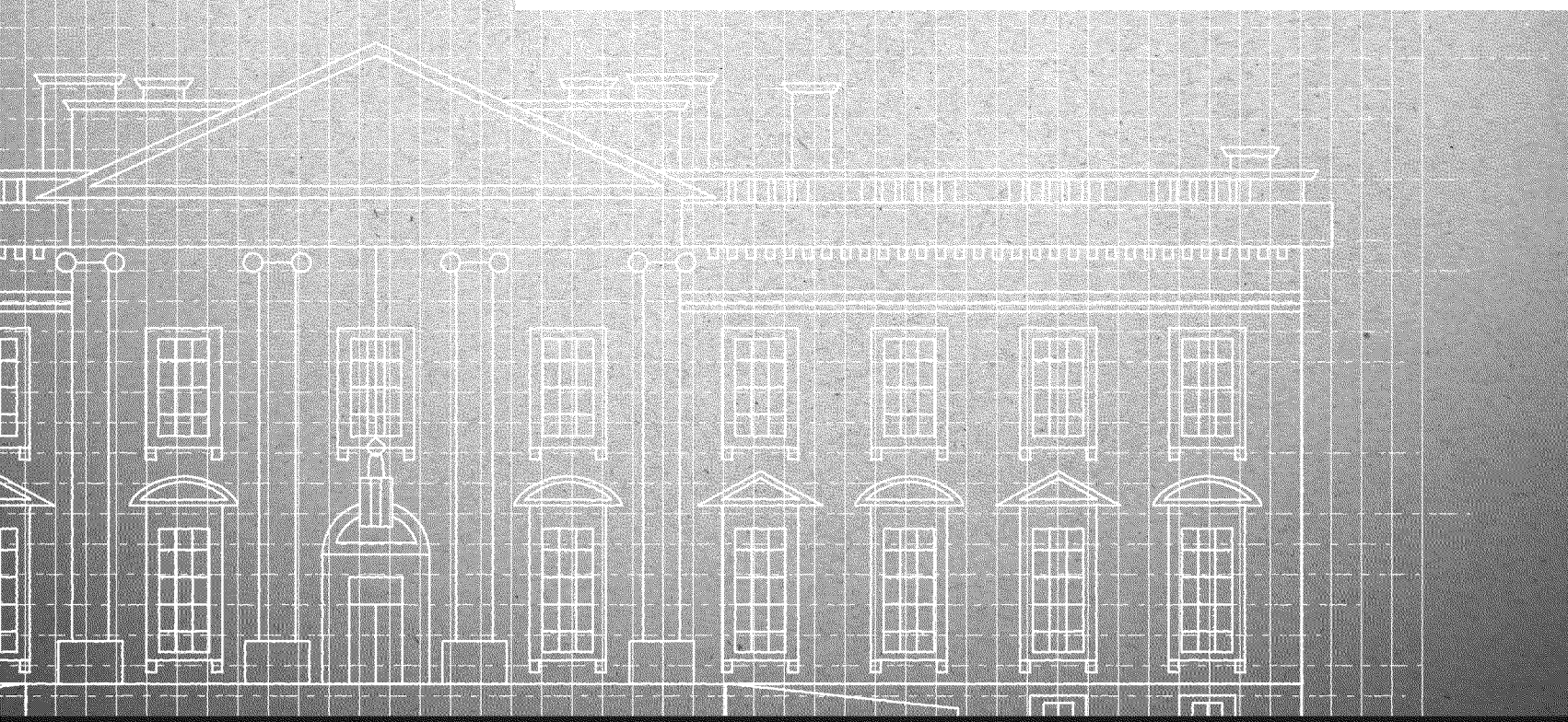
