The Heritage Foundation

SPECIAL REPORT

No. 250 | DECEMBER 8, 2021

37 Biden Administration Regulations in the Pipeline that Americans Should Know About

Edited by Daren Bakst

37 Biden Administration Regulations in the Pipeline that Americans Should Know About

Edited by Daren Bakst

SPECIAL REPORT

No. 250 | DECEMBER 8, 2021

THOMAS A. ROE INSTITUTE FOR ECONOMIC POLICY STUDIES

Contributors

Daren Bakst is Senior Research Fellow in Regulatory Policy Studies in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom, at The Heritage Foundation.

David R. Burton is Senior Fellow in Economic Policy in the Roe Institute.

Joel Griffith is Research Fellow in Financial Regulations in the Roe Institute.

Elizabeth Hanke is Research Fellow in Labor Economics and Policy in the Roe Institute.

Peter St. Onge is Research Fellow in Economic Policy in the Roe Institute.

John Schoof is Research Associate and Project Coordinator in the Center for Education Policy, of the Institute for Family, Community, and Opportunity, at The Heritage Foundation.

Tori K. Smith is Jay Van Andel Senior Policy Analyst in Trade Policy in the Roe Institute.

Katie Tubb is Senior Policy Analyst in Energy and Environment in the Roe Institute.

Kimball Baer and Nick Storz, both members of The Heritage Foundation's Young Leaders Program, provided valuable assistance for this *Special Report*.

This paper, in its entirety, can be found at **http://report.heritage.org/sr250**

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

37 Biden Administration Regulations in the Pipeline that Americans Should Know About

Edited by Daren Bakst

The Biden Administration is pushing an aggressive regulatory agenda that is vastly increasing the influence and power of the federal government. Legislators should be proactive in pushing back against this extreme regulatory agenda and provide the necessary oversight that Congress is expected to provide. This involves knowing which regulations are coming. This Special Report is intended to help with this challenge by identifying some of the most important and problematic regulations that are in the pipeline—that is, they have not yet been proposed, but are expected soon. This unique angle should help to focus much-needed attention on expected regulations earlier than otherwise would be the case and assist Congress in its critical oversight role over federal agencies.

There is a constant barrage of federal regulations that affect the lives of all Americans. As Congress continues to delegate significant power to federal agencies, this barrage will not abate anytime soon. Even for regulatory experts, keeping track of important regulations is a major challenge.

This *Special Report* is intended to help with this challenge by identifying some of the most important regulations that are in the pipeline and providing some perspective on these regulations.[1] While existing proposed regulations and recently finalized regulations are very important, the purpose and focus of this report is on regulations that are expected to be proposed in the near future.[2] This unique angle should help to focus much-needed attention on regulations earlier than otherwise would be the case, and assist Congress in its critical oversight role over federal agencies. By having this one-stop source on many important upcoming regulations, from labor to environmental regulations, legislators can be in a better position to get ahead of potential regulatory actions.

Following are 37 expected regulations, divided into five categories: (1) education regulation, (2) energy and environmental regulation, (3) financial regulation, (4) labor and housing regulation, and (5) miscellaneous regulations. There are common problems with these regulations, from centralizing power among federal bureaucrats and restricting personal freedom to imposing significant costs with likely few or no benefits. Unfortunately, this list is only a sample of many expected problematic federal regulations.

Education Regulation

Many higher education–related regulations are on the horizon. These Biden Administration regulations, among other things, would incentivize borrowers to take on financial risks that they otherwise would not take, forcing taxpayers to bear the brunt of the costs when those risks do not pay off, such as through bailouts. The last regulation in this section (No. 8, "Title IX Sex-Discrimination Rules") is deserving of special attention. It is the likely rejection of the Trump Administration's efforts to eliminate kangaroo courts on college campuses and to ensure that innocent students are not punished. The following are some of the expected important education-related regulations:

1. Amendments to Student-Loan-Cancellation Authorities.[3] The Department of Education plans to amend regulations to increase borrower eligibility and allegedly improve the application process for those seeking debt relief for federal student loans. This includes cancelling student loans for borrowers who meet certain criteria for which the Department of Education currently has some authority to forgive, such as when a borrower becomes permanently disabled, attends a school that shuts down, or is misled to think he qualifies for a loan. According to the "Unified Agenda," a proposed rule is planned for June 2022 following a negotiated rulemaking process that began on October 4, 2021.[4]

Analysis. The Biden Administration is using every avenue to forgive as many federal student loans as possible. Under U.S. Secretary of Education Miguel Cardona, the Department of Education has already made taxpayers bail out millions of dollars of student debt held by students with disabilities and students who attended ITT Technical Institute at the time of its closing.[5] With this proposal, Secretary Cardona is making it clear that the Department of Education will try to expand the channels through which they currently have authority to cancel federal student loan debt.

Expanding the number of people who qualify for federal-student-loan forgiveness is a gift to the relatively wealthy, as "the top fifth of households

holds $3 in student loans for every $1 held by the bottom fifth."[6] Loan forgiveness also creates a moral hazard problem.[7] Future borrowers will be more likely to pursue an expensive college degree with riskier or fewer job prospects with expectations of another bailout by taxpayers in the future if it does not work out. Lastly, all efforts to forgive student loans fail to address the cause of tuition inflation, which is the massive subsidization of student loans to begin with.

2. Reinstatement of "Gainful Employment."[8] The Department of Education is planning to reinstate an Obama-era regulation known as "gainful employment" that requires "any non-degree program offered by non-profit or public institutions and *all educational programs offered at for-profit institutions*" (emphasis added) to prepare its students for gainful employment in order for these programs to participate in Title IV student-assistance programs.[9] After negotiated rulemaking, a proposed rule is supposed to be published in July 2022.

Analysis. In 2014, the Obama Administration finalized the gainful-employment regulations.[10] Eligibility for Title IV federal funding was dependent on the reported debt-to-earnings ratio of students at each institution. These regulations were repealed by former Education Secretary Betsy DeVos in 2018.

The gainful-employment rule is one of many Biden Administration agenda items that unfairly targets for-profit institutions of higher education. The gainful-employment rule should be opposed as the federal government should not pick winners and losers, particularly based on tax status. Also, while the goals of increasing transparency and holding colleges and universities accountable to their customers are laudable, this rule is but a Band-Aid for the massive problems caused by federal subsidies in higher education to begin with. Federal subsidies and regulations in higher education must be phased out. A free market for higher education would provide adequate transparency.

3. Amendments to the 90/10 Rule.[11] The Department of Education is planning to make amendments to the Student Assistance General Provisions of the Higher Education Act, connected to the 90/10 rule. Congress enacted the 90/10 rule in 1992 (initially as the 85/15 rule, and changed to 90/10 in 1998) with the goal of reducing fraud and abuse of federal financial aid funds at for-profit institutions of higher education.[12] Prior to changes made in the American Rescue Plan in 2021, the 90/10 rule required for-profit institutions of higher education to receive at least 10 percent of their revenue from non–Title IV sources.[13] In other words, no more than 90 percent of a for-profit institution's revenue could come from federally subsidized student loans, grants, and financial aid. However, a provision of the 90/10 rule allowed for-profit institutions to count GI Bill and Department of Defense (DOD) tuition assistance—earned benefits afforded to service members—toward the 10 percent of non–Title IV funds.[14]

In 2021, the American Rescue Plan changed the language in the Higher Education Act so that the 90/10 rule now requires for-profit institutions to receive at least 10 percent of their revenue from "sources other than federal education assistance funds" and no longer "sources other than Title IV."[15] The Department of Education will use the negotiated rulemaking process to interpret the definition of "federal education assistance funds," which will most likely no longer include earned service member benefits counting toward the 10 percent of funding designated as non-federal assistance.

Analysis. As a result of the service member provision, for-profit colleges and universities accepted a relatively large share of veterans compared to nonprofit institutions according to the Congressional Budget Office.[16] While some advocacy groups claim that veterans are being targeted by for-profit institutions and are misled into working toward a degree with little value, others warn against making changes to the 90/10 rule, predicting that almost 90,000 veterans could be "barred from attending the schools they choose."[17]

The new language, "federal education assistance funds," introduced by Congress is deliberately vague. Many speculate that the Department of Education will ensure that the definition includes GI Bill and DOD tuition assistance funds.[18] The summary of the American Rescue Plan also states that the change "modifies the so-called 90/10 rule to require for-profit IHEs [institutions of higher education] to include all forms of federal education aid in the revenue calculation for federal student-aid program eligibility."[19] This is not a new priority for the Left as, President Barack Obama's fiscal year (FY) 2017 budget recommendations included eliminating the veterans provision.[20]

Counting earned military benefits as federal assistance will likely make it more difficult for those who serve the country to pursue opportunities of higher education. Eighty-five percent of active-duty service members who use DOD tuition assistance take some online courses, and for-profit institutions tend to provide more flexible options, such as online learning.[21] Counting these earned benefits in the 90/10 rule could be devastating for higher-education access for service members, who could be dropped by schools to avoid the school's 90/10 limit.[22] Moreover, there is no evidence that the 90/10 rule is successful at increasing institutional financial responsibility or educational outcomes.

4. Expansion of Public Service Loan Forgiveness (PSLF).[23] In keeping with President Biden's promise to prioritize student debt relief, the Department of Education announced that key programs governing student loan repayment and forgiveness are in the process of being overhauled through the regulatory process to provide further federal subsidies for borrowers, including PSLF.[24]

Analysis. PSLF is a program that forgives the student debt of full-time employees of the government or eligible nonprofit organizations with Direct Loans who have made 120 qualifying monthly payments under an income-based repayment plan.[25] For borrowers, this means that after 10 years of meeting monthly payments while working full-time, any outstanding balance is to be paid by taxpayers.[26] The current PSLF eligibility requirements have been a longtime object of ire for Democrats, who argue that the benefits are not generous enough.[27]

Changes under President Biden's Department of Education will likely allow more, or all types of, federal student loans and repayment plans to qualify for the program.[28] President Biden has also called for partial forgiveness to occur annually during the 10-year repayment window, a change from the complete forgiveness now only offered after 120 payments are made. Other advocacy groups have lobbied the Administration to automatically forgive the loans of any borrowers who have been in public service for 10 years.[29] Each of those potential reforms would provide more immediate forgiveness for a larger pool of borrowers, distorting incentives in the college market.[30] Providing an easy escape to debt would reduce the perceived risk of taking on student loans, making students more willing to take on increased debt while enabling colleges to raise prices.[31] While the students who go to work in the public sector might welcome taxpayers assuming the debt they agreed to repay, students seeking private-sector jobs would receive no such help. More important, taxpayers who did not attend college (perhaps to avoid debt) would be forced to assume the debt of their college-going counterparts.

5. Extension of Income Contingent Repayment (ICR) to Borrowers.[32] The Department of Education is planning new regulations for ICR plans for federal student loans. Four separate repayment programs exist under the ICR umbrella, each with different forgiveness options and methods of calculating monthly payments.[33] The Department of Education announced that the plans are in a process of negotiated rulemaking, a deliberative back-and-forth process which could take years to complete.[34]

Analysis. Today, 8.6 million federal borrowers are enrolled in ICR programs accounting for almost half of the $1.4 trillion of Department of

Education–serviced balances.[35] The program determines an individually tailored monthly payment based on factors including the borrower's income, family size, and total obligations.[36] Depending on the plan, payments can be between 10 percent and 20 percent of a borrower's discretionary income with forgiveness of the remaining balance after 20 years to 25 years.[37] If a borrower's income is low enough, monthly payments can even be $0.

The Biden Department of Education has made clear that its goal is to reduce the debt burden of borrowers. During his 2020 presidential campaign, candidate Biden advocated a new repayment plan featuring payments set at just 5 percent of a borrower's discretionary income (a move that would slash payments by 50 percent for many borrowers), expanding formulas to take living expenses into account, and exempting ICR loan forgiveness from taxation. Currently, the amount forgiven represents taxable income.[38] Expanding relief to borrowers has destructive implications for students and taxpayers. Reducing the risk and cost for students associated with college debt by shifting the burden to taxpayers distorts incentives and enables colleges to further raise prices.[39] It also puts degreeless taxpayers on the hook for the debt of current and future students, while graduates who have already paid their debts are made to subsidize others' obligations.

6. Amendments to Borrower Defense to Repayment (DTR) Rules.[40] The Department of Education is planning to amend the borrower defense rules. The new rules could change which actions or omissions by a school count as fraud under the program, re-examine consequences for borrowers and institutions, and review the use of class-action lawsuits and arbitration agreements in borrower defense claims. The latter is likely a reference to a lawsuit filed against the Trump Administration's implementation of borrower defense rules. A proposed rule is planned for April 2022, after a negotiated rulemaking process.[41]

Analysis. Borrower DTR allows borrowers defrauded by their schools to have outstanding federal student debt cancelled.[42] The program was formalized under the Obama Administration. After then-Secretary of Education Arne Duncan unilaterally closed several large for-profit colleges by stripping them of federal funds, the Department of Education decided to forgive the federal loans of tens of thousands of affected students, amounting to hundreds of millions of dollars.[43] The Trump Administration rewrote the rules, increasing the burden of proof to require borrowers to show financial harm as a result of their college knowingly making deceptive or false claims.[44] In some cases, the schools were made liable for loans that had to be forgiven by the government.[45]

In line with other reforms proposed by the Biden Administration designed to provide back-door student-loan forgiveness, the Administration's rewriting of borrower defense rules could return to a more lenient standard of proof and serve as an additional vehicle for forgiveness.

7. Reinstitution of Pell Grants for Prison Education Programs.[46] Following Congress's reinstatement of Pell Grant eligibility for incarcerated students in December 2020 as part of the Consolidated Appropriations Act, the Department of Education is planning forthcoming rules to guide colleges and prisons in creating prison-education programs that would be eligible for Pell Grant funding.[47]

Analysis. For the first time in 26 years, incarcerated Americans are again eligible for Pell Grants to finance prison-education programs offered in partnership with colleges.

While the body of research on the topic suggests that prison education may reduce recidivism rates, there remains what researchers have called a "black box" of questions about which types of programs are effective.[48] Despite a five-year pilot program known as Second Chance Pell, some associations between variables, such as curriculum type, length of program, and quality, have yet to be thoroughly studied.[49] It is important that the Department of Education focus on programs that have shown to be effective in addressing recidivism and not lose sight of this goal, such as by seeking to promote "equity" in higher education through these programs.[50]

Further, if college programs in prisons are truly cost-effective, states should invest in programs with their own budgets. State prison systems are not an issue that is relevant to the federal government. Also, given that there is research suggesting that school choice is effective at reducing crime, states should pass private-school-choice programs for K–12 students.[51]

8. Amendments to Title IX Sex-Discrimination Rules.[52] In line with Executive Orders 13988 and 14021 issued by President Biden, the Department of Education is planning to amend the regulations implementing Title IX of the Education Amendments of 1972. The Department of Education plans to conduct a review of "all existing regulations, orders, guidance documents, policies, and any other similar agency actions" that may be inconsistent with the Administration's policy on sexual discrimination and harassment.[53] Executive Order 14021 specifically names the final rule published in May 2020 under then-Secretary of Education Betsy DeVos to be the focus of the review.[54] This executive order also advises that Secretary Cardona "consider suspending, revising, or rescinding" agency actions that are inconsistent with the Administration's policy on sexual discrimination and harassment.

Analysis. In the context of recent statements and actions by the Biden Administration and its Department of Education, it is likely that the 2020 rule change under then-Secretary DeVos will be rescinded and replaced with Title IX rules that resemble those of the Obama era, including rules that result in a lower burden of proof and limits on due process in sexual assault cases on college campuses.[55]

The 2020 reforms narrowed the definition of sexual harassment and removed Obama Administration rules to regulate college adjudication of sexual assault claims.[56] The Obama-era rules, as outlined in a 2011 Dear Colleague Letter, required schools to complete investigations within two months and use the "preponderance of evidence" standard of proof in its hearings, under which a hearing officer must be convinced that the chances of the claim being true are greater than 50 percent.[57] The Obama Administration also urged schools to ensure that a "single investigator...determine guilt and innocence" in sexual assault cases while at the same time pressuring schools against the use of live hearings and cross-examination.[58] These rules eroded the due-process protections and standards of criminal procedure such that hundreds of falsely accused students were punished by campus adjudication boards.[59] Under the Biden Department of Education, these kangaroo courts will likely return.

Moreover, on the campaign trail in May 2020, candidate Biden assured the public that he would bring a "quick end" to the DeVos regulatory changes. On October 20, 2021, the Senate confirmed President Biden's nominee Catherine Lhamon as the next Assistant Secretary for Civil Rights in the Office for Civil Rights at the Department of Education, the same post she held in the Obama Administration.[60]

Due process is fundamental to the rule of law and a just society, and students must receive its full protection. Rolling back the protections resulting from the 2020 rewriting of the Title IX regulations will undermine procedures for fair adjudication while failing to prevent sexual violence, and likely punishing more innocent students.

