state, to prevent harmful future executive re-interpretation of existing laws. Congress needs to reassert its authority in setting and lowering tariffs and advance new free trade agreements in order to quiet long-term uncertainty associated with global trade. Congress must also address the stressed health care system and manage post-crisis deficits by reforming the key drivers of federal spending growth to ensure that taxes stay low and that the 2017 tax cuts can be extended. Congress should:

- **Pursue regulatory reforms to boost recovery.** Before the COVID-19 pandemic, the Administration was undertaking many important deregulatory actions to free labor markets, financial markets, and energy markets, among others.[41] More work can be done to reduce unnecessary regulations that increase production costs and raise prices, restrict innovation, limit job creation, and constrain access to credit. Congress should consider giving the Administration the direct statutory authority to suspend costly regulations that slowed down the nation's response to the crisis or that might impede a swift economic recovery. Typically, regulations have to undergo a thorough rewrite in order to be reduced or eliminated, but a more direct suspension or removal authority for costly rules would accelerate the regulatory reform process. Furthermore, requiring congressional approval and requiring sunset dates for all major regulations would make Members of Congress, not regulators, accountable to the American people for the results of their laws.

- **Pursue trade agreements and lower tariffs to help businesses and consumers.** The increased costs for Americans buying and selling goods abroad due to the Administration's trade policy will slow down the American recovery by making it harder for businesses to access foreign markets and plan new investments. Permanently eliminating or lowering tariffs on intermediate and finished goods, resolving the trade dispute with China, and advancing new trade agreements as soon as possible will allow American businesses to more efficiently scale up their operations and enable American consumers to benefit from competitive prices.[42]

- **Implement systemic environmental reforms to boost production and lower costs**. A number of major environmental regulations threaten a sustained, long-term economic recovery. They would stunt investment, increase costs on households and businesses, and generate negligible environmental benefits. Policymakers should enact systemic environmental regulatory reform by properly defining "waters of the United States,"[43] prohibiting the regulation of greenhouse gases,[44] ending the abuse of ancillary benefits to justify air-quality regulations,[45] and requiring Congress to make any changes to the National Ambient Air Quality Standards.[46]

- **Adopt the Health Care Choices Proposal.** Instead of expanding government control, Congress should adopt the framework laid out in the Health Care Choices Proposal.[47] This proposal builds on the early lessons of this pandemic by (1) providing states with the regulatory flexibility and budgeted resources to respond to the unique needs of their citizens in their states; (2) ensuring that federal subsidies are targeted to those in most need, specifically lower-income people and those with pre-existing conditions; and (3) leveraging the private sector to deliver care and services without the regulatory constraints that slow down innovation.

**Constrain future spending to keep taxes low.** Congress must ensure that taxes stay low for all Americans by making the 2017 tax cuts permanent before they expire at the end of 2025. Essential rules for business expensing also begin to phase out at the end of 2022. If not made permanent, these coming tax increases will depress new business investment and slow down the recovery.[48] Paired with appropriate spending controls, Congress should go further by making residential and nonresidential property eligible for faster write-offs or neutral cost recovery. Congress should use any fiscal space to lower the most economically destructive taxes first, such as business taxes, capital gains taxes, and the estate tax. Shrinking revenues during the coronavirus recession and the fiscal response will add multiple trillions of dollars to the national debt, in addition to the pre-crisis trillion-dollar annual deficits. Large government debts and unsustainable deficits create uncertainties that can lead to debt-market instability and depressed investment, resulting in lackluster economic growth. Massive debt and uncontrolled deficits are a poorly understood source of economic uncertainty, even given the substantial literature on the topic. This is at least partly due to the fact that sustained high levels of sovereign debt during peacetime are a relatively new phenomenon. Congress must enact a credible plan to shrink post-crisis deficits through spending reforms, rather than tax increases, which would slow down the recovery.[49]

## Policy Mistakes to Avoid

While lawmakers should focus on removing unnecessary and harmful barriers to economic activity to unleash a great American recovery, they should also avoid new policy mistakes such as bailing out irresponsible states and localities and resisting the temptation to engage in misguided stimulus spending, flawed industrial policy experiments, or adding new impediments to working, trading, and investing. Congress should:

**Refuse to bail out irresponsible states and localities.** The federal response to the COVID-19 pandemic has already provided hundreds of billions of dollars to state and local governments in direct and indirect aid to cover costs of coronavirus spread containment, support for education systems, child care for frontline workers, and subsidies for mass transit systems. In addition to direct aid, the Federal Reserve has provided $500 billion in short-term loans for state and municipal governments. Moreover, the $1.2 trillion in relief for individuals and businesses represent further indirect support for states. Further bailing out of state and local budgets with unrestricted federal dollars would increase state and local budgets, increase future funding shortfalls, further undermine local decision making, and set a dangerous precedent that could lead to additional federal bailouts of the most irresponsible states and localities.[50] Federal aid tends to expand state budgets and make them less resilient during future crises, perpetuating problems like systematic pension underfunding. Simply moving state funding to the federal government does little more than redistribute local costs to federal taxpayers across all 50 states. Instead, Congress can help states by providing flexibility for existing funding sources and lifting unfunded mandates.[51]

**Resist the temptation to distort the recovery with additional interventions**. In a crisis, policymakers tend to turn first to large new public works projects and centralized programs to try to get people back to work. These programs are rationalized as a way to jump-start private activity by increasing demand for new products and services through government purchases. Traditional government stimulus neglects the real barriers that private businesses must navigate in order to meet increased demand for their products and services (many of which are described above). The barriers to supply exist whether increases in demand are government induced or materialize organically. Rather than turning first to new spending initiatives, which most often have disappointing results for a multitude of theoretical and practical reasons,[52] Congress and state legislatures should focus on removing unnecessary rules that make doing business more costly and loosen excessive restrictions on workers trying to stay employed. The traditional demand-side approach to stimulus is not a sustainable or effective way to restart the economy.

During the economic recovery, many policymakers will also be drawn to seemingly easy solutions to mandate wage increases, expand union power over workers' rights, or develop more onerous environmental mandates.[53] Each of these impulses will impede economic recovery and will likely not deliver the desired results of higher wages or a more sustainable environment. For example, an economic downturn is the worst time to increase the minimum wage; fixing wages artificially high means that many pre-crisis jobs simply will not return.[54] If policymakers get out of the way, the millions of businesses all across America will be better equipped to put Americans back to work and raise wages than federal or state governments.

Continued government spending and new mandates could distort and slow the recovery. The more than $2.5 trillion of federal aid that Congress has authorized in the past month will not create new wealth, and it is not intended to be a stimulus: Much of the short-term spending is intended to put a floor under individuals whose businesses and jobs were shuttered overnight. These temporary policies will have economic costs. Unemployment benefits in excess of pre-crisis wages will create an incentive for some workers to return to the labor force more slowly.[55] Similarly, subsidies for businesses may slow down the post-crisis evolution of the market. The U.S. economy will likely never be exactly as it was in early 2020, and any prolonged business safety net or new stimulus directed at firms could slow down the reshuffling of businesses to meet new market demands.[56] Similarly, governments can slow down the recovery by misdirecting valuable economic resources and human talents through spending programs or centralized industrial planning initiatives. Lawmakers should remember that government intrusions tend to derail, rather than enhance, the human flourishing and higher living standards that result from free people trading in free markets.

## The Path Forward

As shelter-in-place orders are lifted, and healthy people can reasonably begin to go back to work, Congress must step back and allow the private sector to lead the recovery. To enable a strong recovery of the American economy, Congress should:

- **Remove immediate impediments to economic activity** to increase worker flexibility, increase access to capital, and lower regulatory costs.

- **Pursue structural reforms to sustain a strong recovery** by tackling systemic impediments to investment, innovation, and employment through regulatory reforms, pro-growth trade policy, consumer choice in health care, and sustainable budgets that keep taxes low.

- **Reject impediments to economic growth** that would mandate wage levels, expand union power over workers' rights, develop onerous environmental mandates, or expand federal intervention through stimulus programs or by bailing out irresponsible states.

The most effective policies that enable the American economy to recover will remove disincentives that stand in the way of economic activity. Policymakers can realize the great American economic recovery through ensuring policy predictability and pursuing an environment that enables working, hiring, commerce, and investing without unnecessary distortions.

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