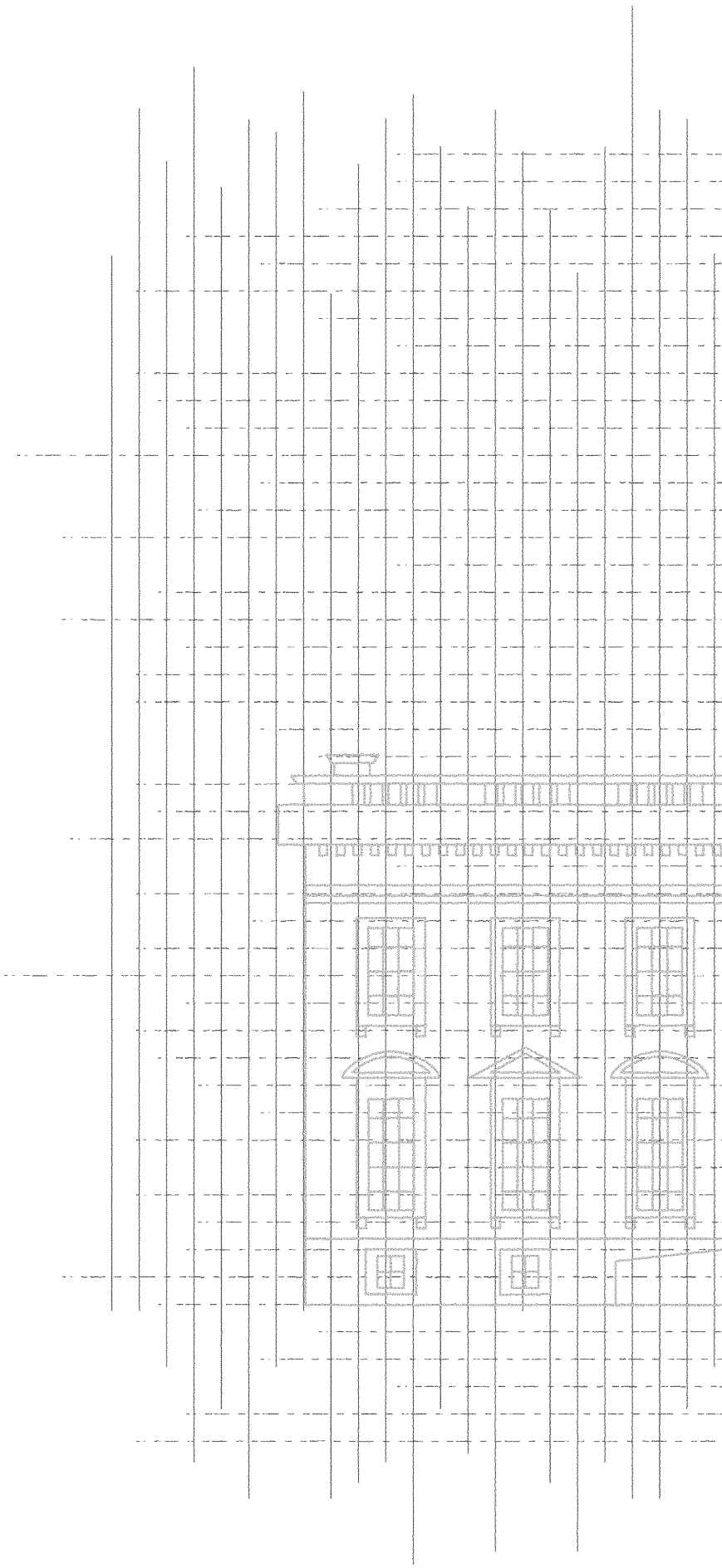
The Heritage Foundation