Energy and Environmental Regulation

The Biden Administration is pursuing aggressive energy and environmental regulations to undo the policies of the previous Administration, implement heavy-handed federal intervention, and advance its climate agenda. These regulations include numerous obstacles for the development and use of conventional fuels and products, the reversal of critical regulatory reforms to improve the implementation of the Endangered

Species Act (ESA), and the likely use of the Clean Water Act (CWA) to regulate almost every "water" imaginable—all with little or no environmental benefit, while imposing great cost on Americans. One notable exception to this regulatory overreach is the Nuclear Regulatory Commission's (NRC's) efforts to streamline environmental reviews for nuclear power reactors. The following are some of the expected important energy and environmental regulations:

9. Energy-Efficiency Mandates for Household and Commercial Appliances. The Department of Energy (DOE) is considering a swath of new and likely more stringent energy-efficiency standards for household appliances. These include standards for refrigerators and freezers, kitchen cooking ranges and ovens, washing machines and dryers, water heaters, light bulbs, ceiling fans and ceiling fan lights, dehumidifiers, mobile homes, dishwashers, microwaves, and furnaces.[61] The DOE is also proposing to review test procedures for these and other appliances (such as televisions, showerheads, and air conditioners) to determine future certification, compliance, and enforcement of standards.

Analysis. Congress has delegated significant power over Americans' choices in household appliances to the DOE,[62] and extended considerable DOE discretion to determine whether more stringent standards are energy-saving, technologically feasible, and economically justifiable. Nowhere does the law direct the DOE to take greenhouse gas emissions into consideration. However, President Biden has included energy efficiency and energy-efficiency standards as part of his climate policy,[63] with the likelihood that the DOE will make standards more stringent. The DOE requested FY 2022 funds to increase employment for appliance-standards development and to support "its contribution to achieving net-zero emissions, economy-wide, by no later than 2050 through its statutory responsibilities associated with appliance standards and assessment of energy savings from model building codes."[64] Accordingly, as done in previous versions of these standards under the Obama Administration,[65] the DOE under President Biden is very likely to use the "social cost of carbon" in its regulatory impact analyses to inflate the estimated benefits of stricter regulations by billions of dollars. The social cost of carbon is an unreliable metric approximating the economic damage that one ton of carbon dioxide emitted today will cause over the next 300 years and is unfit for regulatory analysis and policymaking.[66]

Many consumers value energy-efficient options and factor energy efficiency into their decision-making. However, efficiency regulations generally increase the up-front costs of appliances despite claims of consumer savings over time—a problem that is further obfuscated by using the social cost of carbon in regulatory analysis. The costs and benefits of energy-efficiency standards vary widely depending on income, and these standards particularly burden low-income Americans with billions of dollars in costs.[67] The regulations also offer little or no environmental benefits for the additional costs that consumers incur, and remove consumer choices by prioritizing the DOE's definition of energy efficiency over preferences that customers and businesses may have, such as safety, size, convenience, or durability.[68] Free-market competition inherently drives innovation and efficiency to meet customer needs with affordable energy options.

10. Repeated Environmental Review of Oil and Gas Leasing in Alaska. President Biden's executive order on "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" requires the Department of the Interior (DOI) to stop all activities related to the Coastal Plain Oil and Gas Leasing program, and to conduct a new environmental review of these activities under the National Environmental Policy Act (NEPA).[69] The Coastal Plain (1002 Area) consists of 1.6 million acres in the 19.3-million-acre Arctic National Wildlife Reserve. Interior Secretary Deb Haaland rescinded secretarial orders from the previous Administration to prepare and conduct lease sales,[70] and directed that agencies within the DOI "shall not take any action to authorize any aspect of the Program, including, but not limited to, any leasing, exploration, development, production, or transportation, and shall not process any pending or future applications for such activities."[71] The Bureau of Land Management (BLM) published a notice of intent to prepare a supplemental environmental impact statement for an oil and gas leasing program in the 1002 Area, including "impacts from greenhouse gas emissions from any Leasing Program."[72]

Analysis. The BLM's notice lays out a regulatory schedule that would likely carry into spring 2023.[73] While the delay will certainly have negative economic effects on the state of Alaska,[74] perhaps a greater concern is the Administration's frustration of the clear intent and directive of Congress. The Alaska National Interest Lands Conservation Act of 1980 clearly envisions the potential of the 1002 Area for energy exploration and production and retained congressional authority to determine energy production there. In 2017, Congress required the DOI to "establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas in and from the Coastal Plain."[75] In addition to cutting off revenues to Alaska and the federal government through lease payments, the Biden Administration's actions diminish confidence in the rule of law, abusing the NEPA process to thwart Congress' directions to allow activities that Congress has deemed consistent with the welfare of Americans and environmental stewardship. It further ignores the expressed interests of Alaskans through their elected state and federal representatives, which is critical to successful management of public land.[76]

11. Review of Coal-Leasing Program. The BLM has initiated a programmatic review of the DOI's programs for coal production on federal lands. The review of the DOI's coal-leasing program includes how to improve competition and fair market return to taxpayers; measuring climate impacts of federal coal "production, transportation, and combustion"; whether actual or projected exports should be considered; how the program meets U.S. energy needs; and how the BLM might implement a "budget" for coal-leasing acreage, among other issues.[77] President Biden has also directed the DOI to reconsider royalty rates for coal production on federal lands and incorporate climate costs.[78] The review will likely result in several rulemakings overhauling the DOI's coal-leasing-program requirements and land-management plans to conform to the Administration's climate agenda. According to the BLM, 42 percent of coal production in the U.S. takes place on federal lands in 11 states, though primarily in Montana and Wyoming.[79]

Analysis. Coal exploration and production are legal activities in the United States. While the DOI has not stated that it will ban coal production on federal lands, the Biden Administration's climate policies to date do not inspire confidence, and the Administration has not approved a single new coal-lease sale. President Biden has stated that "it is the policy of my Administration to lead the Nation's effort to combat the climate crisis by example—specifically, by aligning the management of...public lands and waters...to support robust climate action."[80]

One way this policy may be executed is through the BLM's use of the programmatic review to consider not just land-use planning, processes, and fees of a leasing program, but also potential consumers (for example, in the form of exports). This could set an unwise precedent for environmental and other reviews that could chill investment in the U.S. and add unnecessary regulatory review and agency discretion.[81] Finally, the BLM's review of the coal-leasing program is the latest pendulum swing between Administrations regarding access to coal on federal lands.[82] Competing Administrations are interpreting their regulatory authority under the same environmental laws written by Congress to mean drastically different things. This executive branch's "legislating" does not make for durable environmental policy, is costly, and is time-consuming. Congress, not the DOI, should be the governing body responsible for making fundamental changes to the goals for, and purposes of, federal lands.

12. Review of Oil- and Gas-Leasing Program. Section 208 of Executive Order 14008 directed the Secretary of the Interior to pause oil-leasing and gas-leasing activities on federal lands and waters while it conducts "a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices."[83] The BLM and the Bureau of Ocean Energy Management (BOEM) immediately cancelled offshore and onshore lease sales.[84] However in June, the U.S. District Court for the Western District of Louisiana issued a nationwide preliminary injunction prohibiting implementation of the leasing pause.[85] While the BOEM has published notices to conduct several offshore lease sales, the BLM will not hold a single onshore lease sale in 2021.[86] Both agencies appear to be using the regulatory process to slow-walk compliance with the court order. For example, the BOEM is now revising an environmental impact statement of a lease sale off the coast of Alaska[87] and removed a commitment to review certain permit applications for oil and gas leases in the Gulf of Mexico within 75 days.[88] Similarly, the BLM outlined a process to restart onshore lease sales with new scoping periods, new environmental reviews, and public comment periods, pushing lease sales into next year at the earliest.[89]

The same executive order also requires the DOI to reconsider royalty rates from oil and gas production on federal lands "or take other appropriate action, to account for corresponding climate costs."[90] The DOI plans to initiate regulatory actions to adjust oil-leasing and gas-leasing processes, fees, rents, royalties, and bonding requirements on federal lands.[91] Relevant offices have already opened several regulatory reviews of information collections related to royalties, production, and lease holder requirements for oil and gas.[92]

Analysis. The DOI's review and related regulatory activities are part of the Administration's climate policy to halve greenhouse gas emissions by 2030 and force a transition from conventional energy resources to renewable energy technologies and fuels on federal lands.[93] DOI statements give reason to be concerned that the Administration will pursue a "master environmental impact statement" of new and existing oil and gas leases under a sue-and-settle arrangement in which adequate environmental reviews meeting the requirements of NEPA must consider greenhouse gas emissions and climate impacts.[94]

Even if the Administration does not pursue sweeping policy change, piecemeal efforts via regulatory actions on land-management plans, fees, royalties, bureaucratic requirements for oil and gas companies, and agency processes could add up to a functional moratorium on oil and gas production on federal lands. Doing so would undermine rule of law and confidence in land-management policy. Congress, not the DOI, should be the governing body responsible for making fundamental changes to the goals for, and purposes of, federal lands and waters. Oil and gas development on federal lands and waters is and can continue to be consistent with the welfare of Americans and environmental stewardship. Oil and gas production on federal lands and waters has also spurred positive economic activity and contributed billions of dollars to states and tribes, which share the consequences of federal land management.[95]

13. Streamlined Environmental Reviews of Nuclear Power Reactors. The NRC has initiated, or is preparing, several regulatory updates to its environmental review process for nuclear-reactor-licensing activities under NEPA. In particular, the NRC published a rulemaking plan in December 2020 to conduct a broad review and update of its NEPA implementation, which was last done in 1984.[96] The NRC also initiated a related but more narrow advanced notice of proposed rulemaking to update and expand the set of licensing and regulatory activities that qualify for categorical exclusions in environmental reviews.[97] Finally, the NRC is in the process of preparing a generic environmental impact statement (EIS) for advanced nuclear reactors.[98] These rulemakings are scheduled to be finalized between 2022 and 2024.[99]

Analysis. The NRC's review and reform of its environmental review processes are promising developments in line with bipartisan congressional direction for regulatory streamlining at the NRC, particularly as new reactor technologies are advancing. The NRC's current approach to implementing NEPA requires the more extensive process of developing an EIS for most reactor-licensing activities, and the exceptions defined in NRC regulations are quite narrow.[100] NEPA assessments have ballooned over the past several decades, as noted by Administrations of both parties, and impose excessive costs in human, financial, and time resources that have not yielded substantially improved environmental outcomes. For example, environmental reviews for nuclear reactor projects can now take as long as, or longer than, the NRC's technical safety evaluation reviews.[101] In the case of the NRC's EIS for the only reactors currently being built in the U.S.—Vogtle 3 and 4 in Georgia—the NEPA review included an evaluation of more than 10 different technologies other than nuclear power as "reasonable alternatives," even though the reactors were to be sited on an existing, operating nuclear power facility. Flooding the review process with excessive review of alternatives wastes resources (for the NRC and the industry) and reduces transparency of any actual environmental and safety concerns.

The environmental impacts of conventional nuclear reactors are well understood, and new advanced reactor technologies have significantly smaller environmental impacts on issues like land use and water use. The NRC should take a more surgical approach to NEPA compliance that relies on previous NEPA analysis and is more in line with the risk-informed, technology-neutral, performance-based approach that Congress is requiring for new regulation of advanced reactors under the Nuclear Energy Innovation and Modernization Act.[102] Significant improvements can be made to NEPA reviews without compromising on environmental quality, and would allow more rational, efficient reviews that focus resources on pertinent safety and environmental issues, not on exhaustive compliance for little benefit to the public.

14. New Rule to Define "Waters of the United States" (WOTUS). The Environmental Protection Agency (EPA) and the Army Corps of Engineers have stopped implementing the Trump Administration's "Navigable Waters Protection Rule"[103] that defined WOTUS under the Clean Water Act (CWA), and are in the process of proposing an interim definition that it claims "put[s] back into place the pre-2015 definition of 'waters of the United States,' updated to reflect consideration of Supreme Court decisions."[104] This will be followed by a new rule that will redefine WOTUS.[105] The timing of a new proposed WOTUS definition rule is unclear.

Analysis. The WOTUS definition is critical because it defines which waters the EPA and Corps can regulate under the CWA. In the past, both agencies have tried to engage in federal power grabs, seeking to regulate almost every water imaginable. In fact, the U.S. Supreme Court twice struck down their broad view on what constitutes "waters of the United States."[106] Instead of learning the lessons of the past, the Obama Administration issued its infamous Clean Water Rule that was so extreme that it regulated what most people would consider to be land.[107]

After getting rid of this rule, the Trump Administration finalized its new rule that provides much greater clarity for property owners. A new Biden Administration rule will likely be similar to the Obama rule, possibly even broader in scope. As a result, property owners, from farmers to homeowners to small business owners, will face greater prohibitions on their property use, including restrictions on ordinary business activities. According to the CWA, states are to play the primary role in addressing water pollution.[108] However, like the Obama rule, a new Biden rule will likely ignore the cooperative federalism envisioned in the CWA.

15. Regulations that Undermine Implementation of the Endangered Species Act (ESA). The Trump Administration finalized numerous rules to improve implementation of the ESA and species conservation. The Biden Administration's Fish and Wildlife Service and National Marine Fisheries Service have announced that they will be rescinding or revising many of these regulations.[109] These proposed actions will likely occur over the next two years.[110]

Analysis. Unfortunately, the ESA has been a failure. Since its enactment in 1973, only about 3 percent of the species listed as threatened or endangered have been removed from the list due to recovery.[111] This is unacceptable, and while amending the ESA is necessary, the federal government has implemented the law in ways that have contributed to this failure.

To remedy this problem, the Trump Administration finalized important new regulations. These regulations, for example, properly treat *threatened* species and *endangered* species differently, consistent with the law, remove disincentives for property owners in helping to promote species conservation, and increase transparency so that the public can better understand the costs and benefits of the law.[112] The Biden Administration has stated that it will be getting rid of or revising these regulations (any revisions will likely effectively gut these important changes). These expected regulatory actions will help to maintain the same failed policies that have hindered species conservation.

16. Harmful Changes to Section 401 Clean Water Act Certification. In 2020, the Trump Administration's EPA finalized a rule to address concerns regarding the Section 401 certification process under the CWA.[113] In June 2021, the Biden Administration's EPA announced its intention to reconsider and revise the rule, "in accordance" with President Biden's Executive Order 13990.[114] On October 21, 2021, a federal district court in California vacated the Trump rule.[115]

Analysis. Section 401 of the CWA is an excellent example of cooperative federalism. Through the Section 401 certification process, states have a way to ensure that state water quality is not harmed by federally permitted activities. However, some states have abused this process by using non-water-quality issues to block critical projects, such as infrastructure projects. Section 401 is an important tool for states to use to protect water quality, not to veto projects for whatever reason they want.[116] The Trump Administration rule, among other things, requires states to focus on water-quality requirements only, and not use the process to achieve other state objectives, such as addressing climate change.[117] A new Biden Administration rule will likely allow such abuses to occur, and will also undermine the important steps taken to improve and streamline the certification process.

Financial Regulation

There is a very wide scope to the financial regulations that are in the pipeline. Of particular concern are Securities and Exchange Commission (SEC) efforts that go well beyond the mission of the agency and would harm investors, not help them, such as policies on climate change or policies that require discrimination based on race or ethnicity. The regulations covered in this section also highlight federal intervention that can undermine innovation and hurt small businesses. The following are some of the expected important financial regulations:

17. Gamification Regulations. The SEC is considering rules[118] regarding digital engagement tools used by brokerages including gamification, behavioral prompts, predictive analytics, and differential (targeted) marketing. The agency has requested public comments to help educate it on the issues, but it has not yet proposed any rules.[119]

Analysis. Phone-app-based brokerages have grown quickly to more than one-quarter[120] of all accounts. Their business hinges on two key features: commission-free trades and appealing interfaces that attract non-traditional investors. Relative to legacy brokerages that focus on the wealthy, online brokerages disproportionately serve those who are younger,[121] of lower income,[122] and non-white.[123] These groups deserve similar access to investing as the wealthy.

Some digital engagement methods utilize sounds, imagery, and other effects like those used in video games. Detractors warn that this "gamification" preys on novice investors, enticing them to make imprudent financial decisions as they pursue the psychological rewards and adrenaline rush of engaging in trades. The State of Massachusetts threatened to ban one broker for, inter alia, confetti animations when buying a stock and for listing "most traded" or "most popular" stocks—commonly printed in financial newspapers.[124] SEC Chair Gary Gensler recently criticized gamification,[125] putting firms using the method at risk of heightened disclosure requirement.[126] The SEC's scrutiny is odd given that the most popular retirement strategy among the young is slickly marketed government-run lotteries[127] that are designed to pay out less than the price of the ticket.[128] The SEC should be encouraging products that increase financial sophistication among those with modest incomes and education so they can build long-term financial security and build an ownership stake in the free-market system.

18. Regulation of Financial Indices. The SEC is considering seeking public comment on the role, and asset-management implications, of financial index and financial model providers.[129]

Analysis. Passive investing now makes up over half[130] of all publicly traded equity fund assets, meaning that index providers, such as Dow Jones and Standard and Poor's, are taking business from traditional active fund managers who charge higher fees for, on average, lower returns.[131] The new rule could regulate indices, including how they are constructed, which is often inherently subjective[132] as the SEC itself recently stated in an educational bulletin on environmental, social, and governance (ESG) mutual funds and exchange-traded funds.[133]

Indices like the Dow Jones Industrial Average have long been a staple of financial news, and the industry is considered a publisher.[134] After a recent SEC enforcement action against one index publisher, SEC Commissioner Hester M. Peirce expressed concern about possible "expansions of the securities laws to reach all manner of actors and conduct with even more tenuous connections to the offer and sale of securities,"[135] and Chair Gensler is already receiving congressional pressure to step up regulation of social media speech.[136] The SEC should not choose winners and losers, hobble competition and innovation, impose its subjective biases on investment strategies, or restrict speech about financial markets.

