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Achievable Economic Policy Reforms for Congress

Edited by Daren Bakst

Congress can pass legislation this year that would make a significant difference in the lives of Americans. Despite the perception of partisan gridlock, broad support exists for many important domestic economic policy reforms. These policies are ambitious but achievable, and, if adopted, would promote economic growth, empower individuals, and reduce government waste.

While there are numerous major economic policy reforms that Congress should undertake in the 114th Congress, some reforms have a much better chance than others of being enacted immediately. While nothing is easy to pass in Congress, these reforms are "low-hanging fruit." A common thread running through these reforms is that they need not be controversial in nature, and significant support may already exist. There is enough common ground to achieve immediate tangible results. Congress should seize this unique opportunity.

Taxes

Tax reform is essential for improving economic growth and expanding opportunity for Americans struggling to make ends meet in the slow-to-recover economy. It is one of the most important policy issues, and the new Congress should devote considerable time and effort toward achieving tax reform.

Despite the great need for tax reform, it is unlikely that Congress can formulate and pass a plan in the short term. It will take time to do tax reform right. As Congress works up to tax reform, though, there are several tax policies that Congress should pass to increase the chances of both securing tax reform and improving tax policy in the interim. Congress should:

Key Points

- Congress can pass legislation this year that would make a significant difference in the lives of Americans.
- Despite the perception of partisan gridlock, broad support exists for many important domestic economic policy reforms. These policies are ambitious but achievable, and, if adopted, would promote economic growth, empower individuals, and reduce government waste.
- Reforms cover taxes, energy issues, the budget, agriculture, the environment, monetary policy, regulatory reform, "too big to fail" companies, access to capital, and transportation.
- While nothing is easy to pass in Congress, these reforms are "low-hanging fruit."
- There is enough common ground to achieve immediate tangible results. Members of Congress should seize this unique opportunity to achieve these important economic policy reforms.

This paper, in its entirety, can be found at **http://report.heritage.org/bg2985**

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Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

TABLE 1

Achievable Economic Policy Reforms

Area	Reforms
TAX POLICY	• End the annual tax-extenders debate by permanently extending sound tax policies to avoid distraction from greater tax reform. • Make Section 179 expensing permanent up to $1 million to reduce the costs of capital investment, relieve uncertainty, and simplify tax returns for small businesses. • Eliminate barriers that prevent S corporations from taking advantage of improved access to capital made possible with the 2012 JOBS Act.
ENERGY	• Fund the entire NRC licensing process for a long-term nuclear repository at Yucca Mountain. • Liberalize the definition of Master Limited Partnerships to include renewable energy generation. • End the crude oil export ban, eliminate the unnecessary role of the DOE in approving liquid natural gas exports, and eliminate taxes on energy technology imports. • Amend regulations governing national labs to increase lab flexibility to push research to the marketplace and increase private-sector access to the national labs.
BUDGET	• Adopt a path to balance the budget in a proper budget resolution. • Establish an independent, bipartisan, BRAC-like spending commission to identify and consolidate duplicative and ineffective federal programs. • Expand the congressional budget-window projection beyond 10 years to more accurately account for the cost of legislation.
ACCESS TO CAPITAL	• Protect people's ability to invest in private offerings by establishing a clear statutory definition of an "accredited investor" that enables a greater share of the public to invest. • Fix the crowdfunding exemption in the JOBS Act to make it economically viable and less burdensome for the smallest of companies.
AGRICULTURE	• Cap the costs of the Price Loss Coverage and Agriculture Risk Coverage programs to protect taxpayers from unacceptable financial exposure. • Repeal the USDA catfish inspection program, which is a costly redundancy of FDA seafood regulations and a protectionist policy with negative free-trade implications. • Separate agriculture programs from food stamps so that they can be considered on their own merits.
ENVIRONMENT	• Prohibit implementation of the EPA's and Corps' "Waters of the United States" proposed rule, which would regulate almost every body of water in the U.S. • Prohibit implementation of the new proposed ozone standard, which would establish a far more stringent and costly standard even as states are just beginning to implement the current standard.
MONETARY POLICY	• Establish a National Monetary Commission that would develop nonbinding recommendations and provide Members of Congress with information they need to fulfill their constitutional responsibilities regarding monetary policy. • Require the Fed to adopt a rules-based monetary policy.
REGULATION	• Improve regulatory transparency and accountability by requiring that major new rules be approved by Congress. • Make the CFPB more accountable to Congress by abolishing the CFPB's current funding mechanism and subjecting it instead to congressional control.
TOO BIG TO FAIL	• Amend bankruptcy law to establish an orderly resolution process for large institutions. • End the Fed's broken lender-of-last-resort function that enables too-big-to-fail policies. • Eliminate the FSOC, which has a broad, ill-defined mandate through which it can designate financial firms for heightened regulation.
TRANSPORTATION	• Empower states to address transportation needs by ending the current Washington-centric approach, which would give states the incentive to plan and fund their own transportation priorities. • End the Transportation Alternatives Program, which diverts money to activities like landscaping while ignoring bridge maintenance and road improvements.

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- **End the annual tax extenders debate.** The tax extenders are a collection of more than 50 tax policies that expire regularly. Expiring provisions are bad policy. As such, Congress should make the sound policies in the tax extenders package permanent, allow all the other policies to expire permanently, and then reduce other taxes by the amount the expired tax policies raise, in order to avoid a tax hike. This measure would also alleviate the burden of having to address this issue in the future, which means it will not distract from larger tax reform. Settling the tax extenders for good also supports tax reform by aligning the current policy and current law baselines.

- **Make Section 179 expensing permanent at $1 million.** The tax code requires businesses to deduct the cost of capital expenditures over many years. Because of the time value of money, this reduces the real value of their deduction, which raises the cost of capital. There are several policies that seek to correct the problem. The best and most broadly available is Section 179 expensing. It allows small businesses to expense a certain amount of their capital costs each year. The amount that small businesses could deduct each year is $500,000 through 2015. It falls to $25,000 annually in 2016 unless Congress extends the provision in the extenders package. The uncertainty is crippling for small businesses. If Congress does not follow the right procedure for dealing with the extenders early in the year, it should separately make Section 179 expensing permanent up to $1 million early in 2015. In addition to lowering the cost of capital for these firms, which would help them create jobs and raise wages, it would simplify small firms' tax returns, reduce compliance costs, and aid cash flow.