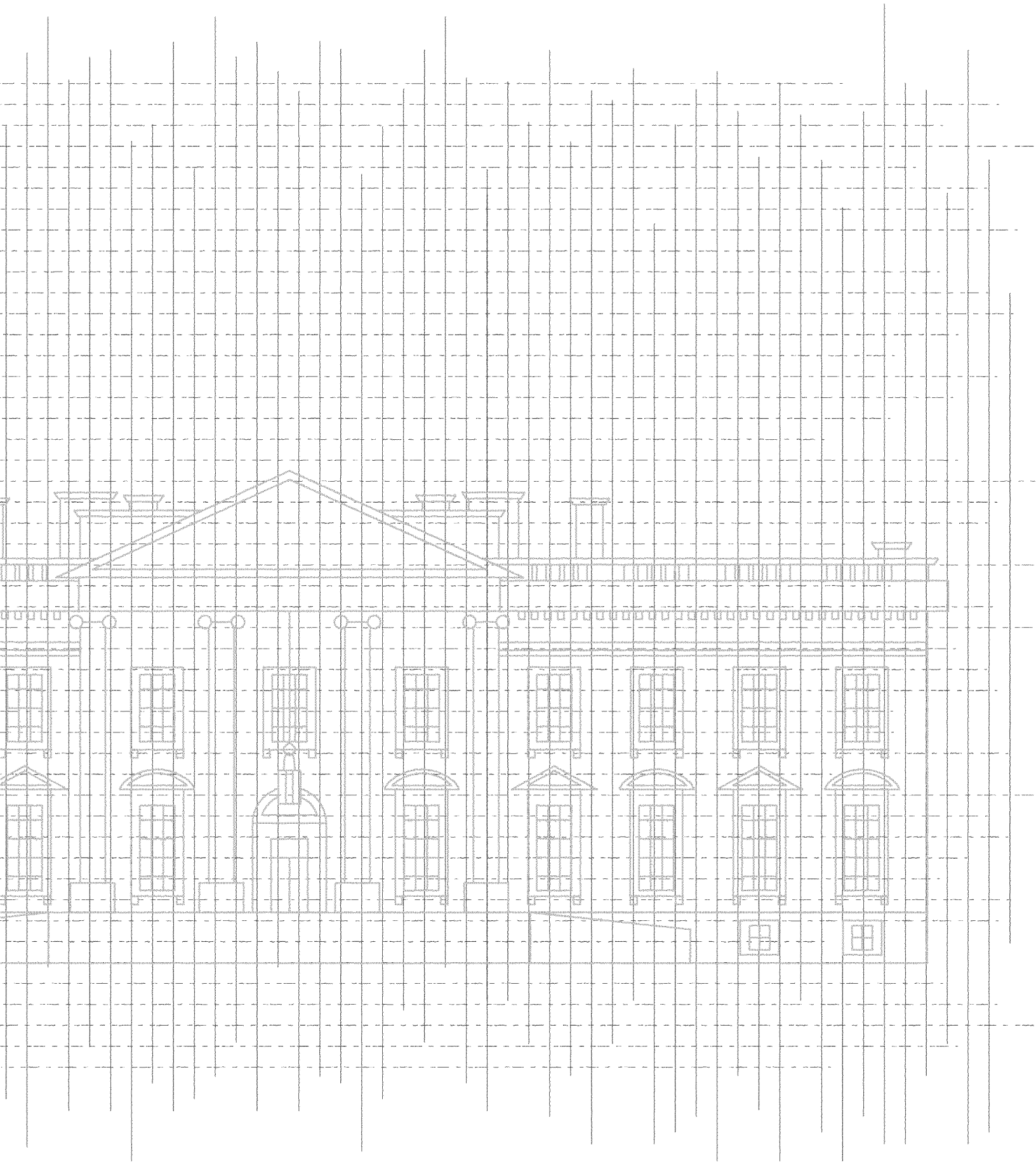
Blueprint for a New Administration

Priorities for the President



MANDATE FOR LEADERSHIP SERIES





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Blueprint for a New Administration

Priorities for the President

MANDATE FOR LEADERSHIP SERIES

Contents

Contributors vii
Priorities for the President 1
Departments and Agencies
Department of Agriculture 5
Department of Commerce 7
Department of Defense 9
Department of Education 13
Department of Energy 15
Department of Health and Human Services 19
Department of Homeland Security 23
Department of Housing and Urban Development 27
Department of the Interior 29
Department of Justice 33
Department of Labor 37
Department of State 39
Department of Transportation 43
Department of the Treasury 47
Department of Veterans Affairs 51
Environmental Protection Agency 53
National Security Council 57
Office of the Director of National Intelligence 61
Office of Personnel Management 65
Office of Management and Budget 67
Social Security Administration 69

EPA-HQ-2017-010625_0000531

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EPA-HQ-2017-010625_0000533

Priorities for the President

Since the publication of *Mandate for Leadership* in 1981, The Heritage Foundation has sought to inform presidential Administrations with principled, conservative policy recommendations to address the issues facing the country. This year, given the magnitude of the challenges confronting our nation, Heritage is publishing three volumes in the Mandate for Leadership Series.