19. Increased Scrutiny of Special Purpose Acquisition Companies (SPACs). The SEC is considering new regulations for SPACs.[137] According to the Unified Agenda, the agency is planning to propose regulations in April 2022.[138]

Analysis. SPACs are a way for firms to go public that is much cheaper and faster[139] than a traditional initial public offering (IPO), and that is open to regular non-accredited investors. This has led to SPAC's characterization as "a poor man's private equity."[140] SPACs have existed for decades but starting in 2019 the industry took off as a way for retail investors to access early stage start-ups, growing from $13 billion in 2019 to $105 billion in 2021[141] before falling back after the SEC warned it could heighten scrutiny of SPACs.[142]

The number of public firms in America has been in rapid decline since the 1990s, in particular for start-ups and smaller firms.[143] This decline can shut out regular non-accredited investors from investing in these businesses. The SEC should be making it easier for American companies to access public markets, and for middle-class American investors to invest in start-ups and smaller businesses. The proper role of the SEC is to require the disclosure of material facts to investors and to deter and punish fraud. The SEC yet again risks suppressing[144] strategies that can broaden capital market participation.

20. Revision of Rules Governing Exempt Private Securities Offerings. In the name of "investor protection," the SEC is considering revising the rules governing private exempt offerings by restricting access to private offerings to the very wealthy and taking additional steps to endanger the most important means of raising entrepreneurial capital in the United States. Specifically, the agency is considering "updating" (that is, raising) the financial thresholds in the accredited investor definition and imposing onerous information-reporting requirements on Regulation D offerings.[145]

Analysis. The Securities Act of 1933[146] makes it generally illegal to sell securities unless the offering is registered with the SEC.[147] Making a registered offering (often called "going public") is a very expensive proposition and well beyond the means of most small and start-up companies. In addition, the costs of complying with continuing disclosure and other obligations of being a registered public company are quite high.[148]

The Securities Act, however, exempts various securities and transactions from this requirement. Private offerings[149] are the most important source of capital for American businesses, accounting for at least $2.9 trillion in raised capital annually.[150] By comparison, registered (public) offerings raised less than half of that amount ($1.4 trillion).[151] Regulation D is the most important means of raising private capital amounting to $1.5 trillion to $1.7 trillion annually from 2017 to 2019.[152]

Regulation D is lightly regulated and a tremendous success. The SEC adopted Regulation D in 1982 during the Reagan Administration.[153] It is not an overstatement to say that the U.S. economy would be unrecognizable without Regulation D. Damaging Regulation D would harm the dynamism of the economy in incalculable ways and have an adverse impact on tens of millions of working men and women and consumers. Under Rule 506 of Regulation D, a company may raise an unlimited amount of money and sell securities to an unlimited number of "accredited investors," and up to 35 non-accredited but sophisticated investors. Under Regulation D, an "accredited investor" is, generally, either a financial institution or a natural person who has an income of more than $200,000 ($300,000 joint) or a residence-exclusive net worth of $1 million or more.[154]

Prior to the Trump Administration, progressives had pushed to adjust these thresholds for inflation since 1982.[155] If that were done, the thresholds would be approximately $575,000 ($850,000 joint) and a residence-exclusive net worth of $2.8 million or more.[156] The SEC currently estimates that only about 16 million households (13 percent of the total) qualify as accredited.[157] If progressives are successful in raising the thresholds, then the proportion of households that are accredited will be reduced to only 1 percent or 2 percent of the total. Companies are going public much later than in the past due to the regulatory burdens imposed on public companies, so those who invest in private offerings generally receive a higher share of returns generated by successful entrepreneurial ventures than those who invest in relatively late-stage public companies. Reducing access to these offerings will harm investors who are not already wealthy. In addition, progressives are considering imposing more onerous requirements on Regulation D offerings.[158] This will harm entrepreneurs seeking to raise capital and it will harm consumers and workers because the U.S. economy will become less dynamic.

21. New Rules for Corporate Board Diversity. The SEC is considering rules to "enhance" mandatory public company disclosures about the diversity of board members and nominees.[159] In August, the SEC approved the Nasdaq board diversity rule, which requires affirmative discrimination on the basis of race, ethnicity, sex, and sexual orientation.[160] This rule provides an indication of the direction the SEC is likely to take.

Analysis. "Diversity" disclosure rules do not "protect investors" in any sense. They do not increase their returns or protect them from losses. They do not protect them from fraud or misrepresentation. They do not protect them from an unaccountable management or board of directors acting in its own interest or pursuing political or social objectives at the expense of investors. Neither do such rules further fair, orderly, and efficient markets, or facilitate capital formation. In short, they do nothing to further the mission of the SEC. The economics literature does not support the proposition that they enhance returns.[161] This is not surprising since race, ethnicity, sex, and sexual orientation have nothing to do with competence.

Investors may require management and the board to implement board "diversity," but when afforded the opportunity to do so, they generally do not.[162] A very high percentage of the shareholder proposals submitted are submitted by government pension funds in their capacity as shareholders for political reasons.[163]

The Nasdaq board diversity rule approved by the SEC is racist and sexist in that it mandates that firms establish quotas and discriminate based on sex, skin color, ethnicity, and sexual orientation rather than making determinations based on individual achievement, talent, experience, and competence. It defines diversity entirely in terms of these immutable characteristics instead of the myriad of other kinds of diversity, such as a director's achievement, expertise, experience, approach to business or business philosophy, educational background, socioeconomic background, ethical views, political views, integrity, or geographic location.[164]

22. Climate-Change-Disclosure Rules. The SEC is considering proposing rule amendments "to enhance registrant disclosures regarding issuers' climate-related risks and opportunities."[165]

Analysis. Climate-change-disclosure rules would impede the SEC's important mission by consuming a large amount of scarce SEC resources that are better spent furthering its actual mission. The concept of materiality has been described as the cornerstone of the disclosure system established by the federal securities laws. Disclosure of material climate-related information is already required under ordinary securities law principles and Regulation S-K. Mandatory "disclosure" of immaterial, highly uncertain, highly disputable information would obfuscate rather than inform.[166] It will harm, rather than hurt, investors. SEC climate-change-disclosure requirements will also do little, and probably nothing, to affect the climate.

Climate models and climate science are highly uncertain.[167] Economic modeling of climate-change effects is even more uncertain. The choice of discount rate is controversial and important. Estimates would need to be made of the cost of various aspects of climate change (such as sea-level rises and the impact on agriculture). Then, after making decisions about all of these extraordinarily complex, ambiguous, and uncertain issues, issuers would need to assess the likely impact of climate change on their specific business years into the future—a business that may by then bear little resemblance to the issuers' existing business. Then, the SEC would need to assess the veracity of the issuers' "disclosure" based on this speculative house of cards. The idea that all of this can be done in a way that will meaningfully improve investors' decision-making is not credible. The SEC has neither the expertise to assess climate models, nor the expertise to assess economic models purporting to project the economic impact of divergent and uncertain climate projections, nor the expertise or administrative ability to assess the veracity, or lack thereof, of issuer "disclosures" based on firm-specific speculation about the impact of climate change.[168]

The compliance costs, regulatory risk, and litigation costs imposed on issuers would be large and reduce investor returns. Climate-change-disclosure requirements would further reduce the attractiveness of becoming a public company, harming ordinary investors and entrepreneurial capital formation. The imposition of such requirements would result in the creation of a new compliance ecosystem and pro-complexity lobby composed of the economists, accountants, attorneys, and compliance officers who live off the revised Regulation S-K.[169]

23. New Corporate Transparency Act Regulations. The Financial Crimes Enforcement Network (FinCEN) is expected to adopt regulations for implementing the beneficial-ownership reporting requirements under the Corporate Transparency Act (CTA).[170]

Analysis. The CTA[171] is aimed squarely at small businesses with fewer than 20 employees or a maximum of $5 million in gross receipts. Firms larger than this are exempt, as are firms in many well-connected lines of business, most of which are vastly more able to abuse the financial system than are the Main Street small businesses targeted by the CTA. It will affect approximately 11 million small firms and can be expected to impose costs exceeding $1 billion annually.[172]

FinCEN is tasked with implementing the beneficial ownership reporting requirements under the CTA. A beneficial owner may be thought of as the true, actual, or final owner, but that is not how the CTA defines it.[173] FinCEN is used to dealing primarily with relatively large firms. It does not have a history of paying a great deal of attention to the costs it imposes on the private sector. This rulemaking needs to be different. In crafting the rules governing implementation of the CTA, it needs to take special care that the rules governing beneficial ownership reporting are simple to understand and simple to comply with.

FinCEN needs to do the hard work of writing the definition of beneficial ownership *in plain English in terms any normal small business owner can understand*. It needs to provide examples. To fail to do so would be an abdication of FinCEN's duty to administer this law responsibly. FinCEN needs to clearly define terms in the rulemaking and systematically avoid weasel words like "substantially," "significantly," and "effectively." It needs to particularly focus on defining deeply ambiguous terms in the centrally important definition of "beneficial owner," including "indirectly," the phrase "arrangement, understanding, relationship, or otherwise," "substantial control," and "entity."[174]

24. Amendments to the Anti–Money Laundering Program. FinCEN is considering amendments "to modernize the regulatory regime to address the evolving threats of illicit finance, and provide financial institutions with greater flexibility in the allocation of resources, resulting in the enhanced effectiveness and efficiency of anti-money laundering programs."[175]

Analysis. Financial and personal privacy is a key component of life in a free society where individuals have a private sphere free of government involvement, surveillance, and control. The existing U.S. financial regulatory framework is not consistent with these ideas and often conflicts with basic economic freedoms. Individuals who engage in cash transactions of more than a nominal size trigger a complex set of reporting requirements that has essentially turned many companies into quasi-law-enforcement agencies.

The current Bank Secrecy Act/Anti–Money Laundering (BSA/AML) laws impose large costs on society and fail any reasonable cost–benefit metric. BSA/AML costs are estimated to be between $4.8 billion and $8 billion annually. Costs exceed $7 million per conviction. There is little or no evidence showing that the BSA/AML laws are a cost-effective law enforcement tool.[176]

Total regulatory costs do not increase linearly with size. There are massive regulatory-induced barriers to entry and economies of scale that adversely impact small businesses, entrepreneurship, innovation, and competition. The ever-increasing regulatory burden associated with AML requirements is a major contributing factor to the relentless decline in the number, profitability, and relative economic importance of small broker-dealers and community banks.

FinCEN should alleviate the burden of AML rules, not make the burden worse. FinCEN should engage in a rigorous and transparent evaluation of which AML rules are effective at identifying and prosecuting predicate crimes and which are not.

25. Returns of Information of Brokers in Virtual Currency Transactions. This regulation will provide guidance under Internal Revenue Code section 6045 about the reporting obligations of brokers who effect the sale of virtual currency, and under section 6050W regarding the reporting obligations of brokers who are also third-party settlement organizations.[177]

Analysis. Under current law, digital assets (including virtual currencies and cryptocurrencies) are treated like any other property. The Internal Revenue Service (IRS) should provide clarity to market participants about the information reporting required by brokers and others. The IRS should take care that it is not overly aggressive, and its rules are not unduly burdensome. Congress, however, needs to act to remove tax barriers to the use and implementation of alternative currencies.[178]

26. Amendments to Human Capital Management Disclosure. The SEC is considering amendments to enhance registrant disclosures regarding human capital management.[179]

Analysis. It is far from clear what the SEC has in mind. A clue can be found in the Human Capital Management (HCM) Coalition's petition to the SEC for a rulemaking[180] and the various comments on this petition.[181] The HCM Coalition suggests that "a number of frameworks, including the Integrated Reporting Framework, SASB's standards, the Global Reporting Initiative, the CWC Guidelines and the U.N. Guiding Principles on Business and Human Rights, recommend disclosure requirements and can provide a starting point for this process." Specifically, the HCM Coalition wants each issuer to disclose (1) workforce demographics (number of full-time and part-time workers, number of contingent workers, policies on and use of subcontracting and outsourcing); (2) workforce stability (turnover, voluntary and involuntary, internal hire rate); (3) workforce composition (diversity, pay equity policies/audits/ratios); (4) workforce skills and capabilities (training, alignment with business strategy, skills gaps); (5) workforce culture and empowerment (employee engagement, union representation, work-life initiatives); (6) workforce health and safety (work-related injuries and fatalities, lost-day rate); (7) workforce productivity (return on cost of workforce, profit/revenue per full-time employee); (8) human rights commitments and their implementation (principles used to evaluate risk, constituency consultation processes, supplier due diligence); and (9) workforce compensation and incentives (bonus metrics used for employees below the named executive officer level, measures to counterbalance risks created by incentives).

Some of this information would be material to investors. Much of it is desired by those demanding it for political purposes so that political pressure can be brought on issuers. Some of it is wanted by unions. Much of it would be proprietary information of which the SEC should not require disclosure.

27. Business Lending Data Reporting. Section 1071 of the Dodd–Frank Wall Street Reform and Consumer Protection Act amends the Equal Credit Opportunity Act (ECOA) to require financial institutions to report information about credit applications made by women-owned, minority-owned, and small businesses. The Consumer Financial Protection Bureau (CFPB) had moved this rulemaking to "long-term action status" but is now in the process of reactivating it.[182]

Analysis. Section 1071 of the Dodd–Frank Act requires financial institutions to collect at least seven items of data for every loan application from women-owned businesses, minority-owned businesses, or small businesses generally. They must maintain this information separate from the application and accompanying information subject to a wide variety of rules and requirements and report this information to the CFPB. The term "financial institution" is defined about as broadly as it can be to mean "any partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity that engages in any financial activity." Under section 1071, the CFPB "by rule or order, may adopt exceptions to any requirement of this section and may, conditionally or unconditionally, exempt any financial institution or class of financial institutions from the requirements of this section, as the Bureau deems necessary or appropriate to carry out the purposes of this section."

The CFPB should exercise its authority to narrow the application of this rule substantially. Otherwise, it will impose yet another burden on small firms, especially small lenders, broker-dealers, and investment advisers. These firms are already under tremendous financial pressure due to regulatory costs, and their numbers are in free fall. This harms competition and innovation. In fact, the definition of "financial institution" is so broad that it would include many firms typically not considered financial institutions (for example, ordinary businesses providing trade credit). Second, those who are required to incur the costs of complying with this provision must recover those costs to remain profitable and to stay in business. The costs will be recovered by charging small business borrowers more for credit. Thus, narrowing the scope of the provision will reduce the cost of small business borrowing. Third, as regulatory costs escalate, fewer firms will offer less capital to small firms. Thus, the provision would harm small-firm access to capital.[183]

Labor and Housing Regulation

The general thrust of the Biden labor regulatory agenda is to replace private, voluntary agreements on the nature of the employment relationship with government mandates regulating in detail the nature of the economic relationship with a one-size fits all philosophy. Labor regulations in the pipeline appear to be policies that may appease unions but likely come at the expense of employers, workers, and consumers. A labor regulation of particular concern is the Biden Administration's plan to redefine the term "fiduciary" under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code, which would likely harm investors and politicize investments. This section of the *Special Report* also discusses two housing regulations that are in the pipeline, one that could increase lending risks and another that would meddle in state and local governmental zoning and transit matters.

The following are some of the expected important labor and housing regulations:

28. Changing the Davis–Bacon and Related Acts Regulations. To allegedly improve its effectiveness in the economy, the Department of Labor (DOL) plans to update the regulations implementing "the Davis–Bacon and related Acts."[184] According to the Unified Agenda, the Biden Administration plans to publish a notice of proposed rulemaking in November 2021.[185]

Analysis. How the Biden Administration updates and modernizes the regulations for the Davis–Bacon Act (and related laws) could have a significant impact on market efficiency. The Davis–Bacon Act already raises the cost of construction by requiring contractors on federally funded contracts for the construction, alteration, or repair of public works to pay workers the local "prevailing wages and benefits."[186] It obstructs the market by disregarding worker specialization and productivity in the wage-setting process. Using the Davis–Bacon Act to intervene further in labor markets could increase costs even more and lead to less market efficiency.

The Biden Administration should refrain from "modernizing" the regulations for the Davis–Bacon Act in a way that artificially sets wages above the market wage rate. The newly imposed regulations will likely obstruct equilibrium wages and exacerbate already existing problems, making taxpayers incur the costs. President Biden stated in February that he wants to rebuild infrastructure and create "good-paying jobs, Davis–Bacon and prevailing wage jobs."[187] This may be indicative of President Biden's plan to expand the application of the Davis–Bacon Act to cover more workers and infrastructure projects.

29. Updates to Federal Emergency Response Standards. The Occupational Safety and Health Administration (OSHA) is looking to update current health and safety standards for emergency responders and similar workers. This potential rule would enhance protective clothing and equipment and performance measures. According to the DOL, the current health and safety standards do not meet industry standards.[188] There has been ongoing work, such as stakeholder meetings about emergency response for years; however, the timing of any proposed rule remains unclear.

Analysis. Emergency response is an important aspect of worker safety for compliance with industry standards. However, a government-imposed update for health and safety standards may not align with the actual safety needs of individual workers. The Biden Administration should refrain from taking a one-size-fits-all approach for emergency response and safety standards, and instead consider individuals' safety needs based on place of employment, location, and other factors.