- **Amend Subchapter S to provide greater flexibility for S corporations.** S corporations are small corporations that do not pay the corporate income tax. Instead, shareholders pay tax on their individual tax returns on their share of the corporation's profits. Congress should amend Subchapter S to permit S corporations to have more than one class of stock, non-resident alien shareholders (subject to 30 percent withholding on dividends), and more than 100 shareholders. Having access to more capital will make it easier for new ventures to grow and add jobs.

  S corporations would benefit from provisions included in the 2012 Jumpstart Our Business Startups (JOBS) Act,[1] but a restriction governing S corporations precludes the provisions from helping them. The JOBS Act allows firms to raise up to $1 million from a large number of small investors using Internet crowdfunding (once the Securities and Exchange Commission (SEC) promulgates implementing regulations). For example, a firm might raise $500,000 from 500 investors investing $1,000 each. The JOBS Act will also allow small firms to raise up to $50 million using the less burdensome Regulation A+ small-issue exemption that makes it easier for small to mid-sized companies to offer shares to the public (once the SEC promulgates implementing regulations). S corporations are not able to take advantage of the act, however, because their 100-shareholder limit effectively precludes them from taking advantage of these two innovative capital-raising techniques.

Energy

Eliminating politics and arbitrary restrictions on energy markets would foster innovation as companies face more competition and meet challenges to retain or expand their market share. Americans would benefit from lower prices, increased economic activity, more ingenuity in energy markets, higher-quality products at competitive prices, and an improving standard of living. Congress should:

- **Ensure funding for the licensing of the Yucca Mountain repository.** The U.S. Department of Energy (DOE) originally applied to the Nuclear Regulatory Commission (NRC) for a license to operate a deep geologic repository at Yucca Mountain because it "brings together the location,

1. The Jumpstart Our Business Startups Act, Public Law 112–106, April 5, 2012, http://www.gpo.gov/fdsys/pkg/PLAW-112publ106/pdf/PLAW-112publ106.pdf (accessed March 11, 2015).

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natural barriers, and design elements most likely to protect the health and safety of the public."[2] However, since 2010, the Obama Administration has worked around Congress to stop Yucca Mountain waste storage and divert resources to its own "Strategy for Management and Disposal," a shortsighted and meager plan for pilot and interim facilities, when the law still requires a complete determination on Yucca Mountain by the NRC. The NRC has since completed its Safety Evaluation Report determining that the repository would be both technologically feasible and safe, and has laid out the conditions for a license.[3]

The NRC's conclusions put to rest any questions over Yucca Mountain's long-term safety and technical feasibility, and it allows the nation to operate under the same agreed-upon facts about the project. The nation needs a permanent nuclear-materials repository such as the Yucca Mountain facility for which taxpayers and electricity ratepayers have already been paying. Congress should stay the course and see that the repository's licensing process is completed.

- **Extend Master Limited Partnerships (MLP) to renewable energy production.** Congress could easily create a more competitive energy market by including renewable generation in MLPs, an arrangement that allows businesses to have the tax structure of a partnership or a limited liability company while trading ownership equity publicly on a securities exchange. The partnership structure allows the business owners to pay taxes on their individual tax returns while providing the flexibility and opportunity to raise capital from smaller investors directly from the stock market. In the energy sector, the ability to form MLPs is available for mineral extraction; natural gas and oil pipelines; geothermal energy; and the transportation and storage of ethanol, biodiesel, and other alternative fuels.[4] Other

2. U.S. Department of Energy, "Recommendation by the Secretary of Energy Regarding the Suitability of the Yucca Mountain Site for a Repository Under the Nuclear Waste Policy Act of 1982," February 2002, p. 6, http://energy.gov/sites/prod/files/edg/media/Secretary_s_Recommendation_Report.pdf (accessed March 4, 2015).
3. U.S. Nuclear Regulatory Commission, "Safety Evaluation Report Related to Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada," January 29, 2015, http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1949/ (accessed March 12, 2015).
4. 26 U.S. Code § 7704.

renewable energy generation does not qualify for MLP status. Both Democratic and Republican legislators have looked to MLP reform as a truly market-driven way to "level the playing field" for renewable energy companies without stimulus spending, government subsidies, or policies that pick winners and losers. Congress should allow energy project investors to form MLPs for the production, transportation, and storage of energy.

- **Remove limitations on energy exports and imports.** Dramatic increases in domestic oil and natural gas production over the past several years have produced tremendous economic benefits for Americans. However, the federal government restricts opportunities by limiting the ability to export crude oil and natural gas. Crude oil exports have been banned since the 1970s except in rare circumstances. For liquefied natural gas (LNG) exports, companies must first obtain approval from both the Federal Energy Regulatory Commission (FERC) and the DOE. A facility is automatically authorized if the recipient country is one of the few with a free trade agreement with the U.S. In the absence of such an agreement, the DOE can arbitrarily deny a permit if it believes the volume of natural gas exports is not in the public's interest.[5] Congress should treat energy like any other regularly traded good or service and end both the crude oil export ban and the DOE's role in the decision-making process for LNG exports. Further, the federal government should not impose taxes on foreign energy technologies to protect American energy manufacturers. Companies should have the ability to import energy technologies at a lower cost without facing a penalty from Washington.

- **Reform DOE laboratories.** For far too long, Congress and the DOE have attempted to use taxpayer money to drive technologies all the way to the market, crippling the role of entrepreneurs and wasting billions of taxpayer dollars in the process. When the government attempts to drive technological commercialization, it circumvents the competitive process that properly assigns risk and reward in an open market. By pulling capital out of the private sector to finance government-supported projects, this intervention also creates dependence on the taxpayer, which can hinder innovation over the long term.

  A more appropriate and productive role for the DOE is to conduct the basic research to meet government needs that the private sector would not undertake, and to allow the private sector, using private funds, to tap into that research and commercialize it when there is an attractive opportunity to do so. Such a system would also allow workers at the federal labs, when appropriate and without violating conflict-of-interest rules, to push research into the marketplace if they see an opportunity. To that end, in the 113th Congress, the House of Representatives easily passed the Department of Energy Laboratory Modernization and Technology Transfer Act of 2014 to increase flexibility and private-sector access to the national labs; and a companion piece, America Implementing New National Opportunities to Vigorously Accelerate Technology, Energy, and Science (INNOVATES) Act, was introduced in the Senate.[6]

Budget

Congress has an opportunity to rein in growing spending and debt. It should seize that opportunity. Last year, lawmakers waived the debt limit until March 16, 2015, and then remained largely silent about the economic dangers posed by excessive federal spending and debt. The new Congress needs to address these issues with the seriousness they deserve.