All three volumes in the Mandate for Leadership Series deliver a clear, unified policy vision for Congress and the President. Undergirding each volume is a commitment to upholding the Constitution and to building an America where freedom, opportunity, prosperity, and civil society flourish.

Part I, *Blueprint for Balance: A Federal Budget for 2017*, released in March 2016, provides detailed recommendations for the annual congressional budget.

Part II, *Blueprint for Reform: A Comprehensive Policy Agenda for a New Administration*, released in July 2016, establishes a long-term vision, and policies to achieve that vision, that requires presidential leadership and congressional action.

This volume, *Blueprint for a New Administration: Priorities for the President,* details specific steps that the new Administration can take immediately upon assuming office to demonstrate its commitment to the long-term vision presented in the second volume.

In formulating policy recommendations in the domestic realm, Heritage analysts were guided by the belief that government policy should serve to strengthen—and not displace—free markets and civil society. In the defense and foreign policy realms, they prescribed policies aimed at protecting the sovereignty of the American people, enabling the military to protect the country's vital national interests, and promoting economic freedom abroad.

Blueprint for a New Administration offers specific steps that the new President and the top officers of all 15 cabinet-level departments and six key executive agencies can take to implement the long-term policy visions reflected in *Blueprint for Reform.* The most important priorities are addressed to the President; the remainder to the Secretary or agency head.

A number of the recommendations in *Blueprint for a New Administration* can be implemented unilaterally by the President on day one via executive order, but some of the most important recommendations—like repealing Obamacare and reforming Social Security—will require congressional approval. As a consequence, the recommendations in this volume are meant to identify the specific steps the new Administration can take to influence congressional action where necessary.

Our country faces many serious challenges at home and a growing number of threats across the globe. The full implementation of this blueprint will not address every problem in the country. Each year, Heritage assesses the strength of America's economy, society, and defense and our most recent findings reveal a great need for improvement, as explained in:

2016 Index of Economic Freedom: Promoting Economic Opportunity and Prosperity, ed. Terry Miller and Anthony B. Kim;

2016 Index of Culture and Opportunity: The Social and Economic Trends that Shape America, ed. Jennifer A. Marshall and Rachel Sheffield; and

EPA-HQ-2017-010625_0000535

2016 Index of U.S. Military Strength: Assessing America's Ability to Provide for the Common Defense, ed. Dakota L. Wood.

Blueprint for a New Administration will, however, go a long way toward strengthening America's standing in the world, meeting critical national security needs, rebuilding constitutional government, and reducing the federal government's heavy footprint on the economy and civil society.

EPA-HQ-2017-010625_0000536

Departments and Agencies

Department of Agriculture

The U.S. Department of Agriculture (USDA) should focus on collecting and disseminating agricultural information and research, identifying and addressing threats to public health and safety connected to food and agriculture, and promoting free trade.

The recommendations below detail specific steps that the new Administration can take immediately to shift the USDA's focus from protecting special interests to serving the American people. Adopting these priorities will signal clearly that the new President and Secretary of Agriculture are determined to reverse costly, market-distorting policies, respect states and local communities, and promote free markets and individual freedom.

PRIORITIES FOR THE PRESIDENT

Call on Congress to Eliminate Farm Subsidies. The President should work with Congress to push a free-market-based agricultural policy by eliminating costly and harmful farm subsidies. These subsidies, such as the federal crop insurance program, cost roughly $15 billion a year, crowd out private solutions to risk management, distort planting decisions, and discourage farmers from private risk management.

By moving away from subsidies, agricultural producers would be free to privately manage their businesses, including risk mitigation, just like any other business owner. The current system is not so much a taxpayer-subsidized "safety net" as it is a system designed to protect many farmers from almost all their risk.