30. Heat Illness Prevention in Outdoor and Indoor Work Settings. OSHA is starting a rulemaking to protect workers from "heat illness"—which includes, as OSHA explains, heat stroke, heat exhaustion, heat cramps, or heat rash[189]—in both indoor and outdoor settings.[190] OSHA announced an Advance Notice of Proposed Rulemaking (ANPRM) on the issue. It is unclear when a proposed rule will be published.[191]

Analysis. President Biden's plan to protect workers from heat illness, which is part of his climate-change agenda and appears to be influenced by California's regulatory practices,[192] may lead to problematic and unintended consequences for businesses and employees. Even the Biden Administration has acknowledged how complicated and broad such a regulatory scheme could wind up being.[193] Any regulations on this issue will likely be extremely burdensome and costly. The impact of this burden will likely not merely be borne by firms alone, but by workers and consumers.

31. Redefinition of the Term "Fiduciary." The DOL is planning to redefine the term "fiduciary" within section 3(21) of ERISA and section 4975(e)(3) of the Internal Revenue Code, and the Employee Benefits Security Administration (EBSA) will consider amendments and exemptions to protect investors in individual retirement accounts, as well as employee-benefit plans.[194] This rule would allegedly "more appropriately" define retirement plan fiduciary duties.[195] A proposed rule is scheduled to be published in December 2021.

Analysis. Current fiduciary laws are designed to protect plan participants. The fiduciary and conflict-of-interest rule under the Trump Administration safeguarded plan investors by not allowing fiduciaries to be involved in transactions that may result in a conflict of interest and requiring investments to be in the financial interests of plan participants.[196] This law and similar ones have adequately protected plan participants for decades. The potential rule under the Biden Administration will likely encourage the shift of investment dollars to investments that support social, environment, or political motives.[197] Investment decisions should be made based on the financial interest of plan participants, not determined by the political preferences of fiduciaries.[198] This potential change in definition moves the investment focus from investment principles grounded in financial returns to one supporting the political objectives du jour.

Since this approach is not based on conventional financial decision-making concepts, it is likely to expose plan participants to unnecessary risk and subpar investment returns. This is eerily reminiscent of the Obama-era Solyndra debacle only a decade ago that cost taxpayers $535 million.[199] Biden's potential rulemaking on the fiduciary definition, along with EBSA's amendments and exemptions, may be putting political objectives above the interest of retirement plan investors.

32. Implementation of Executive Orders 13990 and 14030. The DOL is planning rulemaking to implement Executive Order 13990 titled "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis" and Executive Order 14030 titled "Climate-Related Financial Risks."[200] Among other things, these executive orders direct government agencies, including the DOL, to examine the regulations issued during the Trump Administration from January 20, 2017, to January 20, 2021, that conflict with the policies in the executive orders.[201] Executive order 14030 also directs the Secretary of Labor to consider rulemaking to suspend, revise, or rescind the Trump Administration's "Financial Factors in Selecting Plan Investments" rule and the "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" rule.[202] The Employee Benefits Security Administration under the DOL, as expected, has stated that it is examining these rules.[203]

Analysis. The DOL's efforts to review consistency with policies, such as "to advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk, including both physical and transition risks," is fraught with problems.[204] The potential regulation presupposes that the DOL has the skills, ability, and expertise to adequately assess climate-related financial risk and propose policies to address it.

The Biden Administration is likely going to revoke the "Financial Factors in Selecting Plan Investments" rule adopted by the Trump Administration, which requires that investments be made based on pecuniary considerations, but recognized that ESG factors may in fact be pecuniary.[205] The revocation of this rule and likely new regulation addressing climate-related financial risk would change the definition of fiduciary responsibility, resulting in higher investment risk and lower returns by allowing financial decision-makers to use non-pecuniary factors in financial choices. Similarly, the Biden Administration will likely revoke the "Fiduciary Duties Regarding Proxy Voting and Shareholder Rights" rule established under the Trump Administration that requires the fiduciary to act in the best interest of the plan participants.[206] Relaxing fiduciary responsibilities for shareholder rights would shift fiduciary focus away from financial factors, potentially at the expense of investment returns.

The Biden Administration is also likely going to use regulation to redefine the fiduciary role where investment advisors' responsibility would change from the long-held approach of seeking financial benefit of plan participants to one that allows advisors to pursue their political and social objectives. This may have disastrous consequences because it encourages and legalizes the making of investment decisions based on non-financial factors. In essence, this type of regulation is gambling Americans' retirement savings to help achieve political and social aspirations.

33. New 40-Year Term for Loan Modifications Regulation. This U.S. Department of Housing and Urban Development (HUD) regulation would allow a mortgage lender to lengthen the amortization schedule for Federal Housing Administration (FHA)–insured mortgages of borrowers in default to a term of 480 months (40 years).[207] This would significantly expand the current 360-month (30 years) maximum amortization on a modified loan.[208] According to the Unified Agenda, the rule was to be proposed in August 2021, but as of this writing, it has not been proposed.

Analysis. Extending the maximum amortization for mortgage modifications to 480 months from the current 360 months will encourage riskier lending and incentivize borrowers to overleverage their finances.

Mortgage modifications for borrowers in default can allow the borrower to remain in a home rather than being forced to sell the home (potentially under market value) or undergo an eviction. Under existing law, lenders of FHA-insured loans may already modify defaulted mortgage loans. Refinancing the principal on a loan over a time frame lengthier than the remaining time of the existing loan can lower a monthly payment substantially but with substantially higher total interest payments. An example is a homeowner who borrows $150,000 with a 30-year mortgage at a 4.5 percent interest rate. After 10 years of $760 monthly payments, the balance remaining is $120,134.[209] If this borrower decides to refinance the remaining balance at the end of 10 years utilizing another 30-year mortgage, the mortgage payment declines by nearly 20 percent to just $609 per month. However, interest paid increases by $36,722—from $123,610 under the initial 30-year mortgage to $160,332. Refinancing to a 40-year mortgage after the initial 10 years results in total interest paid of $200,442. In other words, a modification to a 40-year mortgage after 10 years of payments on an initial 30-year mortgage of $150,000 results in nearly $77,000 of additional interest payments.

Although refinancing unpaid principal over an extended time frame may be prudent in some instances, allowing FHA-insured mortgages to be modified to a 40-year amortization results in several drawbacks. A borrower's inability to make payments on the remaining principal on a modified 30-year mortgage is indicative of a heightened risk. For an FHA-insured loan, federal taxpayers bear this risk. HUD also claims this will lead to more affordable housing payments. However, extended amortization schedules result in upward price pressure. Monthly payment—rather than price alone—is a factor in every debt-financed purchase decision, whether for a home, a vehicle, or other product. A lower monthly payment from a longer amortization results in a borrower being more willing, and more able, to borrow more money. Short sales stemming from foreclosures serve to contain price pressure by increasing the supply of homes on the market. Meanwhile, the defaulting borrower has an opportunity to discharge the mortgage debt and delay another debt-financed purchase until he emerges in a stronger financial situation.

34. Implementation of the "Affirmatively Furthering Fair Housing" Rule. In June 2021, HUD published an interim final rule that has restored the Affirmatively Furthering Fair Housing Rule (AFFH) previously eliminated by the Trump Administration that empowers bureaucrats to intrude on local housing policies.[210] HUD now seeks to implement a new rule to provide participants a "more efficient means" of achieving the objectives of the newly restored AFFH. The timing of the new proposed HUD rule is unclear. (The date listed in the Unified Agenda is August 2021.)[211]

Analysis. In 2009, the Obama Administration began intruding on local housing policies in a concerted effort to socially re-engineer communities. These actions were the precursor to the final HUD regulations issued in July 2015 to implement the AFFH that attempted to force state and local governments to pursue community demographic and socioeconomic goals desired by the federal government.[212] The AFFH objectives are pursued by conditioning federal housing grants—particularly from the Community Development Block Grant program—on local governments approving affordable housing projects, transportation initiatives, and zoning guidelines preferred by the federal government. The Trump Administration suspended AFFH in 2018 before terminating it in July 2020.[213] Then-HUD Secretary Ben Carson explained that the AFFH is "unworkable and ultimately a waste of time for localities to comply with, too often resulting in funds being steered away from communities that need them most."[214] The Biden Administration restored the definitions and certification requirements of AFFH in June 2021. One should expect the forthcoming HUD rule on how to meet AFFH requirements to generate chaos and more federal intrusion into matters that should be under the purview of state and local governments.[215]

Miscellaneous Regulations

There are numerous expected important regulations in the pipeline across the government that do not fit neatly into the categories listed above. The following are just three of them:

35. Processing of Nonavailability Waivers. The Department of Transportation announced that it will issue a rule that sets new standards for "Buy American" waivers across the department.[216] This rule was originally initiated in July 2018 following an executive order in April 2017 directing federal agencies to "minimize the use of waivers."[217] President Biden's January executive order "Ensuring the Future Is Made in All of America by All of America's Workers," placed significant emphasis on centralizing the waiver process for all U.S. domestic content laws and limiting the use of those waivers.[218]

Analysis. Generally, federal laws and regulations on required levels of domestic content for government procurement have exceptions for items not available domestically. If products are not available, suppliers are able to apply for a waiver to the domestic content regulations, but the processes for applying and receiving a waiver vary across federal agencies. While this proposed rule may seem like an attempt to streamline processes for suppliers to the government, it is part of a broader effort to limit the issuance of waivers and make domestic content rules more restrictive. Domestic content regulations already make it cumbersome and expensive for businesses to bid on government contracts, limiting competition for procurement and oftentimes making it more expensive for the taxpayers to fund government.[219] Cracking down on waivers will further reduce competition for government contracts and lead to wasteful government spending on more costly goods.

36. Imposing "Net-Neutrality" Regulations. On July 9, 2021, President Biden issued an executive order, allegedly to address competition issues in the U.S. economy.[220] Within this executive order that included a long list of regulation actions, the President "encouraged" the Chair of the Federal Communications Commission (FCC) to bring back the Obama Administration's so-called net-neutrality rules.

Analysis. The FCC during the Trump Administration rightfully eliminated the Obama Administration's "net-neutrality" regulations.[221] These rules would apply a public utility regulatory scheme to prohibit Internet service providers (ISPs) from offering differentiated service to content providers using their networks. Discounts and premium services would be prohibited, and undefined disfavored activities could be banned. These rules would hurt innovation and undermine competition by making it more difficult for new ISPs to draw customers away from existing ISPs by offering differentiated services. It would also hurt small competitors while helping the large incumbent firms.[222]

37. Mandates for Train-Crew Staffing. The Department of Transportation's Federal Railroad Administration (FRA) is planning regulation to address crew staffing for locomotive crews.[223] In 2019, during the Trump Administration, the FRA withdrew a 2016 proposed rule that would have would have mandated a minimum of a two-person crew per locomotive.[224] This new proposed rule is expected to be published within the next several months.

Analysis. This new proposed rule will likely be a resurrection of the withdrawn 2016 proposed rule. When the 2016 rule was proposed, the

FRA acknowledged that it "cannot provide reliable or conclusive statistical data" that one-person locomotive crews are less safe than multiple-person crews.[225] Passenger rail, where an accident would pose a greater risk of loss of human life compared to freight rail, has been using one-person locomotive crews (this does not include conductors and other workers who are on board to assist passengers).[226] In 2019, when the FRA withdrew the 2016 proposed rule, it explained that it "finds that no regulation of train crew staffing is necessary or appropriate at this time."[227] Any rule that would mandate a minimum two-person crew would be ignoring the evidence and the innovation occurring in the rail industry.[228]

Recommendations for Policymakers

One of the key benefits of identifying regulations that have not yet been proposed is to alert policymakers. Policymakers should not wait for regulations to be promulgated before acting. Policymakers should be proactive and, among other things, should:

- **Use the appropriations process to restrict development of regulations.** Policymakers should be aggressive in using policy riders in spending bills to prohibit funding for regulations, including the preliminary groundwork for regulations, to prevent them from being proposed in the first place.

- **Clarify that the underlying statutes do not authorize the aggressive and harmful Biden Administration regulations that are coming.** Policymakers should not sit back as agencies misinterpret the law or try to use questionable authority to develop costly and harmful regulations. They should make it very clear that the underlying statutes that agencies allege give them statutory authority for their desired regulations do not, in fact, provide such authority.

- **Conduct proper oversight over agencies and their regulations, including through hearings.** Policymakers should draw attention to harmful expected regulations, such as through public hearings, and challenge agencies to defend their desired regulatory actions in a transparent fashion.

Ultimately, the problems with regulation will be a constant battle unless policymakers address the root cause of the problems: the regulatory process itself, including overexpansive interpretation of statutes by agencies, excessive congressional delegating to agencies, and lack of regulatory transparency. The recommendations listed merely identify *some* steps that policymakers can take to proactively address specific regulations that they know are "in the pipeline."

Conclusion

As has already been seen, the Biden Administration is pushing an aggressive regulatory agenda that is vastly increasing the influence and power of the federal government. Legislators should be proactive in pushing back against this extreme regulatory agenda and provide the necessary oversight that Congress is expected to play. This involves knowing what kind of regulations are coming.

Proper oversight and, when appropriate, legislative action, to address upcoming regulatory actions are ways that legislators can reassert their legislative power.

Even more important, though, is that legislators need to stop over-delegating power to these agencies in the first place. With proper delegation, the looming regulations would not be so massive in number or inappropriate in scope. The country's system of representative government is undermined when Congress is willing to hand over so much power, including its legislative power, to federal agencies. The American people—who expect their voices to be heard and represented through legislators, not ignored through unelected and unaccountable bureaucrats—deserve much better.

Endnotes

1. The perspective on, and analysis of, each regulation in the pipeline does not go beyond what is known at the time of this writing.
2. While this *Special Report* indicates that there are 37 expected new regulations, more regulations are covered, since some of the regulations are a "package" of regulations, such as the numerous energy-efficiency regulations expected from the U.S. Department of Energy. The regulations identified in this report are those that the Biden Administration has expressly indicated as planned, such as through the spring 2021 "Unified Agenda," an executive order, or agency document or Web page. There is no guarantee that these regulations will in fact be proposed. The Unified Agenda, for example, is an Administration's semi-annual regulatory plan, but it does not bind the Administration to issue a regulation. Further, the Unified Agenda sometimes qualifies what an agency is planning, using language, such as that the agency is "considering" a rulemaking. See, for example, Office of Information and Regulatory Affairs, "Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions," https://www.reginfo.gov/public/do/eAgendaMain (accessed November 18, 2021). As explained in the text of this report, the focus is on regulations that have not yet been proposed at the time of this writing. This report is by no means exhaustive, but it does reflect regulations that the authors deemed to be important, worthy, of attention, and for which the Biden Administration has discretion in determining whether the regulation will be promulgated, or which details will be connected to the regulation.
3. Office of Information and Regulatory Affairs, "View Rule: Improving Student Loan Cancellation Authorities," RIN No. 1840-AD59, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1840-AD59 (accessed November 16, 2021).
4. News release, "New Negotiated Rulemaking Committee to Focus on Student Loans, Targeted Discharge and Forgiveness Authorities," U.S. Department of Education, August 6, 2021, https://www.ed.gov/news/press-releases/new-negotiated-rulemaking-committee-focus-student-loans-targeted-discharge-and-forgiveness-authorities (accessed November 16, 2021).
5. News release, "Extended Closed School Discharge Will Provide 115K Borrowers from ITT Technical Institute More Than $1.1B in Loan Forgiveness," U.S. Department of Education, August 26, 2021, https://www.ed.gov/news/press-releases/extended-closed-school-discharge-will-provide-115k-borrowers-itt-technical-institute-more-11b-loan-forgiveness (accessed November 16, 2021).
6. Preston Cooper, "The Case Against Student Loan Forgiveness," *Forbes*, November 17, 2020, https://www.forbes.com/sites/prestoncooper2/2020/11/17/the-case-against-student-loan-forgiveness/?sh=331eb5a6464c (accessed November 16, 2021).
7. Lindsey M. Burke, "Student Loan Forgiveness a Regressive Policy That Hurts Working Americans," Heritage Foundation *Commentary*, November 17, 2020, https://www.heritage.org/education/commentary/student-loan-forgiveness-regressive-policy-hurts-working-americans.
8. Office of Information and Regulatory Affairs, "View Rule Gainful Employment," RIN No. 840-AD57, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1840-AD57 (accessed November 16, 2021).
9. U.S. Department of Education, Office of Federal Student Aid, "Gainful Employment Information," https://studentaid.gov/data-center/school/ge (accessed November 16, 2021).
10. Hugh T. Ferguson, "As Biden Administration Takes Hold, Some Speculate on the Return of Gainful Employment," National Association of Student Financial Aid Administrators, February 8, 2021, https://www.nasfaa.org/news-item/24674/As_Biden_Administration_Takes_Hold_Some_Speculate_on_the_Return_of_Gainful_Employment (accessed November 16, 2021).
11. Office of Information and Regulatory Affairs, "View Rule: Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education," RIN No. 1840-AD55, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1840-AD55 (accessed November 16, 2021).
12. Vivien Lee and Adam Looney, "Understanding the 90/10 Rule: How Reliant Are Public, Private, and For-Profit Institutions on Federal Aid?" Brookings Institution, January 2019, https://www.brookings.edu/wp-content/uploads/2019/01/ES_20190116_Looney-90-10.pdf (accessed November 16, 2021).
13. Ibid.
14. Ibid.
15. Alexandra Hegji, "The 90/10 Rule Under HEA Title IV: Background and Issues," Congressional Research Service, April 26, 2021, https://files.eric.ed.gov/fulltext/ED614219.pdf (accessed November 18, 2021).
16. Elizabeth Bass, "The Post-9/11 GI Bill: Beneficiaries, Choices, and Cost," Congressional Budget Office, May 2019, https://www.cbo.gov/system/files/2019-05/55179-Post911GIBill.pdf (accessed November 18, 2021).
17. Sara Weissman, "Veterans' Education Advocates Celebrate Closure of the 90/10 Loophole," Diverse Issues in Higher Education, March 15, 2021, https://www.diverseeducation.com/home/article/15108878/veterans-education-advocates-celebrate-closure-of-the-90-10-loophole (accessed November 16, 2021), and "Changes to 90-10 Rule Could Harm Veterans–Study Shows," Veterans Education Project, February 9, 2021, https://veteranseducationproject.org/2021/02/09/changes-to-90-10-harm-veterans/ (accessed November 18, 2021).
18. Kery Murakami, "Provision in COVID-19 Relief Bill Would Ease Incentives for For-Profits to Target Veterans," *Inside Higher Ed*, March 2, 2021, https://www.insidehighered.com/news/2021/03/02/provision-covid-19-relief-bill-would-ease-incentives-profits-target-veterans (accessed November 18, 2021).