In a joint op-ed published the day after the elections in *The Wall Street Journal,* House Speaker John Boehner (R–OH) and Senate Majority Leader Mitch McConnell (R–KY) promised to address "a national debt that has Americans stealing from their children and grandchildren, robbing them of benefits

5. Nicolas D. Loris, "U.S. Natural Gas Exports: Lift Restrictions and Empower the States," Heritage Foundation *Backgrounder* No. 2767, February 11, 2013, http://www.heritage.org/research/reports/2013/02/us-natural-gas-exports-lift-restrictions-and-empower-the-states.

6. Department of Energy Laboratory Modernization and Technology Transfer Act of 2014, H.R. 5120, 113th Congress, 2nd Sess., and America Implementing New National Opportunities to Vigorously Accelerate Technology, Energy, and Science, S. 1793, 113th Cong., 1st Sess.

that they will never see and leaving them with burdens that will be nearly impossible to repay."[7] The congressional budget process affords them just this opportunity. Congress should:

- **Adopt a path to balance the budget.** The new Congress will encounter its first opportunity to exert spending control when the House and Senate introduce their respective budgets this year.[8] Congress is supposed to pass its budget resolution by April 15. Congressional budgets cover all spending and taxes over the next decade and afford Congress an opportunity to use reconciliation to make changes to mandatory programs or taxes. Obamacare is sure to be at the center of those budget debates. With $1.8 trillion in new spending over the next 10 years, Obamacare's subsidies and Medicaid expansion are projected to drive 44 percent of the growth in entitlement spending. Furthermore, Congress should address growing spending in Medicare and Social Security, two programs whose trust funds are on the path to exhaustion as their burden on current and future workers grows.

- **Establish a BRAC-like spending commission.** Special-interest pressures, the demise of the federal budget process, and a lack of congressional oversight keep duplicative and ineffective federal programs on the books. A Base Realignment and Closure (BRAC)–like spending commission could help to break through the status quo to consolidate duplicative programs and eliminate ineffective spending.[9] The commission should be independent and bipartisan, it should review all domestic programs and agencies using clear and transparent criteria, and its recommendations should be considered under expedited legislative action. House Majority Leader Kevin McCarthy (R–CA) recently suggested that he was considering such a commission.[10]

- **Expand the congressional budget window.** The Congressional Budget Office (CBO) projects spending and revenue effects for the first 10 years of any legislative proposal. This focus ignores the longer-term effects of policy proposals, and sets up perverse incentives to manipulate the policy to accomplish a more favorable 10-year score. This is particularly problematic when it comes to entitlement proposals, with policymakers adjusting the design of a law to intentionally hide a spending explosion beyond the 10-year window.

  The Affordable Care Act (ACA), a law passed in 2010, is the quintessential example of this approach. As budget expert Patrick Louis Knudsen and Heritage Senior Fellow Robert Moffit explained, "Major provisions of the ACA, such as enrollment in its insurance exchanges, did not start until 2014, and the CBO projected that coverage would build up gradually. So, obviously, the first 10 years' worth of CBO estimates predictably failed to capture the full range of spending required by the law."[11] Knudsen explained in a different paper, "Indeed, lawmakers commonly phase in program expansions, deliberately limiting the spending and deficit impact of the first decade, but back-loading the much larger effects into subsequent years."[12]

  Congress should expand the budget window to cover 20 years, or even 30 years, to improve transparency and make spending and revenue effects of major policy changes more visible and understandable over a longer-term horizon. House Majority

7. John Boehner and Mitch McConnell, "Now We Can Get Congress Going," *The Wall Street Journal*, November 5, 2014, http://www.speaker.gov/op-ed/boehnermcconnell-op-ed-now-we-can-get-congress-going (accessed March 13, 2015).
8. Romina Boccia, "Eliminating Waste and Controlling Government Spending," Heritage Foundation *Backgrounder* No. 2960, October 17, 2014, http://www.heritage.org/research/reports/2014/10/eliminating-waste-and-controlling-government-spending.
9. Ibid.
10. Jake Sherman, "Kevin McCarthy Vows Change on Hill to Save GOP," *Politico*, October 26, 2014, http://www.politico.com/story/2014/10/kevin-mccarthy-congress-republicans-112209.html (accessed March 27, 2015).
11. Patrick Louis Knudsen and Robert E. Moffit, "The Affordable Care Act's Mounting Budgetary Pressures," Heritage Foundation *Backgrounder* No. 2980, December 8, 2014, http://www.heritage.org/research/reports/2014/12/the-affordable-care-acts-mounting-budgetary-pressures.
12. Patrick Louis Knudsen, "An Analysis of Selected Budget Process Reforms," Heritage Foundation *Discussion Paper* No. 16, April 11, 2014, http://www.heritage.org/research/reports/2014/04/an-analysis-of-selected-budget-process-reforms.

Leader McCarthy recently suggested that he supported an expansion of the CBO budget window.[13]

Access to Capital for Business and Entrepreneurs

Capital formation improves economic growth, boosts productivity, and increases real wages. Entrepreneurship also improves economic growth, boosts productivity, and increases real wages because it improves economic efficiency and consumer satisfaction by bringing new technologies and production processes to market, and by making markets more creative, dynamic, and flexible.[14] Start-up companies account for most of the new net job creation in the United States.[15] Securities regulation has important effects on both capital formation and entrepreneurship.

Entrepreneurship in America is in decline. Business exits now exceed new business formations.[16] Many other indicia of entrepreneurial health also indicate that the government has placed an unprecedented burden on small and start-up businesses. Accordingly, job creation, productivity improvements, and welfare-enhancing innovation have slowed down.

Among the most important factors impeding entrepreneurship are securities laws and, to a lesser extent, banking laws and practices that restrict entrepreneurs' access to the capital needed to launch or expand their businesses.[17] After all, without capital to launch a business in the first place, other impediments to entrepreneurial success are a moot point.

Often, an entrepreneurial firm will need capital from outside investors or lenders. Other than friends or family, outside investors are typically described as "angel investors" or "venture capitalists." Typically, angel investors are individuals who invest at the early "seed stage," while venture capitalists are firms or funds that make investments later in the firms' life cycle after "proof of concept." Firms seeking outside investors are often the most dynamic, high-growth companies.[18] The process of raising capital from investors is heavily regulated at both the state and federal level. State laws governing securities are known as "blue sky laws."