The President should draw attention to the expansive nature of the current system and move the country away from this overly generous federal scheme.

> Daren Bakst, "A Primer for the Next President on Reducing Washington's Role in Agriculture," Heritage Foundation *Issue Brief* No. 3095, February 10, 2016,
> http://www.heritage.org/research/reports/2016/02/a-primer-for-the-next-president-on-reducing-washingtons-role-in-agriculture.

> Daren Bakst, Scott Lincicome, Nicolas D. Loris, Josh Sewell, and Brian Wright, *Farms and Free Enterprise: A Blueprint for Agricultural Policy*, The Heritage Foundation, September 21, 2016,
> http://www.heritage.org/research/reports/2016/09/farms-and-free-enterprise.

Call for Food Stamps and Agricultural Programs to Be Considered in Separate Legislation. The President should urge Congress to consider food stamps and agricultural programs in separate pieces of legislation and to transfer authority to run the food stamp program to the Department of Health and Human Services, the primary welfare department of the federal government.

At present, food stamps are combined together with agricultural programs in the farm bill, making it more difficult to reform either program. The Congressional Budget Office, prior to passage of the 2014 farm bill, projected that the costs of food stamps accounted for 79 percent of the farm bill. If these programs can be considered on their own merits, the President and Members of Congress have a better chance for policy reform.

> Daren Bakst, "Congress Should Separate Food Stamps from Agricultural Programs," Heritage Foundation *Issue Brief* No. 4375, April 7, 2015,
> http://www.heritage.org/research/reports/2015/04/congress-should-separate-food-stamps-from-agricultural-programs.

> Daren Bakst, Scott Lincicome, Nicolas D. Loris, Josh Sewell, and Brian Wright, *Farms and Free Enterprise: A Blueprint for Agricultural Policy*, The Heritage Foundation, September 21, 2016,
> http://www.heritage.org/research/reports/2016/09/farms-and-free-enterprise.

Promote Free Trade in Agriculture. The President should urge Congress to eliminate any policies or barriers—such as tariffs and agricultural subsidies—that obstruct the free exchange of agricultural goods and services. The President should also work to aggressively knock down foreign trade barriers as part of any trade talks. This includes making greater demands (and offers) in trade negotiations and making greater use of the World Trade Organization dispute-settlement process. These changes will help increase both exports and imports, helping both agricultural producers (better access to markets) and consumers (greater choice and value).

Free trade in agriculture has many benefits for the nation. For example, according to the USDA's Economic Research Service, the $150 billion in agricultural exports in 2014 created an additional $190.6 billion in economic activity and over 1 million full-time jobs.

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Scott Lincicome, "Promoting Free Trade in Agriculture," Heritage Foundation *Backgrounder* No. 3136, July 11, 2016, http://www.heritage.org/research/reports/2016/07/promoting-free-trade-in-agriculture.

Daren Bakst, Scott Lincicome, Nicolas D. Loris, Josh Sewell, and Brian Wright, *Farms and Free Enterprise: A Blueprint for Agricultural Policy*, The Heritage Foundation, September 21, 2016, http://www.heritage.org/research/reports/2016/09/farms-and-free-enterprise.

PRIORITIES FOR THE SECRETARY

Oppose Mandatory Labeling of Genetically Engineered Food. President Obama recently signed into law a federal mandatory labeling requirement for genetically engineered food. The Secretary should work to minimize the misleading nature and effect of the law, by providing as much flexibility as possible in information disclosure, such as allowing food manufacturers to provide contextual information about genetic engineering.

At the same time, the Secretary should work with Congress to repeal the law. Mandatory labeling—whether through a bar code or the text on the package—compels companies to engage in misleading speech by giving the false impression that there is something wrong with genetically engineered food. Repealing this law would address major problems like these that could prove detrimental to the future of agricultural biotechnology.

Daren Bakst, "Federal and State Governments Should Not Require Mandatory Labeling of Genetically Engineered Food," Heritage Foundation *Issue Brief* No. 4567, May 20, 2016, http://www.heritage.org/research/reports/2016/05/federal-and-state-governments-should-not-require-mandatory-labeling-of-genetically-engineered-food.