19. H.R. 1319–American Rescue Plan Act of 2021,117th Congress (2021–2022), March 11, 2021, https://www.congress.gov/bill/117th-congress/house-bill/1319 (accessed November 18, 2021).

20. Stephen Payne, "President Obama's Final Budget Proposal Renews Push for Signature Policy Initiatives," National Association of Student Financial Aid Administrators, February 10, 2016, https://www.nasfaa.org/news-item/7537/President_Obama_s_Final_Budget_Proposal_Renews_Push_for_Signature_Policy_Initiatives (accessed November 18, 2021).

21. Dawn Bilodeau, "Voluntary Education Program Update," U.S. Department of Defense, March 2017, PowerPoint presentation, https://static1.squarespace.com/static/556718b2e4b02e470eb1b186/t/5abb8d5e575d1fb78ed47a67/1522240883455/CCME2017_VolEdUpdate_3Mar17_final.pdf.pdf (accessed November 16, 2021), and Stephanie Riegg Cellini, "The Alarming Rise in For-Profit College Enrollment," Brookings blog, November 2, 2020, https://www.brookings.edu/blog/brown-center-chalkboard/2020/11/02/the-alarming-rise-in-for-profit-college-enrollment/ (accessed November 18, 2021).

22. Lindsey M. Burke, "Higher Education Act Reauthorization: Easing the Federal Regulatory Burden," Heritage Foundation *Issue Brief* No. 4974, June 24, 2019, https://www.heritage.org/education/report/higher-education-act-reauthorization-easing-the-federal-regulatory-burden.

23. Office of Information and Regulatory Affairs, "View Rule: Public Service Loan Forgiveness," RIN No. 1840-AD70, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1840-AD70 (accessed November 16, 2021).

24. News release, "New Negotiated Rulemaking Committee to Focus on Student Loans, Targeted Discharge and Forgiveness Authorities."

25. U.S. Department of Education, Office of Federal Student Aid, "Public Service Loan Forgiveness FAQ," https://studentaid.gov/manage-loans/forgiveness-cancellation/public-service/questions (accessed November 16, 2021).

26. Adam Minsky, "Biden's Student Loan Changes: Is Public Service Loan Forgiveness Next?" *Forbes*, August 25, 2021, https://www.forbes.com/sites/adamminsky/2021/08/25/bidens-student-loan-changes-is-public-service-loan-forgiveness-next/?sh=7f20ae1c1e3f (accessed November 16, 2021).

27. U.S. Department of Education, Office of Federal Student Aid, "Public Service Loan Forgiveness Data; November 2020 PSLF Report," November 2020, https://studentaid.gov/data-center/student/loan-forgiveness/pslf-data (accessed November 16, 2021), and U.S. Department of Education, "Department of Education Updates Series of Student Aid Quarterly Data Reports," June 14, 2021, https://www.ed.gov/news/press-releases/department-education-updates-series-student-aid-quarterly-data-reports (accessed November 16, 2021).

28. Adam Minsky, "Biden Administration Starts Overhaul of Student Loan Forgiveness, Income Based Repayment Programs," *Forbes*, August 9, 2021, https://www.forbes.com/sites/adamminsky/2021/08/09/biden-administration-starts-overhaul-of-student-loan-forgiveness-income-based-repayment-programs/?sh=49382b226e2a (accessed November 16, 2021); news release, "Congressman Panetta, Over 150 Democrats Call on DeVos to Release More Information about the Department's Failure to Faithfully Implement the Public Service Loan Forgiveness Program," Congressman Jimmy Panetta, October 17, 2018, https://panetta.house.gov/congressman-panetta-over-150-democrats-call-devos-release-more-information-about-department-s (accessed November 16, 2021); and Hilary Wething, "Don't Pull the Rug Out from Under PSLF Recipients," Economic Policy Institute, May 23, 2014, https://www.epi.org/blog/dont-pull-rug-pslf-recipients/ (accessed November 16, 2021).

29. Student Borrowers Protection Center, letter to Secretary of Education Miguel Cardona, April 12, 2021, https://protectborrowers.org/wp-content/uploads/2021/04/Consumer-Advocate-Orgs-PSLF-Letter-to-ED.pdf (accessed November 16, 2021).

30. Jason Delisle, "The Coming Public Service Loan Forgiveness Bonanza," Brookings Institution, September 22, 2016, https://www.brookings.edu/research/the-coming-public-service-loan-forgiveness-bonanza/ (accessed November 16, 2021).

31. Lindsey M. Burke, "Democratic Plan to Forgive Student Loans Could Raise Tuition and Hurt Those at the Bottom," Heritage Foundation *Commentary*, February 23, 2021, https://www.heritage.org/education/commentary/democratic-plan-forgive-student-loans-could-raise-tuition-and-hurt-those-the (accessed November 16, 2021).

32. Office of Information and Regulatory Affairs, "Income Contingent Repayment," RIN No. 1840-AD69, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1840-AD69 (accessed November 16, 2021).

33. Rebecca Safier, "IBR vs. ICR: Which Income-Driven Repayment Plan Is Right for You?" Student Loan Hero, January 23, 2020, https://studentloanhero.com/featured/ibr-vs-icr-repayment-plan/ (accessed November 16, 2021).

34. News release, "New Negotiated Rulemaking Committee to Focus on Student Loans, Targeted Discharge and Forgiveness Authorities," and Adam Minsky, "Biden Promised a New, Cheaper Income-Based Plan for Student Loans. Will It Happen?" *Forbes*, September 14, 2021, https://www.forbes.com/sites/adamminsky/2021/09/14/biden-promised-a-new-cheaper-income-based-plan-for-student-loans-will-it-happen/?sh=68c766c74f57 (accessed November 16, 2021).

35. U.S. Department of Education, "Department of Education Updates Series of Student Aid Quarterly Data Reports," June 14, 2021, https://www.ed.gov/news/press-releases/department-education-updates-series-student-aid-quarterly-data-reports (accessed November 16, 2021).

36. U.S. Department of Education, Federal Student Aid, "If Your Federal Student Loan Payments Are High Compared to Your Income, You May Want to Repay Your Loans Under an Income-Driven Repayment Plan," https://studentaid.gov/manage-loans/repayment/plans/income-driven (accessed November 16, 2021).

37. National Consumer Law Center, Student Loan Borrower Assistance, "Income Driven Repayment Options," May 13, 2020, https://www.studentloanborrowerassistance.org/repayment/payment-plans/income-based-options/ (accessed November 16, 2021), and U.S. Department of Education, Federal Student Aid, "Do You Have Questions About the Different Types of Income-Driven Repayment Plans?" https://studentaid.gov/manage-loans/repayment/plans/income-driven/questions (accessed November 16, 2021).

38. Minsky, "Biden Promised a New, Cheaper Income-Based Plan for Student Loans. Will It Happen?"
39. Burke, "Democratic Plan to Forgive Student Loans Could Raise Tuition and Hurt Those at the Bottom,"
40. Office of Information and Regulatory Affairs, "View Rule: Borrower Defense," RIN No. 840-AD53, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1840-AD53 (accessed November 16, 2021).
41. Adam Minsky, "Students: DeVos's Dept. of Education Deliberately Thwarted Student Loan Forgiveness Program," *Forbes*, March 19, 2021, https://www.forbes.com/sites/adamminsky/2021/03/19/students-devoss-dept-of-education-deliberately-thwarted-student-loan-forgiveness-program/?sh=203c42b86c9a (accessed November 16, 2021).
42. U.S. Department of Education, Federal Student Aid, "Borrower Defense Loan Discharge," https://studentaid.gov/borrower-defense/ (accessed November 16, 2021).
43. A. Barton Hinkle, "Obama's Anti-Profit Crusade Targets Colleges," *Reason*, September 19, 2016, https://reason.com/2016/09/19/obamas-anti-profit-crusade-targets-colle/ (accessed November 16, 2021), and Josh Mitchell, "Education Department Forgives $171 Million in Debt Owed by Former Corinthian Students," *The Wall Street Journal*, June 29, 2016, https://www.wsj.com/articles/education-department-forgives-171-million-in-debt-owed-by-former-corinthian-students-1467234919 (accessed November 16, 2021).
44. Owen Daugherty, "Federal Judge Upholds Most of DeVos' Stricter Borrower Defense Rules," National Association of Student Financial Aid Administrators, March 18, 2021, https://www.nasfaa.org/news-item/25065/Federal_Judge_Upholds_Most_of_DeVos_Stricter_Borrower_Defense_Rules (accessed November 16, 2021).
45. U.S. Department of Education, "Borrower Defense, Final Rule," July 1, 2020, https://www2.ed.gov/policy/highered/reg/hearulemaking/2017/borrower-defense-final-rule.pdf (accessed November 16, 2021).
46. Office of Information and Regulatory Affairs, "View Rule: Pell Grants for Prison Education Programs," RIN No. 1840-AD54, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1840-AD54 (accessed November 16, 2021).
47. Michael Stratford, "Congress Clinches Deal to Restore Pell Grants for Prisoners 26 Years after Ban," *Politico*, December 20, 2020, https://www.politico.com/news/2020/12/20/congress-pell-grant-prisoners-449364 (accessed November 16, 2021), and news release, "U.S. Department of Education Announces It Will Expand the Second Chance Pell Experiment for the 2022–2023 Award Year," July 30, 2021, https://www.ed.gov/news/press-releases/us-department-education-announces-it-will-expand-second-chance-pell-experiment-2022-2023-award-year (accessed November 16, 2021).
48. Lois M. Davis et al., "Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults," RAND Corporation, 2013, https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/RAND_Correctional-Education-Meta-Analysis.pdf (accessed November 16, 2021).
49. Margaret diZerega and Ruth Delaney, "New Data: Second Chance Pell Continues to Open Doors for More Students," Vera Institute of Justice, Think Justice Blog, April 21, 2020, https://www.vera.org/blog/new-data-second-chance-pell-continues-to-open-doors-for-more-students (accessed November 16, 2021), and Davis et al., "Evaluating the Effectiveness of Correctional Education," p. 65.
50. See, for example, news release, "U.S. Department of Education Announces It Will Expand the Second Chance Pell Experiment for the 2022–2023 Award Year," U.S. Department of Education, July 30, 2021, https://www.ed.gov/news/press-releases/us-department-education-announces-it-will-expand-second-chance-pell-experiment-2022-2023-award-year (accessed November 16, 2021), and Lilah Burke, "With Pell Grants Restored to People in Prison, Eyes Turn to Assuring Quality," *Inside Higher Ed*, January 27, 2021, https://www.insidehighered.com/news/2021/01/27/pell-grants-restored-people-prison-eyes-turn-assuring-quality (accessed November 18, 2021).
51. Andrew McEachin, Douglas L. Lauen, Sarah C. Fuller, and Rachel M. Perera, "Social Returns to Private Choice? Effects of Charter Schools on Behavioral Outcomes, Arrests, and Civic Participation," *Economics of Education Review*, Vol. 76 (2020), https://doi.org/10.1016/j.econedurev.2020.101983 (accessed November 16, 2021).
52. Office of Information and Regulatory Affairs, "View Rule: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," RIN No. 1870-AA16, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1870-AA16 (accessed November 16, 2021).
53. Presidential Documents, "Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity," Executive Order No. 14021, *Federal Register*, Vol. 86, No. 46 (March 11, 2021), pp. 13803 and 13804, https://www.federalregister.gov/documents/2021/03/11/2021-05200/guaranteeing-an-educational-environment-free-from-discrimination-on-the-basis-of-sex-including (accessed November 18, 2021).
54. Ibid.
55. Suzanne Goldberg, "Letter to Students, Educators, and other Stakeholders re Executive Order 14021 Notice of Language Assistance," in news release, "Department of Education's Office for Civil Rights Launches Comprehensive Review of Title IX Regulations to Fulfill President Biden's Executive Order Guaranteeing an Educational Environment Free from Sex Discrimination," U.S. Department of Education, April 6, 2021, https://www.ed.gov/news/press-releases/department-educations-office-civil-rights-launches-comprehensive-review-title-ix-regulations-fulfill-president-bidens-executive-order-guaranteeing-educational-environment-free-sex-discrimination (accessed November 18, 2021).

56. R. Shep Melnick, "Analyzing the Department of Education's Final Title IX Rules on Sexual Misconduct," The Brookings Institution, June 11, 2020, https://www.brookings.edu/research/analyzing-the-department-of-educations-final-title-ix-rules-on-sexual-misconduct/ (accessed November 18, 2021), and news release, "DeVos Rescinds Disastrous 'Dear Colleague' Policy on Campus Sexual Misconduct," National Association of Scholars, September 25, 2017, https://www.nas.org/blogs/press_release/devos_rescinds_disastrous_dear_colleague_policy_on_campus_sexual_misconduct (accessed November 16, 2021).
57. U.S. Department of Education, Office of the Assistant Secretary, "Dear Colleague Letter," April 4, 2011, https://www2.ed.gov/print/about/offices/list/ocr/letters/colleague-201104.html (accessed November 16, 2021); "Preponderance of the Evidence," Legal Information Institute, Cornell Law School, https://www.law.cornell.edu/wex/preponderance_of_the_evidence (accessed November 16, 2021); and K. C. Johnson, "How American College Campuses Have Become Anti–Due Process," The Heritage Foundation, August 2, 2016, https://www.heritage.org/education/report/how-american-college-campuses-have-become-anti-due-process.
58. Johnson, "How American College Campuses Have Become Anti–Due Process."
59. Jacob Sullum, "Biden Threatens to Revive Kangaroo Courts in College Sexual Assault Cases," *Reason*, March 24, 2021, https://reason.com/2021/03/24/biden-threatens-to-revive-kangaroo-courts-in-college-sexual-assault-cases/ (accessed November 18, 2021).
60. "Education Department Announces Path Forward in Title IX Overhaul," NY1, April 6, 2021, https://www.ny1.com/nyc/all-boroughs/news/2021/04/06/biden-education-title-ix-cardona (accessed November 18, 2021), and news release, "President Biden Announces His Intent to Nominate Catherine Lhamon for Assistant Secretary for Civil Rights at the Department of Education," The White House, May 13, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/13/president-biden-announces-his-intent-to-nominate-catherine-lhamon-for-assistant-secretary-for-civil-rights-at-the-department-of-education/ (accessed November 18, 2021).
61. Office of Information and Regulatory Affairs, "Agency Rule List–Spring 2021: Department of Energy," https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1900&csrf_token=E5D3AB29228DC5D4585ED5E267629C2C10D563E461E2D8844512EF82B7A821548965459B3D21A6CEAA6FFFD1221547A441BE (accessed November 18, 2021).
62. The Energy Policy and Conservation Act of 1975 established DOE authority to regulate the energy and water-use efficiency for 19 categories of consumer and commercial appliances, which are to be reviewed at least every six years. Test procedures for appliances must be reviewed every seven years. Over time, the DOE has expanded its authority to more than 60 categories of covered products.
63. The White House, "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," January 20, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/ (accessed November 16, 2021).
64. U.S. Department of Energy, *Department of Energy FY2022 Congressional Budget Request*, Vol. 3, Part 1, June 2021, pp. 196 and 456, https://www.energy.gov/sites/default/files/2021-06/doe-fy2022-budget-volume-3.1-v5.pdf (accessed November 16, 2021).
65. For example, this Obama-era rule on air conditioners: Office of Energy Efficiency and Renewable Energy, "Energy Conservation Program: Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps," Rule, *Federal Register*, Vol. 82, No. 4 (January 6, 2017), pp. 1786–1858, https://www.federalregister.gov/documents/2017/01/06/2016-29992/energy-conservation-program-energy-conservation-standards-for-residential-central-air-conditioners (accessed November 16, 2021).
66. Kevin D. Dayaratna, "Why 'Social Cost of Carbon' Is Most Useless Number You've Never Heard Of," The Daily Signal, March 2, 2021, https://www.dailysignal.com/2021/03/02/why-social-cost-of-carbon-is-most-useless-number-youve-never-heard-of/.
67. "Therefore, a result of [energy-efficiency] standards is to place an implicit tax on...the less well off. Thus efficiency standards can have an adverse income distribution effect." Sofie Miller, "One Discount Rate Fits All? The Regressive Effects of DOE's Energy Efficiency Rule," *Policy Perspectives*, Vol. 22 (2015), pp. 43 and 44, https://regulatorystudies.columbian.gwu.edu/sites/g/files/zaxdzs3306/f/downloads/WorkingPapers/GW%20Policy%20Perspectives%20-%20One-Discount-Rate-Fits-All%20-%20SMiller.pdf (accessed November 16, 2021).
68. Katie Tubb, Nicolas D. Loris, and Paul J. Larkin, Jr., "The Energy Efficiency Free Market Act: A Step Toward Real Energy Efficiency," Heritage Foundation *Backgrounder* No. 3144, August 17, 2016, https://www.heritage.org/environment/report/the-energy-efficiency-free-market-act-step-toward-real-energy-efficiency.
69. The White House, "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis."
70. U.S. Department of the Interior, "Order No. 3398: Revocation of Secretary's Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," April 16, 2021, https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3398-508_0.pdf (accessed November 18, 2021).
71. U.S. Department of the Interior, "Order No. 3401: Comprehensive Analysis and Temporary Halt on All Activities in the Arctic National Wildlife Refuge Relating to the Coastal Plain Oil and Gas Leasing Program," June 1, 2021, https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3401-comprehensive-analysis-and-temporary-halt-on-all-activitives-in-the-arctic-national-wildlife-refuge-relating-to-the-coastal-plain-oil-and-gas-leasing-program.pdf.
72. U.S. Bureau of Land Management, Interior, "Notice of Intent to Prepare a Supplemental Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, Alaska," Notice, *Federal Register*, Vol. 86, No. 147 (August 4, 2021), pp. 41989 and 41990, https://www.federalregister.gov/documents/2021/08/04/2021-16572/notice-of-intent-to-prepare-a-supplemental-environmental-impact-statement-for-the-coastal-plain-oil (accessed November 18, 2021), and U.S. Bureau of Land Management, "Coastal Plain Oil and Gas Leasing and Development," August 26, 2021, https://eplanning.blm.gov/eplanning-ui/project/102555/510 (accessed November 18, 2021).