It is quite clear that existing regulations, usually imposed in the name of investor protection, go beyond those necessary to deter fraud and achieve reasonable, limited, and scaled disclosure for small firms. Existing rules seriously impede the ability of entrepreneurial firms to raise the capital they need to start, to grow, to innovate, and to create new products and jobs.

The 2012 JOBS Act was a bipartisan achievement of consequence.[19] It will improve the regulatory

13. Rachel Stoltzfoos, "McCarthy's Big Plan to Streamline, Modernize Congress," *The Daily Caller*, October 27, 2014, http://dailycaller.com/2014/10/27/mccarthys-big-plan-to-streamline-modernize-congress/ (accessed March 13, 2015).
14. In terms of the neo-classical growth model, entrepreneurship is an important factor affecting the rate of technological change and the marginal productivity of capital.
15. Ryan Decker, John Haltiwanger, Ron Jarmin, and Javier Miranda, "The Role of Entrepreneurship in US Job Creation and Economic Dynamism," *Journal of Economic Perspectives*, Vol. 28, No. 3 (Summer 2014), pp. 3–24, http://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.28.3.3 (accessed March 11, 2015), and Salim Furth, "Research Review: Who Creates Jobs? Start-up Firms and New Businesses," Heritage Foundation *Issue Brief* No. 3891, April 4, 2013, http://www.heritage.org/research/reports/2013/04/who-creates-jobs-startup-firms-and-new-businesses.
16. Ian Hathaway and Robert Litan, "Declining Business Dynamism in the United States: A Look at States and Metros," Brookings Institution, May 2014, http://www.brookings.edu/~/media/research/files/papers/2014/05/declining%20business%20dynamism%20litan/declining_business_dynamism_hathaway_litan.pdf (accessed March 11, 2015).
17. For a good short introduction to the problems, see SEC Commissioner Daniel M. Gallagher, "Whatever Happened to Promoting Small Business Capital Formation?" September 17, 2014, http://www.heritage.org/events/2014/09/commissioner-gallagher. See also David R. Burton, "Proposals to Enhance Capital Formation for Small and Emerging Growth Companies," testimony before the Capital Markets and Government Sponsored Enterprises Subcommittee, Committee on Financial Services, U.S. House of Representatives, April 11, 2014, http://www.heritage.org/research/testimony/2014/04/capital-formation-for-small-and-emerging-growth-companies, and Stuart R. Cohn and Gregory C. Yadley, "Capital Offense: The SEC's Continuing Failure to Address Small Business Financing Concerns," *New York University Journal of Law and Business*, Vol. 4, No. 1 (2007), pp. 1–87.
18. Sampsa Samila and Olav Sorenson, "Venture Capital, Entrepreneurship, and Economic Growth," *Review of Economics and Statistics*, Vol. 93, No. 1 (February 2011), pp. 338–349, and Dane Stangler, "High-Growth Firms and the Future of the American Economy," Kauffman Foundation, March 9, 2010, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1568246 (accessed March 13, 2015).
19. H.R. 3606 (112th Congress) passed the House with overwhelming support of 390 to 23, and passed the Senate by a wide margin of 73 to 26. For general information, see U.S. Securities and Exchange Commission, "Jumpstart Our Business Startups (JOBS) Act," https://www.sec.gov/spotlight/jobs-act.shtml (accessed March 11, 2015).

environment for entrepreneurial capital formation. Whether its impact is small or significant is largely up to the SEC. The rules proposed (but not yet finalized) by the SEC are cause for serious concern.[20]

While the JOBS Act represents progress, a great deal more needs to be done. Some of the most important things that Congress could do to remove impediments to entrepreneurial capital formation are:

- **Protect the ability of people to invest in private offerings.** Many are urging regulators to raise the income and net worth requirements under Regulation D so that only the wealthiest 2 percent of the public are allowed to invest in private offerings. To prevent this limitation, Congress should establish a statutory definition of an "accredited investor" for purposes of determining who may invest in Regulation D offerings (private placements) that (1) sets the income and net worth requirements for natural persons at current levels, and (2) establishes specific bright-line tests for determining who is a sophisticated investor permitted to invest in private offerings. Regulation D is the primary way that businesses and entrepreneurs raise capital in the U.S.—about $1 trillion annually.

- **Make crowdfunding economically viable.** Congress needs to fix the crowdfunding exemption included in the JOBS Act. Crowdfunding is meant to allow the smallest companies to raise small amounts from many investors via the Internet. The regulatory burdens placed on issuers and crowdfunding web portals are much too high—so high that this new means of raising capital will probably be rendered uneconomic for most small issuers.

Agriculture

Government interventionist polices are still the norm in agriculture, distorting decisions made by farmers and stunting innovation and reducing consumer choices. Farmers, like other business leaders, can effectively manage risk and compete without special handouts. While major systemic change may not be feasible right away, Congress can address three straightforward issues that would be good first steps:

- **Separate agricultural programs from food stamps.** Farm bills have combined both agricultural programs with food stamps for political purposes in order to get a bill passed.[21] In reality, the farm bill is really a food stamp bill, in which food stamps account for about 80 percent of the farm bill's costs.[22] This combination of disconnected programs prevents these distinct programs from being considered and voted on based on their own merits. As a matter of sound policy, they should be separated and each addressed in its own legislation. This would allow both food stamps and agricultural programs to get the attention they deserve.

  In the 113th Congress, the House did pass two different bills addressing these programs, one an "agriculture-only" farm bill, and another bill just covering food stamps. The agriculture-only farm bill authorized programs for five years, while the food stamp bill was authorized for three years—this helped to ensure that in the immediate future, these programs would have been on different timelines and not combined back together.[23] The House combined both bills back together when the legislation went to conference, but the

20. These are (1) the proposed rule implementing Regulation A+; (2) the proposed rule implementing Title III crowdfunding; (3) the proposed Regulation D amendments; and (4) the proposed rule implementing Titles V and VI. In addition, the final rule implementing Title II relating to general solicitation is far more burdensome than it should be. See also, for example, Rutheford B. Campbell Jr., "The New Regulation of Small Business Capital Formation: The Impact—If Any—of the Jobs Act," April 30, 2014, *Kentucky Law Journal*, forthcoming, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2434264 (accessed March 11, 2015).
21. See, for instance, Daren Bakst, "House Oks Farm Bill That Staggers Food Stamps, Agriculture Programs," The Daily Signal, September 28, 2013, http://dailysignal.com/2013/09/28/house-votes-for-farm-bill-that-staggers-food-stamps-agriculture-programs/.
22. Ralph M. Chite et al., "The 2014 Farm Bill (P.L. 113–79): Summary and Side-by-Side," Congressional Research Service, February 12, 2014, http://www.farmland.org/programs/federal/documents/2014_0213_CRS_FarmBillSummary.pdf (accessed March 11, 2015).
23. H.R. 2642 (agriculture-only bill), as passed by the House, http://www.gpo.gov/fdsys/pkg/BILLS-113hr2642eh/pdf/BILLS-113hr2642eh.pdf (accessed March 11, 2015), and H.R. 3102 (food stamp bill), http://thomas.loc.gov/cgi-bin/query/z?c113:H.R.3102 (accessed March 11, 2015).

different timelines remained intact.[24] Legislators, during conference, removed these different timelines.

The House Agriculture Committee is currently conducting a comprehensive review of the food stamp program.[25] Central to the committee's work should be legislation that would separate food stamps from agricultural programs. This should include creating different timelines for these programs as were passed in the House during the 113th Congress, authorizing food stamps through fiscal year (FY) 2016, while agricultural programs would remain authorized through FY 2018.[26]

- **Cap the costs of two major new farm programs.** The 2014 farm bill eliminated the infamous direct payments program through which farmers received subsidies regardless of need. Instead of stopping there and making real progress, Congress created two new commodity programs—Price Loss Coverage (PLC) and Agricultural Risk Coverage (ARC)—which will likely cost as much as or far more than the direct-payments program.[27] PLC provides payments to farmers when commodity prices fall below a fixed reference price established by statute. ARC protects farmers from shallow losses (minor losses), providing payments when their actual revenues fall below expected revenues.[28]

  Congress should cap the costs of these programs so that taxpayers are not faced with an excessive amount of liability that could arise from these programs. The House overwhelmingly passed an amendment[29] to its original farm bill that would cap the costs of these programs; the provision was included in the farm bill[30] that was sent to the Senate for conference. Unfortunately, the provision was then taken out during conference. Now Congress can once again take action so that taxpayers are not paying more than what was projected or what they already were paying under direct payments.

- **Repeal the USDA catfish inspection program.** The Food and Drug Administration (FDA) is responsible for inspecting both domestic and imported seafood. However, in the 2008 farm

24. See, for example, H.R. 2642, Engrossed Amendment House §4024. This is one provision that addresses the three-year authorization, http://www.gpo.gov/fdsys/pkg/BILLS-113hr2642eah/pdf/BILLS-113hr2642eah.pdf (accessed March 11, 2015).
25. News release, "House Agriculture Committee Begins Full Review of the SNAP," House Committee on Agriculture, February 25, 2015, http://agriculture.house.gov/press-release/house-agriculture-committee-begins-full-review-snap (accessed March 11, 2015).
26. Chairman of the House Agriculture Committee, Mike Conaway (R–TX), is drawing attention to the separation issue: "The House Agriculture Committee will take another look at the idea of severing nutrition programs from the rest of the farm bill as part of its upcoming review of the Supplemental Nutrition Assistance Program.… 'We're going to have to create an urban-rural alliance that helps us pass the next farm bill that's not based or held together by the SNAP program.'" "Lawmakers to Consider Splitting Next Farm Bill, Conaway Says," *Seminole Sentinel*, February 8, 2015, http://www.seminolesentinel.com/Content/News/State-and-National/Article/Lawmakers-to-consider-splitting-next-farm-bill-Conaway-says/1/8/5677 (accessed March 11, 2015).
27. In its recently released March baseline projections, the CBO projected that the average annual costs of ARC and PLC for the five-year farm bill would be $5 billion. Congressional Budget Office, "CBO's March 2015 Baseline for Farm Programs," March 9, 2015, http://www.cbo.gov/publication/44202 (accessed March 13, 2015). Some experts are estimating that ARC and PLC could cost as much as $8 billion (if not more) in the first year alone. See, for instance, Ros Krasny and Christine Stebbins, "US Farmers Set to Get Huge Government Payouts Despite Bumper Harvest," Reuters, November 19, 2014, http://www.reuters.com/article/2014/11/19/usa-grains-insurance-idUSL2N0T122P20141119 (accessed March 13, 2015). Direct payments were projected to cost around $4.5 billion had they not been eliminated. See Congressional Budget Office, "CBO's May 2013 Baseline for Farm Programs," May 14, 2013, https://www.cbo.gov/sites/default/files/cbofiles/attachments/44202-2013-05-USDA.pdf (accessed March 13, 2015).
28. Subsidies are paid when actual revenue falls below 86 percent of historical or benchmark revenue. See "Crop Commodity Programs: Title I (Commodities)," U.S. Department of Agriculture, Economic Research Service, April 11, 2014, http://www.ers.usda.gov/agricultural-act-of-2014-highlights-and-implications/crop-commodity-programs.aspx (accessed March 13, 2015), and see Agriculture Act of 2014, Public Law 113–79, §1117.
29. House Amendment 179 to Federal Agriculture Reform and Risk Management Act of 2013, H.R. 1947, 113th Cong., 1st Sess. The amendment passed by a 267–156 vote. The roll call vote can be found at U.S. House of Representatives Office of the Clerk, "Final Vote Results for Roll Call 257," June 19, 2013, http://clerk.house.gov/evs/2013/roll257.xml (accessed March 13, 2015).
30. Agriculture Act of 2014, Public Law 113–79, §1107(e).

bill, a special exception was created that requires the U.S. Department of Agriculture (USDA) to inspect catfish. The program (still to be implemented), which the USDA has estimated will cost about $14 million annually,[31] will impose costly duplication because facilities that process seafood, including catfish, will be required to comply with both FDA and USDA regulations. The Government Accountability Office (GAO) has repeatedly criticized the program. Its views on the program are captured by the not-so-subtle title of a 2012 GAO report, "Seafood Safety: Responsibility for Inspecting Catfish Should Not Be Assigned to USDA."[32]

The program will hurt consumers by limiting competition, and will likely harm industries by provoking retaliatory trade measures by foreign countries. The retaliation would likely be against industries *other than* the catfish industry, such as milk producers or meat packers. There is widespread bipartisan opposition to this program. The House farm bill would have repealed the program.[33] In his FY 2014 budget, President Barack Obama sought to eliminate funding for the USDA catfish program.[34] Congress should repeal the program.