73. The scoping period (comments closed on October 4, 2021) is to be followed by a draft SEIS (which the BLM estimates will take six to eight months, or roughly by June 2022) to be available for public comment (for at least 45 days), followed by a Final SEIS (which the BLS estimates will take six months or roughly by January 2023), and a record of decision published ("no sooner than 30 days after notice of the availability of the Final Supplemental EIS is published in the Federal Register," in February or March 2023).
74. News release, "Alaska Delegation, Governor Rebuke Biden Administration for Cancelling Lawful ANWR Leases," Senator Lisa Murkowski, June 2, 2021, https://www.murkowski.senate.gov/press/release/-alaska-delegation-governor-rebuke-biden-administration-for-cancelling-lawful-anwr-leases?peek=CCfPz9LXrlDDzUf2bfQHOx7aE8rD%2Bt7UtQcHqX0ABLXGjcQD (accessed November 18, 2021).
75. Tax Cuts and Jobs Act of 2017, Public Law No. 97, Sec. 20001, 115th Congress, https://www.govinfo.gov/content/pkg/PLAW-115publ97/html/PLAW-115publ97.htm (accessed November 18, 2021).
76. News release, "Alaska Delegation, Governor Rebuke Biden Administration For Cancelling Lawful ANWR Leases," and Katie Tubb, "No More Standoffs: Protecting Federal Employees and Ending the Culture of Anti-Government Attacks and Abuse," testimony before Subcommittee on National Parks, Forests, and Public Lands, Committee on Natural Resources, U.S. House of Representatives, October 22, 2019, https://naturalresources.house.gov/imo/media/doc/Tubb,%20Katie%20-%20Testimony.pdf (accessed November 18, 2021).
77. U.S. Bureau of Land Management, Interior, "Notice of Intent to Conduct a Review of the Federal Coal Leasing Program and to Seek Public Comment," Notice, *Federal Register*, Vol. 86, No. 159 (August 20, 2021), pp. 46873–46877, https://www.federalregister.gov/documents/2021/08/20/2021-17827/notice-of-intent-to-conduct-a-review-of-the-federal-coal-leasing-program-and-to-seek-public-comment (accessed November 18, 2021).
78. Presidential Documents, "Tackling the Climate Crisis at Home and Abroad," Executive Order 14008, *Federal Register*, Vol. 86, No. 19 (February 1, 2021), pp. 7619–7633, https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad (accessed November 18, 2021).
79. U.S. Bureau of Land Management, Interior, "Notice of Intent to Conduct a Review of the Federal Coal Leasing Program and to Seek Public Comment."
80. Presidential Documents, "Tackling the Climate Crisis at Home and Abroad," Executive Order 14008.
81. Nicolas D. Loris, "Energy Exports Promote Prosperity and Bolster National Security," Heritage Foundation *Backgrounder* No. 2931, July 23, 2014, https://www.heritage.org/environment/report/energy-exports-promote-prosperity-and-bolster-national-security/#_ftnref25.
82. In 2016, Interior Secretary Sally Jewell instituted a moratorium on new coal leases while conducting a programmatic environmental impact statement under NEPA to address concerns over competition and inconsistency with the Obama Administration's climate policy. In 2017, Interior Secretary Ryan Zinke lifted the moratorium and ended development of a programmatic environmental impact statement. In April 2021, Interior Secretary Haaland rescinded Zinke's order and initiated a new review of the coal-leasing program. See U.S. Department of the Interior, "Order No. 3338: Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program," January 15, 2016, https://law.indiana.edu/publicland/files/doi_coal_leases_SO_3338_2016.pdf (accessed November 18, 2021); U.S. Department of the Interior, "Order No. 3348: Concerning the Federal Coal Moratorium," May 29, 2017, https://www.doi.gov/sites/doi.gov/files/uploads/so_3348_coal_moratorium.pdf (accessed November 18, 2021); and U.S. Department of the Interior, "Order No. 3398: Revocation of Secretary's Orders Inconsistent with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," April 16, 2021, https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3398-508_0.pdf (accessed November 18, 2021).
83. Presidential Documents, "Tackling the Climate Crisis at Home and Abroad," Executive Order 14008.
84. Bureau of Ocean Energy Management, Interior, "Withdrawal of the Public Review Period for Cook Inlet Lease Sale 258," Notice, *Federal Register*, Vol. 86, No. 34 (February 23, 2021), p. 10994, https://www.federalregister.gov/documents/2021/02/23/2021-03693/withdrawal-of-the-public-review-period-for-cook-inlet-lease-sale-258 (accessed November 18, 2021).
85. *Louisiana v. Joseph Biden*, U.S. District Court for the Western District of Louisiana, June 15, 2021, https://www.agjefflandry.com/Files/Article/10919/Documents/Injunction.pdf (accessed November 23, 2021).
86. News release, "Interior Department Files Court Brief Outlining Next Steps in Leasing Program," U.S. Department of the Interior, August 24, 2021, https://www.doi.gov/pressreleases/interior-department-files-court-brief-outlining-next-steps-leasing-program (accessed November 18, 2021), and Bureau of Ocean Energy Management, Interior, "Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 257," Final Notice of Sale, *Federal Register*, Vol. 86, No. 189 (October 4, 2021), pp. 54728–54734, https://www.federalregister.gov/documents/2021/10/04/2021-21682/gulf-of-mexico-outer-continental-shelf-oil-and-gas-lease-sale-257 (accessed November 18. 2021).
87. News release, "Interior Department Files Court Brief Outlining Next Steps in Leasing Program," and news release, "Lease Sale 258," Bureau of Ocean Energy Management, October 22, 2021, https://www.boem.gov/oil-gas-energy/leasing/lease-sale-258 (accessed November 18, 2021).
88. News release, "BOEM Announces Lease Stipulation Change," Bureau of Ocean Energy Management, August 26, 2021, https://www.boem.gov/newsroom/notes-stakeholders/boem-announces-lease-stipulation-change (accessed November 18, 2021).
89. See, for example, news release, "The Bureau of Land Management Nevada State Office Seeks Public Input on Proposals for Upcoming Competitive Oil and Gas Lease Sale," U.S. Bureau of Land Management, August 31, 2021, https://www.blm.gov/press-release/bureau-land-management-nevada-state-office-seeks-public-input-proposals-upcoming (accessed November 18, 2021).
90. Presidential Documents, "Tackling the Climate Crisis at Home and Abroad," Executive Order 14008.

91. Office of Information and Regulatory Affairs, “View Rule: Revision of Existing Regulations Pertaining to Fossil Fuel Leases and Leasing Process 43 CFR Parts 3100 and 3400,” RIN No, 1004-AE80, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1004-AE80 (accessed November 19, 2021).
92. Office of Natural Resources Revenue, Interior, “Agency Information Collection Activities: Royalty and Production Reporting,” Notice, *Federal Register*, Vol. 86, No. 173 (September 10, 2021), pp. 50742 and 50743, https://www.federalregister.gov/documents/2021/09/10/2021-19552/agency-information-collection-activities-royalty-and-production-reporting (accessed November 19, 2021); U.S. Bureau of Land Management, Interior, “Agency Information Collection Activities; Production Subject to Royalties, and Resource Conservation,” Notice, *Federal Register*, Vol. 86, No. 159 (August 20, 2021), pp. 46871 and 46872, https://www.federalregister.gov/documents/2021/08/20/2021-17846/agency-information-collection-activities-production-subject-to-royalties-and-resource-conservation (accessed November 19, 2021); U.S. Bureau of Land Management, Interior, “Agency Information Collection Activities; Onshore Oil and Gas Leasing, and Drainage Protection,” Notice, *Federal Register*, Vol. 86, No. 150 (August 9, 2021), pp. 43563 and 43564, https://www.federalregister.gov/documents/2021/08/09/2021-16875/agency-information-collection-activities-onshore-oil-and-gas-leasing-and-drainage-protection (accessed November 19, 2021); and Office of Natural Resources Revenue, Interior, “ONRR 2020 Valuation Reform and Civil Penalty Rule: Delay of Effective Date; Request for Public Comment,” Rule, *Federal Register*, Vol. 86, No. 28 (February 12, 2021), pp. 9286–9289, https://www.federalregister.gov/documents/2021/02/12/2021-03052/onrr-2020-valuation-reform-and-civil-penalty-rule-delay-of-effective-date-request-for-public-comment (accessed November 19, 2021).
93. U.S. Bureau of Land Management, “The United States Department of the Interior Budget Justifications and Performance Information Fiscal Year 2022,” pp. V–68, https://www.doi.gov/sites/doi.gov/files/fy2022-blm-budget-justification.pdf (accessed November 19, 2021).
94. See, for example, news release, “Statement on Second Quarter Oil and Gas Lease Sales,” U.S. Bureau of Land Management, April 21, 2021, https://www.blm.gov/press-release/statement-second-quarter-oil-and-gas-lease-sales (accessed November 19, 2021), and James Lucier, “Natural Gas: Methane Fee and Drilling Moratorium Possibly on the Way,” Capital Alpha Partners, August 26, 2021, https://capalphadc.com/ (accessed November 19, 2021).
95. U.S. Bureau of Land Management, “The United States Department of the Interior Budget Justifications and Performance Information Fiscal Year 2022,” pp. V–71, and Bureau of Ocean Energy Management, “Facilitating the Responsible Development of Oil and Gas Resources on the OCS,” https://www.boem.gov/oil-and-gas-energy (accessed November 19, 2021).
96. U.S. Nuclear Regulatory Commission, “Rulemaking Plan–Transforming the NRC’s Environmental Review Process,” December 31, 2020, https://www.nrc.gov/docs/ML2021/ML20212L393.pdf (accessed November 19, 2021).
97. U.S. Nuclear Regulatory Commission, “Categorical Exclusions from Environmental Review,” August 23, 2021, https://www.regulations.gov/document/NRC-2018-0300-0103 (accessed November 19, 2021).
98. A final rule is scheduled for January 2024. U.S. Nuclear Regulatory Commission, “Advanced Reactor Details,” October 22, 2021, https://www.nrc.gov/reactors/new-reactors/advanced/details.html#advRxGEIS (accessed November 19, 2021), and U.S. Nuclear Regulatory Commission, “Advanced Nuclear Reactor Generic Environmental Impact Statement,” March 8, 2021, https://www.regulations.gov/document/NRC-2020-0101-0033 (accessed November 19, 2021).
99. U.S. Nuclear Regulatory Commission, “Advanced Reactor Stakeholder Public Meeting,” April 15, 2021, pp. 15–31, https://www.nrc.gov/docs/ML2110/ML21103A423.pdf (accessed November 19, 2021).
100. Legal Information Institute, “10 CFR §51.20–Criteria for and Identification of Licensing and Regulatory Actions Requiring Environmental Impact Statements,” https://www.law.cornell.edu/cfr/text/10/51.20 (accessed November 19, 2021), and Legal Information Institute, “10 CFR §51.22–Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Exclusion or Otherwise Not Requiring Environmental Review,” https://www.law.cornell.edu/cfr/text/10/51.22 (accessed November 19, 2021).
101. Nuclear Innovation Alliance, “Nuclear Innovation and NEPA: Streamlining NRC NEPA Reviews for Advanced Reactor Demonstration Projects While Safeguarding Environmental Protection,” September 2019, http://nuclearinnovationalliance.org/sites/default/files/2019-10/5b05b3_e661eba94a224b28aac2a7e11d60e0c6.pdf (accessed November 19, 2021).
102. Katie Tubb, “Needed: An Effective Nuclear Energy Policy,” Heritage Foundation *Backgrounder* No. 3633, July 1, 2021, https://www.heritage.org/nuclear-energy/report/needed-effective-nuclear-energy-policy.
103. U.S. Army Corps of Engineers and U.S. Environmental Protection Agency, “The Navigable Waters Protection Rule: Definition of ‘Waters of the United States,’” Final Rule, *Federal Register*, Vol. 85, No. 77 (April 22, 2020), pp. 22250–22342, https://www.epa.gov/sites/default/files/2020-01/documents/navigable_waters_protection_rule_prepbulication.pdf (accessed November 24, 2021).
104. U.S. Environmental Protection Agency, “Revising the Definition of ‘Waters of the United States,’” https://www.epa.gov/wotus/revising-definition-waters-united-states (accessed November 24, 2021); U.S. Environmental Protection Agency, “Notice of Public Meetings Regarding ‘Waters of the United States,’” https://www.epa.gov/wotus/notice-public-meetings-regarding-waters-united-states (accessed November 24, 2021); and U.S. Environmental Protection Agency, “Final Rule: The Navigable Waters Protection Rule,” https://www.epa.gov/wotus/final-rule-navigable-waters-protection-rule (accessed November 24, 2021). While the EPA and Corps halted implementation of the Navigable Waters Protection Rule after an Arizona federal district court order vacated and remanded the rule, the agencies had already announced they were going to get rid of this Trump Administration rule. See news release, “EPA, Army Announce Intent to Revise Definition of WOTUS,” U.S. Environmental Protection Agency, June 9, 2021, https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus (accessed November 24, 2021).

105. News release, "Intention to Revise the Definition of 'Waters of United States,'" U.S. Environmental Protection Agency, June 9, 2021, https://www.epa.gov/wotus/intention-revise-definition-waters-united-states (accessed November 19, 2021).
106. See Daren Bakst, Mark C. Rutzick, and Adam J. White, "Restoring Meaningful Limits to 'Waters of the United States,'" released by the Regulatory Transparency Project, September 26, 2017, https://regproject.org/paper/restoring-meaningful-limits-waters-united-states/ (accessed November 19, 2021).
107. U.S. Army Corps of Engineers and U.S. Environmental Protection Agency, "Clean Water Rule: Definition of 'Waters of the United States,'" Final Rule, *Federal Register*, Vol. 80, No. 124 (June 29, 2015), pp. 37053–37127, https://www.federalregister.gov/documents/2015/06/29/2015-13435/clean-water-rule-definition-of-waters-of-the-united-states (accessed November 16, 2019).
108. Federal Water Pollution Control Act, Public Law No. 107–303, 107th Cong., November 27, 2002, Sec. 101(b), https://www.epa.gov/sites/production/files/2017-08/documents/federal-water-pollution-control-act-508full.pdf (accessed November 16, 2019).
109. News release, "Regulation Revisions," U.S. Fish and Wildlife Service, June 4, 2021, https://www.fws.gov/endangered/improving_esa/regulation-revisions.html (accessed November 19, 2021).
110. During the development of this report, two expected regulations were, in fact, proposed (more ESA regulations are expected): (1) U.S. Fish and Wildlife Service, Interior, "Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat," Proposed Rule, *Federal Register*, Vol. 86, No. 205 (October 27, 2021), pp. 59346–59353, https://www.federalregister.gov/documents/2021/10/27/2021-23011/endangered-and-threatened-wildlife-and-plants-regulations-for-designating-critical-habitat (accessed November 19, 2021), and (2) U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, "Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat," Proposed Rule, *Federal Register*, Vol. 86, No. 205 (October 27, 2021), pp. 59353–59357, https://www.federalregister.gov/documents/2021/10/27/2021-23214/endangered-and-threatened-wildlife-and-plants-regulations-for-listing-endangered-and-threatened (accessed November 19, 2021).
111. Daren Bakst, "Permitting: Finding a Path Forward," Heritage Foundation *Testimony*, September 14, 2018, https://www.heritage.org/testimony/permitting-finding-path-forward; U.S. Fish and Wildlife Service, "Environmental Conservation Online System: Species Reports–Listed Species Summary (Boxscore)," https://ecos.fws.gov/ecp/report/boxscore (accessed November 16, 2021); and U.S. Fish and Wildlife Service, "Environmental Conservation Online System: Species Reports–Delisted Species," https://ecos.fws.gov/ecp/report/species-delisted (accessed November 29, 2021).
112. See, for example, news release, "Trump Administration Improves the Implementing Regulations of the Endangered Species Act," U.S. Department of the Interior, August 12, 2019, https://www.doi.gov/pressreleases/endangered-species-act?utm_source=newsletter&utm_medium=email&utm_content=U.S.%20Fish%20and%20Wildlife%20Service%20%28USFWS%29%20announced%20final%20changes&utm_campaign=ESA%20Regulatory%20Alert%20-%20August%202019 (accessed November 19, 2021), and Daren Bakst, "A Better Way to Conserve Endangered and Threatened Species," Heritage Foundation *Commentary*, November 9, 2018, https://www.heritage.org/environment/commentary/better-way-conserve-endangered-and-threatened-species.
113. U.S. Environmental Protection Agency, "Clean Water Act Section 401 Certification Rule," July 13, 2020, https://www.regulations.gov/document/EPA-HQ-OW-2019-0405-1124 (accessed November 19, 2021).
114. U.S. Environmental Protection Agency, "Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule," Proposed Rule, *Federal Register*, Vol. 86, No. 104 (June 2, 2021), pp. 29541–29544, https://www.federalregister.gov/documents/2021/06/02/2021-11513/notice-of-intention-to-reconsider-and-revise-the-clean-water-act-section-401-certification-rule (accessed November 19, 2021).
115. News release, "2020 Clean Water Act Section 401 Certification Rule," U.S. Environmental Protection Agency, October 21, 2021, https://www.epa.gov/cwa-401/2020-clean-water-act-section-401-certification-rule (accessed November 20, 2021), and Michael F. McBride and Michael A. Swiger, "U.S. District Court for The Northern District of California Vacates EPA's Clean Water Act Section 401 Certification Rule," *National Law Review*, Vol. XI, No. 298 (October 25, 2021), https://www.natlawreview.com/article/us-district-court-northern-district-california-vacates-epa-s-clean-water-act-section (accessed November 20, 2021).
116. Daren Bakst, "EPA's Section 401 Rule Respects Federalism While Addressing State Abuses," Heritage Foundation *Commentary*, June 4, 2020, https://www.heritage.org/environment/commentary/epas-section-401-rule-respects-federalism-while-addressing-state-abuses.
117. Ibid.
118. Office of Information and Regulatory Affairs, "View Rule: Gamification," RIN No. 3235-AN00, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AN00 (accessed November 20, 2021), and news release, "SEC Requests Information and Comment on Broker-Dealer and Investment Advisor Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Advisor Use of Technology," U.S. Securities and Exchange Commission, August 27, 2021, https://www.sec.gov/news/press-release/2021-167 (accessed November 20, 2021).
119. News release, "SEC Requests Information and Comment on Broker-Dealer and Investment Advisor Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches; Information and Comments on Investment Advisor Use of Technology."
120. John McCrank, "Factbox: The U.S. retail trading frenzy in numbers," Reuters, January 29, 2021, https://www.reuters.com/article/us-retail-trading-numbers/factbox-the-u-s-retail-trading-frenzy-in-numbers-idUSKBN29Y2PW (accessed November 20, 2021).