Environment

Most environmental policymaking today is being done by executive agency actions, including regulation. Congress has delegated too much power to executive agencies to manage the environment and human health. As a result, costly regulations are developed by unelected and unaccountable bureaucrats instead of by the American people's representatives in Congress. There are two major and time-sensitive regulatory issues that Congress should address early in the 114th Congress.

- **Prohibit implementation of the EPA's and Corps' proposed "Waters of the United States" rule.** Under the Clean Water Act, the federal government has jurisdiction over "navigable waters," which the statute further defines as "the waters of the United States, including the territorial seas."[35] The term "waters of the United States" was never clearly defined in statute, giving the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) the opportunity to take advantage of any ambiguities. The EPA and Corps have tried to expand their power by defining waters of the United States extremely broadly. The United States Supreme Court has twice shot down the agencies' overreach in just over a decade.[36] On April 21, 2014, the agencies published a proposed rule[37] in the *Federal Register* that would redefine waters of the United States. This controversial rule would allow the agencies to regulate almost any type of water body, from most ditches to depressions in land that are dry most of the year except when there is heavy rain.

  Congress should prohibit the agencies from moving forward with the proposed rule or from taking any similar action. The agencies may finalize the rule as early as this spring, so action would need to be taken immediately. Fortunately, there is widespread opposition to the proposed rule. The House passed legislation in the 113th Congress

31. This USDA Food Safety and Inspection Service (FSIS) estimate includes the costs to both the federal government and industry. The government would bear 98 percent of the costs. The GAO had some concerns about this estimate. U.S. Government Accountability Office, "Seafood Safety: Responsibility for Inspecting Catfish Should Not Be Assigned to USDA," GAO–12–411, May 2012, http://www.gao.gov/assets/600/590777.pdf (accessed March 13, 2015). For example, the GAO explained, "FSIS indicated that it did not have complete information on the total number of domestic and foreign catfish processing facilities that would be affected by the proposed regulations." Ibid., p. 20.
32. U.S. Government Accountability Office, "Seafood Safety: Responsibility for Inspecting Catfish Should Not Be Assigned to USDA."
33. Agriculture Act of 2014, Public Law 113–79, §1117.
34. U.S. Office of Management and Budget, "Building a 21st Century Government by Cutting Duplication, Fragmentation, and Waste," April 9, 2013, http://www.whitehouse.gov/omb/Building_a_21st_Century_Government_by_Cutting_Duplication_Fragmentation_and_Waste (accessed March 13, 2015).
35. 33 U.S. Code §1362.
36. *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al.*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006).
37. *Federal Register*, Vol. 79, No. 76 (April 21, 2014), http://www.gpo.gov/fdsys/pkg/FR-2014-04-21/pdf/2014-07142.pdf (accessed March 13, 2015).

that would have prohibited the rule from being finalized.[38] In addition to prohibiting implementation of the rule, Congress needs to start working on legislation that would define waters of the United States to generally cover traditional navigable waters. This would provide much-needed clarity and stop the constant overreach by the agencies.

- **Prohibit implementation of the new proposed ozone standard.** On December 17, 2014, the EPA published its proposed new ozone standards in the *Federal Register*.[39] These standards address ground-level ozone, which is the primary component of smog. Every five years, the EPA is required by law to review and, if appropriate, revise the ozone standards. This requirement has effectively become a way to continuously make the standards far more stringent, even as air quality has drastically improved. The current standard for ozone was set at 75 parts per billion (ppb) in 2008. The new standard proposed by the EPA would decrease that level to 65 ppb to 70 ppb, though the EPA is still openly considering an even lower standard of 60 ppb. The National Association of Manufacturers has said that a 65 ppb standard could be the costliest regulation in U.S. history.[40]

  Setting a new standard is premature. States are just beginning to implement the current standard of 75 ppb. The EPA does not even know what kind of impact, positive or negative, the current standard will have, yet it has proposed that states should already get moving on a new standard. Based on 2011–2013 EPA data, most monitored counties would meet the existing 75 ppb standard. However, nearly half of these counties would fail to meet a 70 ppb standard, and it gets far worse as the standard becomes more stringent.[41] According to the Congressional Research Service, 123 million people live in areas that have not attained the current standards. In fact, 105 million people live in areas that are still considered nonattainment for the less stringent 1997 ozone standard.[42] Congress should prohibit the implementation of any new ozone standard.

Monetary Policy

More than five years after the 2008 financial crisis, the Federal Reserve's proper role is still the subject of much debate. Many of the Fed's activities—such as emergency lending and expansive asset purchases—were based on the premise that failing to undertake them would have caused a calamity on the scale of the Great Depression. Even after financial markets stabilized, the Fed expanded its activities because the recovery was slow to materialize. These ongoing monetary policies have come under fire for being ineffective and for increasing the likelihood of future inflation because they were so aggressive.[43] Congress should adopt two complementary policy solutions:

- **Establish a National Monetary Commission.** Congress should provide a public venue for both critics and supporters to discuss the Federal Reserve's past operations and the appropriate role for the central bank going forward. A formal monetary commission, as would have been

38. Waters of the United States Regulatory Overreach Protection Act of 2014, H.R. 5078, 113th Cong., 2nd Sess.
39. *Federal Register*, Vol. 79, No. 242 (December 17, 2014), pp. 75233–75411, https://federalregister.gov/a/2014-28674 (accessed March 13, 2015).
40. National Association of Manufacturers' ozone regulations web page discussing a February 2015 study entitled "Economic Impacts of a 65 ppb National Ambient Air Quality Standard for Ozone," http://www.nam.org/Ozone-Regulations/ (accessed March 13, 2015).
41. In the U.S., 717 counties were monitored for ozone (using 2011–2013 EPA data); 49 percent of those counties would be in violation of a 70 ppb standard; 75 percent for a 65 ppb standard; 91 percent for a 60 ppb standard. A 60 ppb standard may be impossible to meet because background levels in some areas of the country have been found to regularly exceed 60 ppb. Amanda Peterka, "Regulators Squirm as Good Ozone Breaks Bad," E&E Greenwire, November 17, 2014, http://www.eenews.net/greenwire/2014/11/17/stories/1060009038 (accessed March 13, 2015).
42. James E. McCarthy, "Ozone Air Quality Standards: EPA's 2015 Revision," Congressional Research Service, October 3, 2014, http://fas.org/sgp/crs/misc/R43092.pdf (accessed February 24, 2015).
43. Norbert J. Michel and Stephen Moore, "Quantitative Easing, The Fed's Balance Sheet, and Central Bank Insolvency," Heritage Foundation *Backgrounder* No. 2938, August 14, 2014, http://www.heritage.org/research/reports/2014/08/quantitative-easing-the-feds-balance-sheet-and-central-bank-insolvency.

created through the Centennial Monetary Commission Act of 2013[44] that was introduced in both the House and Senate, would be an excellent vehicle for assessing the Fed's overall performance and implementing the best long-term monetary policy reforms. The commission's recommendations would not bind Congress to any particular changes, but it would provide Members with the information they need to fulfill their constitutional responsibilities regarding monetary policy.[45] Major structural reforms to the Fed will most likely not be achieved without such a formal commission, and the House bill received significant support with 40 co-sponsors.

- **Require the Fed to implement rules-based policy.** While a formal monetary commission completes its tasks, Congress can also greatly improve transparency and predictability by requiring the Fed to adopt a rules-based monetary policy. For example, the approach offered in the Federal Reserve Accountability and Transparency Act of 2014 would require the Fed to choose its own monetary policy rule. It would also give the Fed the flexibility to stop following its policy rule, provided that it explains this decision to Congress. A policy based on this type of rule could be implemented quickly because it would avoid some of the drawn-out, scholarly debates sure to ensue in a formal monetary commission. This sort of legislation should enjoy bipartisan support because it would not overly restrict the Fed. It would merely require the Fed to choose from among one of several policy rules with benefits long acknowledged by economists.

Regulatory Reform

In his January 2014 State of the Union address, President Obama vowed to wield his executive powers when faced with congressional resistance to his legislative agenda: "America does not stand still—and neither will I," he said. "So wherever and whenever I can take steps without legislation...that's what I am going to do."[46] This provocative declaration was startling in its bluntness, but it was hardly a new policy.

During its first five years, the Obama Administration aggressively exploited regulation to get its way. Issuing 157 new major rules at a cost to Americans approaching $73 billion *annually*, this Administration is very likely the most regulatory in U.S. history.[47] The new Congress should reduce this flood of regulation, ensuring that each new rule is necessary and its costs minimized:

- **Require congressional approval of major rules.** Congress should pass legislation that would require new major regulations to be approved by Congress before going into effect. The House passed a similar measure, the Regulations from the Executive in Need of Scrutiny (REINS) Act, in the 113th Congress.[48]

  Legislation such as the REINS Act would provide real teeth to regulatory review. Specifically, major rules would not be formally adopted until and unless a "resolution of approval" is passed by Congress. As with the Congressional Review Act's "resolution of *dis*approval," this resolution would be subject to fast-track consideration. This would be a significant change in the way rules are adopted. The effect is to reinforce the

44. Centennial Monetary Commission Act of 2013, H.R. 1176, 113th Cong., 1st Sess., and Centennial Monetary Commission Act of 2013, S. 1895, 113th Cong., 1st Sess.
45. Norbert J. Michel, "The Centennial Monetary Commission Act of 2013: A Second Look at the Fed and the 2008 Financial Crisis," Heritage Foundation *Backgrounder* No. 2926, July 1, 2014, http://www.heritage.org/research/reports/2014/07/the-centennial-monetary-commission-act-of-2013-a-second-look-at-the-fed-and-the-2008-financial-crisis?ac=1.
46. "Full Transcript: Obama's 2014 State of the Union Address," *The Washington Post*, January 28, 2014, http://www.washingtonpost.com/politics/full-text-of-obamas-2014-state-of-the-union-address/2014/01/28/e0c93358-887f-11e3-a5bd-844629433ba3_story.html (accessed March 13, 2015).
47. James L. Gattuso and Diane Katz, "Red Tape Rising: Five Years of Regulatory Expansion," Heritage Foundation *Backgrounder* No. 2895, March 26, 2014, http://www.heritage.org/research/reports/2014/03/red-tape-rising-five-years-of-regulatory-expansion.
48. Regulations from the Executive in Need of Scrutiny Act, H.R. 367, 113th Cong., 1st Sess.

constitutional balance of powers. As a first matter, the change restores Congress's constitutional role of legislating, much of which has been delegated to regulators in recent decades. Equally important, the change would also make lawmakers more accountable for their legislative actions.

- **Make the CFPB accountable to Congress.** The Consumer Financial Protection Bureau (CFPB) was created in 2010 by the Dodd–Frank Wall Street Reform and Consumer Protection Act, and imbued with unparalleled powers over virtually every consumer financial product and service.[49] The flood of regulations imposed by the bureau are constricting the availability of financial products and services and raising costs—all of which limit consumer access to credit.

  The CFPB was designed to evade the checks and balances that apply to most other regulatory agencies. Although established within the Federal Reserve System, the CFPB operates independently, and with virtually no oversight. CFPB funding is set by law at a fixed percentage of the Federal Reserve's operating budget. This budget independence limits congressional oversight of the agency. The best option going forward would be outright elimination of the CFPB through repeal of Title X of Dodd–Frank. A more immediate step is to abolish the CFPB's current funding mechanism and subject it to congressional control. Given the CFPB's overly broad powers, there is no justification for allowing it to circumvent oversight by Congress.

Too Big to Fail

The financial crisis of 2008 led to the "Great Recession" from which the nation is still recovering. Despite the slow economic rebound, and in the face of contradictory historical evidence, many critics still claim that a lack of regulation caused the crisis. If anything, though, the constant expansion of the massive federal regulatory framework *contributed* to the crisis. It follows that most of the so-called solutions offered since then—virtually all of which involved more regulation—will fail to make financial markets any safer. Congress should:

- **Amend the bankruptcy law to establish an orderly resolution process for large institutions.** One of Dodd–Frank's most troubling aspects is the creation of seizure authority—politely called "orderly liquidation authority"—for certain firms that regulators perceive to be failing. While orderly liquidation sounds pleasant, Title II of Dodd–Frank allows federal regulators to seize troubled financial firms—with minimal judicial review—and close down their affairs. The time-tested bankruptcy system, with its legal protections and judicial supervision, is a far better system.