121. Ainsley Harris, "How Brokerage App Robinhood Got Millennials to Love the Market," *Fast Company*, August 14, 2017, https://www.fastcompany.com/40437888/how-brokerage-app-robinhood-got-millennials-to-love-the-market (accessed November 20, 2021).
122. Board of Governors of the Federal Reserve System, "Distributional Financial Accounts: Distribution of Household Wealth in the U.S. Since 1989," https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/chart/ (accessed November 16, 2021).
123. Aaron Brown, "Stock Investors Are Younger and More Racially Diverse," Bloomberg, September 21, 2020, https://www.bloomberg.com/opinion/articles/2020-09-21/stock-investors-are-younger-and-more-racially-diverse (accessed November 20, 2021).
124. Jennifer Schulp, "The Trading Game," Cato Institute *Commentary*, May 3, 2021, https://www.cato.org/commentary/trading-game (accessed November 20, 2021).
125. Dave Michaels and Alexander Osipovich, "SEC to Explore Rules for Apps That 'Gamify' Trading, New Chairman Says," *The Wall Street Journal*, May 6, 2021, https://www.wsj.com/articles/secs-new-chairman-set-to-field-questions-on-gamestop-archegos-11620306010 (accessed November 20, 2021).
126. Andrew Ramonas, "SEC 'Gamification' Study Ups Reporting Threat for Online Brokers," Bloomberg Law, September 7, 2021, https://news.bloomberglaw.com/securities-law/sec-gamification-study-ups-reporting-threat-for-online-brokers (accessed November 20, 2021).
127. Jacqueline Sergeant, "Nearly 60% of Millennials Look to Lottery for Retirement, Survey Says," *Financial Advisor*, April 17, 2019, https://www.fa-mag.com/news/nearly-60-percent-of-millennials-eyeing-a-lottery-win-as-their-retirement-plan-44389.html (accessed November 20, 2021).
128. U.S. Census Bureau, "2016 Annual Survey of State Government Finances Tables," https://www.census.gov/data/tables/2016/econ/state/historical-tables.html (accessed November 20, 2021).
129. Office of Information and Regulatory Affairs, "View Rule: Third Party Services Providers," RIN No. 3235-AM95, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM95 (accessed November 20, 2021).
130. "Passive Likely Overtakes Active by 2026, Earlier if Bear Market," Bloomberg, March 11, 2021, https://www.bloomberg.com/professional/blog/passive-likely-overtakes-active-by-2026-earlier-if-bear-market/#:~:text=Passive%20vehicles%20hold%2050.2%25%20of,%244%20trillion (accessed November 20, 2021).
131. Bob Pisani, "Stock Picking Has a Terrible Track Record, and It's Getting Worse," CNBC, September 18, 2020, https://www.cnbc.com/2020/09/18/stock-picking-has-a-terrible-track-record-and-its-getting-worse.html (accessed November 20, 2021).
132. Robin Wigglesworth, "'Volmageddon' Fine May Hint to Era of Stricter Index Regulation," *Financial Times*, May 24, 2021, https://www.ft.com/content/8a8ea648-5ef1-48f3-8409-33f82a5154c1 (accessed November 16, 2021).
133. News release, "Environmental, Social and Governance (ESG) Funds–Investor Bulletin," U.S. Securities and Exchange Commission, February 26, 2021, https://www.sec.gov/oiea/investor-alerts-and-bulletins/environmental-social-and-governance-esg-funds-investor-bulletin (accessed November 20, 2021).
134. Chris Flood, "Call for SEC to Regulate Index Providers as Investment Advisers," *Financial Times*, February 17, 2021, https://www.ft.com/content/7c093c08-393c-4ced-b529-3c76b2d4df33 (accessed November 20, 2021).
135. U.S. Securities and Exchange Commission, "Statement on S&P Dow Jones Indices LLC," May 17, 2021, https://www.sec.gov/news/public-statement/peirce-statement-sp-dow-jones-indices-051721 (accessed November 20, 2021).
136. Caitlin Reilly, "Gensler: SEC's Social Media Focus Is on Fraud, Not Collusion," *Roll Call*, May 6, 2021, https://rollcall.com/2021/05/06/gensler-secs-social-media-focus-is-on-fraud-not-collusion/ (accessed November 20, 2021).
137. U.S. Securities and Exchange Commission, "Prepared Remarks Before the Investor Advisory Committee," September 9, 2021, https://www.sec.gov/news/public-statement/gensler-iac-2021-09-09 (accessed November 20, 2021).
138. Office of Information and Regulatory Affairs, "View Rule: Special Purpose Acquisition Companies," RIN No. 3235-AM90, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM90 (accessed November 20, 2021).
139. PWC, "How Special Purpose Acquisition Companies (SPACs) Work," https://www.pwc.com/us/en/services/audit-assurance/accounting-advisory/spac-merger.html (accessed November 20, 2021).
140. Stephen Deane, "The Three Big Transitions Reshaping Finance," *Barron's*, September 2, 2021, https://www.barrons.com/articles/the-three-big-transitions-reshaping-finance-51630526645 (accessed November 20, 2021).
141. Carmen Reinicke, "A SPAC Frenzy Earlier This Year Could Lead to Riskier Deals. Here's Why," CNBC, June 2, 2021, https://www.cnbc.com/2021/06/02/a-spac-frenzy-this-year-could-lead-to-riskier-deals-heres-why.html (accessed November 20, 2021).
142. Stan Choe, "Once-Hot SPAC Investments Return to Earth," ABC News, November 1, 2021, https://abcnews.go.com/Business/wireStory/hot-spac-investments-return-earth-80187330 (accessed November 20, 2021).
143. John Hartsel and Peter St. Onge, "Canada's Free-Market example for SEC," *The Wall Street Journal*, May 16, 2019, https://www.wsj.com/articles/canadas-free-market-example-for-the-sec-11558048459 (accessed November 20, 2021), and David R. Burton, "Reducing the Burden on Small Public Companies Would Promote Innovation, Job Creation, and Economic Growth," Heritage Foundation *Backgrounder* No. 2924, June 20, 2014, https://www.heritage.org/jobs-and-labor/report/reducing-the-burden-small-public-companies-would-promote-innovation-job.
144. Reinicke, "A SPAC Frenzy Earlier This Year Could Lead to Riskier Deals. Here's Why."

145. Office of Information and Regulatory Affairs, "View Rule: Exempt Offerings," RIN No. 3235-AM85, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM85 (accessed November 20, 2021). To view a list of currently proposed SEC rules, see U.S. Securities and Exchange Commission, " SEC Proposed Rules," https://www.sec.gov/rules/proposed.shtml (accessed November 20, 2021), and U.S. Securities and Exchange Commission, "Rulemaking Index," https://www.sec.gov/rules/rulemaking-index.shtml (accessed November 16, 2021).
146. The Securities Act of 1933, Public Law 73–22, 48 Stat. 74, 15 U.S. Code § 77a et seq.
147. See § 5 of the Securities Act of 1933.
148. 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 $1.5 million per year." U.S. Securities and Exchange Commission, "Crowdfunding," Proposed Rules, *Federal Register*, Vol. 78, No. 214 (November 5, 2013), p. 66509 (col. 2), http://www.gpo.gov/fdsys/pkg/FR-2013-11-05/pdf/2013-25355.pdf (accessed November 20, 2021).
149. The Securities Act of 1933, section 4(a)(2). For a discussion of what are and are not private offerings and their regulation, see David R. Burton, "Improving Entrepreneurs' Access to Capital: Vital for Economic Growth," Heritage Foundation *Backgrounder* No. 3182, February 14, 2017 https://www.heritage.org/sites/default/files/2017-02/BG3182.pdf, and David R. Burton, "Congress Should Increase Access to Private Securities Offerings," Heritage Foundation *Issue Brief* No. 4899, August 29, 2018, https://www.heritage.org/sites/default/files/2018-08/IB4899.pdf.
150. U.S. Securities and Exchange Commission, "Concept Release on Harmonization of Securities Offering Exemptions," *Federal Register*, Vol. 84, No. 123 (June 26, 2019), p. 30466, Table 2–Overview of Amounts Raised in the Exempt Market in 2018, https://www.govinfo.gov/content/pkg/FR-2019-06-26/pdf/2019-13255.pdf (accessed November 20, 2021). The SEC almost certainly undercuts the amount of capital invested privately by the smallest businesses that need not make any filing with the SEC.
151. U.S. Securities and Exchange Commission, "Concept Release on Harmonization of Securities Offering Exemptions," p. 30465, Figure 1: Capital Raised in Exempt and Registered Capital Markets, 2009–2018.
152. Ibid., p. 30466, Table 2, and U.S. Securities and Exchange Commission, "Report to Congress on Regulation A/Regulation D Performance," August 2020, Figure 12: Aggregate Capital Reported Raised in 2009–2019 through Regulation D Offerings and Registered Offerings ($ billion), https://www.sec.gov/files/Report%20to%20Congress%20on%20Regulation%20A.pdf (accessed November 20, 2021). See also David R. Burton, "Broadening Regulation D: Congress Should Let More People Invest in Private, High-Growth Companies," Heritage Foundation *Backgrounder* No. 3137, August 15, 2016, http://thf-reports.s3.amazonaws.com/2016/BG3137.pdf; David R. Burton, "Congress Should Increase Access to Private Securities Offerings," Heritage Foundation *Issue Brief* No. 4899, August 29, 2018, https://www.heritage.org/markets-and-finance/report/congress-should-increase-access-private-securities-offerings; and Thaya Brook Knight, "Your Money's No Good Here: How Restrictions on Private Securities Offerings Harm Investors," Cato Institute *Policy Analysis* No. 833, February 9, 2018, https://www.cato.org/sites/cato.org/files/pubs/pdf/pa833.pdf (accessed November 20, 2021).
153. U.S. Securities and Exchange Commission, "Revision of Certain Exemptions from Registration for Transactions Involving Limited Offers of Sales," Adoption of Final Rules, *Federal Register*, Vol. 47, No. 51 (March 16, 1982), p. 11251, https://archives.federalregister.gov/issue_slice/1982/3/16/11247-11267.pdf (accessed November 20, 2021). Regulation D is found at 17 C.F.R. § 230.500 through § 230.508. For the original proposed rule, see U.S. Securities and Exchange Commission, "Proposed Revision of Certain Exemptions from the Registration Provisions of the Securities Act of 1993 for Transactions Involving Limited Offers of Sales," *Federal Register*, Vol. 46, No. 159 (August 18, 1981), p. 41791, https://www.govinfo.gov/content/pkg/FR-1981-08-18/pdf/FR-1981-08-18.pdf (accessed November 20, 2021).
154. The statutory basis for the use of an accredited investor in Regulation D is § 2(a)(15) of the Securities Act, 15 U.S. Code § 77b(a)(2). 17 C.F.R. § 230.501(a) defines "accredited investor" for purposes of Regulation D.
155. David R. Burton, "Don't Crush the Ability of Entrepreneurs and Small Businesses to Raise Capital," Heritage Foundation *Backgrounder* No. 2874, February 5, 2014, https://www.heritage.org/government-regulation/report/dont-crush-the-ability-entrepreneurs-and-small-businesses-raise.
156. The index was 96.5 in 1982 and is estimated to be 271.4 in 2021. Federal Reserve Bank of Minneapolis, "Consumer Price Index, 1913–2021," https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator/consumer-price-index-1913- (accessed November 21, 2021). Thus, the 2021 threshold is 2.8 times what it was in 1982.
157. U.S. Securities and Exchange Commission, "Concept Release on Harmonization of Securities Offering Exemptions," *Federal Register*, Vol. 84, No. 123 (June 26, 2019), p. 30471, Table 3: Households Qualifying Under Existing Accredited Investor Criteria.
158. See, for example, statement by Acting Chair Allison Herren Lee, "Public Input Welcomed on Climate Change Disclosures," U.S. Securities and Exchange Commission, March 15, 2021, Question 14, https://www.sec.gov/news/public-statement/lee-climate-change-disclosures# (accessed November 21, 2021), and Office of Information and Regulatory Affairs, "View Rule: Exempt Offerings," RIN No. 3235-AM85, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM85 (accessed November 21, 2021).
159. Office of Information and Regulatory Affairs, "View Rule: Corporate Board Diversity," RIN No. 3235-AL91, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AL91 (accessed November 21, 2021).

160. U.S. Securities and Exchange Commission, "Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Adopt Listing Rules Related to Board Diversity," *Federal Register*, Vol. 85, No. 239 (December 11, 2020), pp. 80472–80505, https://www.govinfo.gov/content/pkg/FR-2020-12-11/pdf/2020-27091.pdf (accessed November 21, 2021). The SEC approved this rule on August 6, 2021, by a vote of 3 to 2. See U.S. Securities and Exchange Commission, "Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Changes, as Modified by Amendments No. 1, to Adopt Listing Rules Related to Board Diversity and to Offer Certain Listed Companies Access to a Complimentary Board Recruiting Service," August 6, 2021 https://www.sec.gov/rules/sro/nasdaq/2021/34-92590.pdf (accessed November 21, 2021). See also statement by Chair Gary Gensler, "Statement on the Commission's Approval of Nasdaq's Proposal for Disclosure about Board Diversity and Proposal for Board Recruiting Service," U.S. Securities and Exchange Commission, August 6, 2021, https://www.sec.gov/news/public-statement/gensler-statement-nasdaq-proposal-disclosure-board-diversity-080621 (accessed November 21, 2021); statement by Commissioner Hester Peirce, "Statement on the Commission's Order Approving Proposed Rule Changes, as Modified by Amendments No. 1, to Adopt Listing Rules Related to Board Diversity submitted by the Nasdaq Stock Market LLC," U.S. Securities and Exchange Commission, August 6, 2021, https://www.sec.gov/news/public-statement/peirce-nasdaq-diversity-statement-080621 (accessed November 21, 2021); statement by Commissioner Elad L. Roisman, "Statement on the Commission's Order Approving Exchange Rules Relating to Board Diversity," U.S. Securities and Exchange Commission, August 6, 2021, https://www.sec.gov/news/public-statement/roisman-board-diversity (accessed November 21, 2021); statement by Commissioners Allison Lee and Caroline A. Crenshaw, "Statement on Nasdaq's Diversity Proposals—Positive First Step for Investors," U.S. Securities and Exchange Commission, August 6, 2021, https://www.sec.gov/news/public-statement/statement-nasdaq-diversity-080621 (accessed November 21, 2021); and David R. Burton, "Proposed Nasdaq Rule Change to Adopt Listing Rules Related to Board Diversity [File Number SR–NASDAQ–2020–081]," U.S. Securities and Exchange Commission comment letter, January 4, 2021, https://www.sec.gov/comments/sr-nasdaq-2020-081/srnasdaq2020081-8204282-227462.pdf (accessed November 21, 2021).