  Short of repealing Dodd–Frank, the preferred solution—eliminating Title II of the law—would be a good way to mitigate the too-big-to-fail problem. Amending bankruptcy law so that a credible resolution process exists for large financial firms—an idea that already has widespread support among policymakers—is a key component to fixing this problem.

- **End the Fed's broken lender-of-last-resort function.** During the 2008 crisis, the supposedly independent Federal Reserve worked closely with the U.S. Treasury Department to facilitate bailouts to financially weak firms and their creditors via its so-called emergency lending authority. This emergency lending authority exists because the Fed has historically been viewed as the nation's lender of last resort, but it now serves mainly as a way to enable too-big-to-fail policies.

  Throughout its history, the Federal Reserve has given special treatment to some by lending to financially troubled firms, thus jeopardizing the independence of its monetary policy decisions and putting taxpayers at risk. The 2008 financial crisis is only the most recent example.[50] During the 2008 crisis, the Fed allocated credit directly to firms, as well as indirectly through more than

49. Diane Katz, "The CFPB in Action: Consumer Bureau Harms Those It Claims to Protect," Heritage Foundation *Backgrounder* No. 2760, January 22, 2013, http://www.heritage.org/research/reports/2013/01/the-cfpb-in-action-consumer-bureau-harms-those-it-claims-to-protect.
50. Norbert J. Michel, "The Fed's Failure as a Lender of Last Resort: What to Do About It," Heritage Foundation *Backgrounder* No. 2943, August 20, 2014, http://www.heritage.org/research/reports/2014/08/the-feds-failure-as-a-lender-of-last-resort-what-to-do-about-it.

a dozen broad-based lending programs. The GAO estimates that the Federal Reserve lent financial firms more than $16 trillion through these lending programs.[51]

While Dodd–Frank amended this authority after the 2008 crisis, even if these changes had been in place before the crash, the Fed would still have been able to conduct roughly half of those lending programs. Congress should help to minimize the chances of future too-big-to-fail–style bailouts by revoking the Federal Reserve's emergency lending authority and closing the discount window. This policy change should enjoy bipartisan support among all lawmakers who want to end taxpayer bailouts.

- **Eliminate the FSOC.** One of the principal ways that Dodd–Frank greatly expands the federal government's reach into financial markets is through the Financial Stability Oversight Council (FSOC). The FSOC has a broad, ill-defined mandate through which it designates certain "systemically important" financial companies for special regulations under the Federal Reserve.[52]

  These designations effectively identify the firms whose failure regulators would consider catastrophic to the U.S. economy—that is, the firms considered too big to fail. Additionally, the FSOC can require new regulations for any financial company for virtually any stability-related reason. The FSOC framework also assures that the Federal Reserve will regulate even nonbank sectors of financial markets more extensively than ever before. Short of a full repeal of Dodd–Frank, the preferred solution, Congress should eliminate the FSOC.

Transportation

People working with private businesses and state and local authorities are best able to figure out how to get themselves and their property and goods from point A to point B. The goal of federal surface transportation policy should be only to fill voids that neither the private sector nor state or local government can manage. Congress should put a stop to current federal earmarks, mandates, and funding diversions to low-value projects that only hamstring efficient state and local deployment of resources, in order to meet the commuters' demands for reduced congestion, enhanced mobility, and improved safety:

- **Empower states to address transportation needs.** Congress should incrementally lower the federal gas tax and diesel tax rates, and reduce the size of the federal-aid highway program to a modest level that only includes funding and management of the Interstate Highway System—the whole point of the gas tax in the first place. In turn, states would be empowered to assume this taxing authority and use their highway resources as they deem appropriate. Legislation was introduced in both the House and Senate during the 113th Congress that would accomplish these objectives.[53]

  Ending the current Washington-centric approach would discourage pork-barrel spending by Congress and give states the incentive to plan and fund their transportation priorities. Reform-minded state transportation officials would be free to deploy resources to modes that reduce congestion and enhance cost-effective mobility, engaging with the private sector for capital-intensive projects. Amid Washington's inaction, states such as Maryland, Michigan, Virginia, and Wyoming have increased their state gas tax rates.[54] Though some of these proposals amount to large

51. These loans were made from December 1, 2007, through July 21, 2010. U.S. Government Accountability Office, "Federal Reserve System: Opportunities Exist to Strengthen Policies and Processes for Managing Emergency Assistance," GAO–11–696, July 2011, p. 131, http://www.gao.gov/new.items/d11696.pdf (accessed March 13, 2015).
52. Norbert J. Michel, "The Financial Stability Oversight Council: Helping to Enshrine 'Too Big to Fail,'" Heritage Foundation *Backgrounder* No. 2900, April 1, 2014, http://www.heritage.org/research/reports/2014/04/the-financial-stability-oversight-council-helping-to-enshrine-too-big-to-fail.
53. The Transportation Empowerment Act (S. 1702 and H.R. 3486).
54. For a comprehensive list of states that have changed their transportation revenue sources and are using long-term credit instruments to finance projects, see Ken Orski, "Rethinking Transportation Funding," Innovation Briefs *NewsBrief* No. 16, December 19, 2014, http://www.innobriefs.com/ (accessed March 13, 2015).

tax hikes, state leaders are more likely to be held accountable for tax increases and poor prioritization of new transportation spending than are bureaucrats or lawmakers in Washington.

- **End the Transportation Alternatives Program (TAP).** Moving Ahead for Progress in the 21st Century (MAP-21), the law that governs the federal highway and transit programs, created TAP to replace a program dubbed Transportation Enhancements. Drivers across the country pay federal gas and diesel taxes, which are sent to the federal government; then each state receives its share in return according to complicated formulas. MAP-21 requires the states to set aside 2 percent of these "formula funds" for TAP projects. A portion of the TAP funds must be dedicated to Recreational Trails Program activities unless states opt out. This federal mandate results in less money for states to dedicate to bridge maintenance or road improvements.

  In FY 2014, $819.9 million was designated for eligible TAP activities, which can include activities from historic preservation to removal of outdoor advertising.[55] Identifying a connection between these activities and a federal highway program concerned with Interstate Highway System construction and maintenance proves difficult. Indeed, there is nothing *federal*-related or *highway*-related about bicycle paths, landscaping, or most other local activities. TAP should be repealed, and the money rededicated as Interstate Highway System formula funding.

55. U.S. Department of Transportation, Federal Highway Administration, "Transportation Alternatives Program," http://www.fhwa.dot.gov/map21/factsheets/tap.cfm (accessed March 13, 2015).