161. David R. Burton, "Nasdaq's Proposed Board-Diversity Rule Is Immoral and Has No Basis in Economics," Heritage Foundation *Backgrounder* No. 3591, March 9, 2021, https://www.heritage.org/sites/default/files/2021-03/BG3591_0.pdf; letter by C. Boyden Gray et al., on behalf of the Alliance for Fair Board Recruitment, U.S. Securities and Exchange Commission, File No. File No. SR-NASDAQ-2020-081, April 6, 2021, https://www.sec.gov/comments/sr-nasdaq-2020-081/srnasdaq2020081-8639478-230941.pdf (accessed November 21, 2021); and Jonathan Klick, "Review of the Literature on Diversity on Corporate Boards," American Enterprise Institute, April 2021, https://www.aei.org/wp-content/uploads/2021/04/Review-of-the-Literature-on-Diversity-on-Corporate-Boards.pdf?x91208 (accessed November 21, 2021).

162. Proxy Preview, "Proxy Preview, 2020," p. 66, https://www.proxypreview.org/2020/report-cover (accessed November 21, 2021).

163. For example, the New York City Comptroller's Boardroom Accountability Project 3.0 campaign: New York City Comptroller, "Comptroller Stringer Launches Boardroom Accountability Project 3.0, a First-in-the-Nation Initiative to Bring Diversity to Board and CEO Recruitment," https://comptroller.nyc.gov/services/financial-matters/boardroom-accountability-project/boardroom-accountability-project-3-0/ (accessed November 21, 2021). See also Andrew Ramonas, "Illinois Treasurer Urges SEC to Adopt Diversity Mandates," Bloomberg Law, September 16, 2020, https://news.bloomberglaw.com/securities-law/illinois-treasurer-urges-sec-to-adopt-diversity-mandates (accessed November 21, 2021).

164. Burton, "Nasdaq's Proposed Board-Diversity Rule Is Immoral and Has No Basis in Economics."

165. Office of Information and Regulatory Affairs, "View Rule: Climate Change Disclosure," RIN No. 3235-AM87, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM87 (accessed November 21, 2021), and statement by Acting Chair Allison Herren Lee, "Public Input Welcomed on Climate Change Disclosures," March 15, 2021, https://www.sec.gov/news/public-statement/lee-climate-change-disclosures# (accessed November 21, 2021).

166. Letter by David R. Burton on "Climate Disclosure," U.S. Securities and Exchange Commission, June 13, 2021, https://www.sec.gov/comments/climate-disclosure/cll12-8914466-244728.pdf (accessed November 21, 2021), and letter by Benjamin Zycher on "Climate Risk Disclosures," U.S. Securities and Exchange Commission, June 10, 2021, https://www.sec.gov/comments/climate-disclosure/cll12-8911386-244314.pdf (accessed November 21, 2021).

167. Letter by Katie Tubb on "Public Input Welcomed on Climate Change Disclosures," U.S. Securities and Exchange Commission, June 11, 2021, https://www.sec.gov/comments/climate-disclosure/cll12-8907322-244259.pdf (accessed November 17, 2021).

168. Ibid.

169. Ibid.

170. Office of Information and Regulatory Affairs, "View Rule, Section 6403. Corporate Transparency Act," RIN No. 1506-AB49, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1506-AB49 (accessed November 21, 2021), and U.S. Department of the Treasury, Financial Crimes Enforcement Network, "Beneficial Ownership Information Reporting Requirements," *Federal Register*, Vol. 86, No. 63 (April 5, 2021), Advance Notice of Proposed Rulemaking, pp. 17557–17565, https://www.federalregister.gov/documents/2021/04/05/2021-06922/beneficial-ownership-information-reporting-requirements (accessed November 21, 2021).

171. The Corporate Transparency Act was enacted as Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law No: 116-283) on January 1, 2021. See H.R. 6395, 116th Cong., 2nd Sess., https://www.congress.gov/116/bills/hr6395/BILLS-116hr6395enr.pdf (accessed November 21, 2021).

172. David R. Burton, "The Corporate Transparency Act and the ILLICIT CASH Act," Heritage Foundation *Backgrounder* No. 3449, November 7, 2019, p. 9, https://www.heritage.org/sites/default/files/2019-11/BG3449_0.pdf.

173. See 31 U.S. Code § 5336(a)(3) for the 190-word statutory definition, which, in turn, references various defined and undefined terms that are centrally important to the definition of "beneficial owner," including "indirectly," the phrase "arrangement, understanding, relationship, or otherwise," "substantial control," and "entity." For a discussion of the various ambiguities in the definition, see Burton, "The Corporate Transparency Act and the ILLICIT CASH Act," p. 9, and letter by David R. Burton on "Beneficial Ownership Information Reporting Requirements," Financial Crimes Enforcement Network, May 5, 2021, https://downloads.regulations.gov/FINCEN-2021-0005-0132/attachment_1.pdf (accessed November 21, 2021).
174. For a detailed analysis, see letter by Burton on "Beneficial Ownership Information Reporting Requirements."
175. Office of Information and Regulatory Affairs, "View Rule: Anti-Money Laundering Program Effectiveness," RIN No. 1506-AB44, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1506-AB44 (accessed November 21, 2021).
176. David R. Burton and Norbert J. Michel, "Financial Privacy in a Free Society," Heritage Foundation *Backgrounder* No. 3157, September 23, 2016, http://thf-reports.s3.amazonaws.com/2016/BG3157.pdf.
177. Office of Information and Regulatory Affairs, "View Rule: Returns of Information of Brokers in Virtual Currency Transactions," RIN No. 1545-BP71, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=1545-BP71 (accessed November 21, 2021).
178. David R. Burton and Norbert J. Michel, "Removing Tax Barriers to Competitive Currencies," Heritage Foundation *Issue Brief* No. 4761, September 13, 2017, https://www.heritage.org/sites/default/files/2017-09/IB4761.pdf.
179. Office of Information and Regulatory Affairs, "View Rule: Human Capital Management Disclosure," RIN No. 3235-AM88, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3235-AM88 (accessed November 21, 2021).
180. Human Capital Management Coalition, petition for rulemaking pursuant to Rule 192(a) of the SEC's Rules of Practice, July 6, 2017, https://www.sec.gov/rules/petitions/2017/petn4-711.pdf (accessed November 21, 2021).
181. U.S. Securities and Exchange Commission, "Comments on Rulemaking Petition to Require Issuers to Disclose Information About Their Human Capital Management Policies, Practices and Performance," File No. 4-711, https://www.sec.gov/comments/4-711/4-711.htm (accessed November 16, 2021).
182. Office of Information and Regulatory Affairs, "View Rule: Business Lending Data (Regulation B)," RIN No. 3170-AA09, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=3170-AA09 (accessed November 21, 2021). To view the CFPB proposed rule, see, for example, Consumer Financial Protection Bureau "Rules Under Development," https://www.consumerfinance.gov/rules-policy/rules-under-development/ (accessed November 21, 2021).
183. David R. Burton, "Improving Small Business Access to Capital," statement to the Consumer Financial Protection Bureau Symposium on Section 1071 of the Dodd-Frank Act Small Business Lending Panel, November 6, 2019, https://files.consumerfinance.gov/f/documents/cfpb_burton-written-statement_symposium-section-1071.pdf (accessed November 21, 2021).
184. Office of Information and Regulatory Affairs, "Modernizing the Davis-Bacon and Related Acts Regulations," RIN No. 1235-AA40, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1235-AA40 (accessed November 21, 2021). For a list of Department of Labor proposed rules, see, for example, U.S. Department of Labor, "Federal Register Document–Proposed Rules," https://federalregister.dol.gov/index.php/index/doc_by_agency/PRORULE (accessed November 21, 2021).
185. Office of Information and Regulatory Affairs, "View Rule: Modernizing the Davis–Bacon and Related Acts Regulations."
186. Rachel Greszler, "Why Congress Must 'Cancel' the Davis–Bacon Act," Heritage Foundation *Commentary*, April 7, 2021, https://www.heritage.org/jobs-and-labor/commentary/why-congress-must-cancel-the-davis-bacon-act.
187. The White House, "Remarks by President Biden Before Meeting with Labor Leaders to Discuss the American Rescue Plan and Infrastructure," February 17, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/17/remarks-by-president-biden-before-meeting-with-labor-leaders-to-discuss-the-american-rescue-plan-and-infrastructure/ (accessed November 21, 2021).
188. Office of Information and Regulatory Affairs, "View Rule: Emergency Response," RIN No. 218-AC91, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1218-AC91 (accessed November 21, 2021).
189. Occupational Health and Safety Administration, "Protecting Workers from the Effects of Heat," *OSHA Fact Sheet*, https://www.osha.gov/sites/default/files/publications/heat_stress.pdf (accessed November 23, 2021).
190. The White House, "Fact Sheet: Biden Administration Mobilizes to Protect Workers and Communities from Extreme Heat," September 20, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/20/fact-sheet-biden-administration-mobilizes-to-protect-workers-and-communities-from-extreme-heat/ (accessed November 21, 2021).
191. Ibid.
192. Office of Information and Regulatory Affairs, "View Rule: Heat Illness Prevention in Outdoor and Indoor Work Settings," RIN No. 1218-AD39, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1218-AD39 (accessed November 21, 2021).
193. Ibid.
194. Office of Information and Regulatory Affairs, "View Rule: Definition of the Term 'Fiduciary,'" RIN No. 1210-AC02, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1210-AC02 (accessed November 21, 2021).
195. Ibid.

196. U.S. Department of Labor, "Definition of the Term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice," *Federal Register*, Final Rule, Vol. 81, No. 68 (April 8, 2016), p. 20946, https://www.federalregister.gov/documents/2016/04/08/2016-07924/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice (accessed November 21, 2021).
197. Morgan Lewis, "ERISA Fiduciaries Under a Biden Labor Department: What Is on the Horizon?" JDSUPRA, February 23, 2021, https://www.jdsupra.com/legalnews/erisa-fiduciaries-under-a-biden-labor-9933458/ (accessed November 21, 2021).
198. U.S. Securities and Exchange Commission, "Financial Navigating in the Current Economy: Ten Things to Consider Before You Make Investing Decisions," https://www.sec.gov/investor/pubs/tenthingstoconsider.htm (accessed November 21, 2021).
199. Alex Diaz, "Remember Solyndra? Loss of Taxpayer Millions Now Seems Forgotten, Expert Says," Fox News, March 20, 2019, https://www.foxnews.com/politics/remember-solyndra-loss-of-taxpayer-millions-seems-forgotten-expert-says (accessed November 21, 2021).
200. Office of Information and Regulatory Affairs, "View Rule: Implementing Executive Orders 13990 and 14030," RIN No. 1210-AC03, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1210-AC03 (accessed November 21, 2021).
201. Ibid.
202. Ibid.
203. Ibid.
204. See, for example, Norbert J. Michel, David R. Burton, and Nicolas D. Loris, "Using Financial Regulation to Fight Climate Change: A Losing Battle," Heritage Foundation *Backgrounder* No. 3634, June 24, 2021, https://www.heritage.org/sites/default/files/2021-06/BG3634.pdf, and letter by David R. Burton on "Climate Change Disclosures," U.S. Securities and Exchange Commission, June 13, 2021, https://www.sec.gov/comments/climate-disclosure/cll12-8914466-244728.pdf (accessed November 21, 2021).
205. K. Elise Norcini and Joshua Waldbeser, "Department of Labor Confirms It Will Not Enforce Controversial 'Pecuniary Factors' Rule for ERISA Plan Investments," JDSUPRA, March 15, 2021, https://www.jdsupra.com/legalnews/department-of-labor-confirms-it-will-2487947/ (accessed November 21, 2021).
206. Robert Sichel and Kristina Zanotti, "DOL Proposes New Rule on Proxy Voting Duties–Potential Implications for Investment Managers and Other ERISA Fiduciaries," JDSUPRA, October 15, 2021, https://www.jdsupra.com/legalnews/dol-proposes-new-rule-on-proxy-voting-76180/ (accessed November 21, 2021).
207. Office of Information and Regulatory Affairs, "View Rule: Increased 40-year Term for Loan Modifications," RIN No. 2502-AJ59, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2502-AJ59 (accessed November 16, 2021).
208. 24 C.F.R. 203.616.
209. Bankrate.com, "Amortization Schedule Calculator," https://www.bankrate.com/calculators/mortgages/amortization-calculator.aspx (accessed November 16, 2021).
210. U.S. Department of Housing and Urban Development, "Restoring Affirmatively Furthering Fair Housing Definitions and Certifications," *Federal Register*, Interim Final Rule, Vol. 86, No. 110 (June 10, 2021), p. 30779, https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications (accessed November 21, 2021).
211. Office of Information and Regulatory Affairs, "View Rule: Affirmatively Furthering Fair Housing (FR-6250), RIN No. 2529-AB05, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2529-AB05 (accessed November 21, 2021).
212. 24 CFR Parts 5, 91, 92, 570, 574, 576, and 903. U.S. Department of Housing and Urban Development, "Affirmatively Furthering Fair Housing," Final Rule, *Federal Register*, Vol. 80, No. 136 (July 16, 2015), p. 42272, https://www.govinfo.gov/content/pkg/FR-2015-07-16/pdf/2015-17032.pdf (accessed November 16, 2021).
213. News release, "Secretary Carson Terminates 2016 AFFH Rule," U.S. Department of Housing and Urban Development, July 23, 2020, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_109 (accessed November 16, 2021).
214. Ibid.
215. Hans A. von Spakovsky and Mike Gonzales, "Poison Policy: An Unfair Housing Regulation Leftover from the Obama Era Creates Unnecessary Chaos," Heritage Foundation *Commentary*, March 24, 2020, https://www.heritage.org/housing/commentary/poison-policy-unfair-housing-regulation-leftover-the-obama-era-creates.
216. Office of Information and Regulatory Affairs, "View Rule: Processing Buy America and Buy America Waivers Based on Nonavailability," Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2105-AE79 (accessed November 16, 2021).
217. U.S. Department of Transportation, "Report on DOT Significant Rulemakings," February 2020, p. 90, https://www.transportation.gov/sites/dot.gov/files/2020-02/February%202020%20Sign_rulemaking%20report02072020r.pdf (accessed November 21, 2021), and Presidential Documents, "Executive Order 13788 of April 18, 2017: Buy American and Hire American," *Federal Register*, Vol. 82, No. 76 (April 21, 2017), p. 18837, https://www.federalregister.gov/documents/2017/04/21/2017-08311/buy-american-and-hire-american (accessed November 21, 2021).
218. The White House, "Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers," January 25, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/ (accessed November 21, 2022).

219. Tori K. Smith, "'Buy American' Laws: A Costly Policy Mistake That Hurts Americans," Heritage Foundation *Backgrounder* No. 177, May 18, 2017, https://www.heritage.org/trade/report/buy-american-laws-costly-policy-mistake-hurts-americans-0.
220. "Executive Order on Promoting Competition in the American Economy," White House, July 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/ (accessed December 1, 2021), and "FACT SHEET: Executive Order on Promoting Competition in the American Economy," White House, July 9, 2021, https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/ (accessed December 1, 2021).
221. David Shpardson, "U.S. FCC Votes to Maintain 2017 Repeal of Net Neutrality Rules," Reuters, October 27, 2020, https://www.reuters.com/article/us-usa-internet/u-s-fcc-votes-to-maintain-2017-repeal-of-net-neutrality-rules-idUSKBN27C2EO (accessed November 22, 2021).
222. James L. Gattuso, "Debunking the Left's Myths on Net Neutrality," Heritage Foundation *Commentary*, December 1, 2017, https://www.heritage.org/government-regulation/commentary/debunking-the-lefts-myths-net-neutrality, and James L. Gattuso, "Why Congress Shouldn't Restore Net Neutrality," The Daily Signal, March 8, 2019, https://www.dailysignal.com/2019/03/08/why-congress-shouldnt-restore-net-neutrality/.
223. Office of Information and Regulatory Affairs, "View Rule: Train Crew Staffing," RIN No. 2130-AC88, Spring 2021, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2130-AC88 (accessed November 22, 2021).
224. U.S. Department of Transportation, Federal Railroad Administration, "Train Crew Staffing," Proposed Rule, *Federal Register*, Vol. 84, No. 103 (May 29, 2019), pp. 24735–24741, https://www.federalregister.gov/documents/2019/05/29/2019-11088/train-crew-staffing (accessed November 22, 2021).
225. U.S. Department of Transportation, Federal Railroad Administration, "Train Crew Staffing," Proposed Rule, *Federal Register*, Vol. 81, No. 50 (March 15, 2016), pp. 13917–13966, https://www.federalregister.gov/documents/2016/03/15/2016-05553/train-crew-staffing#p-53 (accessed November 22, 2021).
226. Association of American Railroads, "Freight Rail & Crew Size Regulations," https://www.aar.org/article/freight-rail-crew-size-regulations/ (accessed November 22, 2021).
227. U.S. Department of Transportation, Federal Railroad Administration, "Train Crew Staffing," Proposed Rule.
228. To learn more, see, for example, Daren Bakst and Nathaniel Turner, "Legislators Should Embrace Railroad Innovation, Not Hinder It," Heritage Foundation *Commentary*, June 29, 2021, https://www.heritage.org/transportation/commentary/legislators-should-embrace-railroad-innovation-not-hinder-it.

The Heritage Foundation
214 Massachusetts Ave., NE | Washington, DC 20002
(202) 546-4400 | heritage.org