Daren Bakst, Scott Lincicome, Nicolas D. Loris, Josh Sewell, and Brian Wright, *Farms and Free Enterprise: A Blueprint for Agricultural Policy*, The Heritage Foundation, September 21, 2016, http://www.heritage.org/research/reports/2016/09/farms-and-free-enterprise.

Reduce Federal Role in School Meal Programs. The Healthy Hunger-Free Kids Act of 2010 (42 U.S.C. 1751) greatly expanded federal control over the food that can be served in schools. The new school meal standards mandated by the law provide little flexibility to schools and dictate everything from calorie limits to the type of milk that schools can provide.

To have flexible and parent-driven standards, the Secretary should work with Congress to change existing law to create minimal federal requirements. A parent-driven and local-driven approach would allow local officials to tailor their standards to the needs of their communities and the demands of parents and students. Unlike Washington, DC, bureaucrats who often want to push a one-size-fits-all approach, local officials are far more likely to listen to and address the concerns of parents, since these officials are closer to the people and can be held accountable by them.

Rachel Sheffield and Daren Bakst, "Child Nutrition Reauthorization: Time for Serious Reform, Not Tinkering," Heritage Foundation *Issue Brief* No. 4570, May 26, 2016, http://www.heritage.org/research/reports/2016/05/child-nutrition-reauthorization-time-for-serious-reform-not-tinkering.

Work to Eliminate the Provision that Expands Free Lunches to Middle-class and Wealthy Families . The Secretary should work with Congress to eliminate the provision of the Healthy Hunger-Free Kids Act (42 U.S.C. 1759a—the community eligibility provision), which developed a backdoor approach to push universal school meals.

As a result of this provision, welfare benefits are being handed out to many middle-class and wealthy families. If a certain number of children are eligible for free meals at a school, based on certain criteria, then all the students are eligible for free meals. As a result of this provision, welfare benefits are being handed out to many middle-class and wealthy families. If a certain number of children are eligible for free meals within a school, school district, or a group of schools within a district, based on certain criteria, then all the students are eligible for free meals. Because schools can be grouped together, this provision makes it possible for a school with no low-income students to provide free meals for all of its students. By eliminating this provision, free meals will only go to those students from low-income families who truly need them.

Rachel Sheffield and Daren Bakst, "Child Nutrition Reauthorization: Time for Serious Reform, Not Tinkering," Heritage Foundation *Issue Brief* No. 4570, May 26, 2016, http://www.heritage.org/research/reports/2016/05/child-nutrition-reauthorization-time-for-serious-reform-not-tinkering.

EPA-HQ-2017-010625_0000540

Department of Commerce

The Department of Commerce currently administers a variety of programs, many of which are focused on dispensing corporate welfare to favored businesses. The recommendations below detail specific steps that the new Administration can take immediately to demonstrate its commitment to restructuring the Commerce Department so that it serves the interests of all Americans. Adopting these priorities will clearly signal that the new President and Secretary of Commerce are committed to refocusing the department's efforts on programs that are consistent with the proper role of the federal government and that do not privilege a select few at the expense of others.

PRIORITIES FOR THE PRESIDENT

End Corporate Welfare. The President should call for Congress to terminate the following agencies or programs that in effect dispense corporate welfare to favored businesses or tax-exempt organizations serving business interests:

1. Economic Development Administration
2. International Trade Administration
3. Minority Business Development Agency
4. Hollings Manufacturing Extension Partnership (part of the National Institute of Standards and Technology or NIST)
5. National Network for Manufacturing Innovation (NNMI) (part of NIST)

The first budget of the new Administration should include termination of these programs.

> Romina Boccia, "Corporate Welfare Wastes Taxpayer and Economic Resources," testimony before the Subcommittee on Federal Spending Oversight and Emergency Management, Committee on Homeland Security and Governmental Affairs, U.S. Senate, June 10, 2015,
> http://www.heritage.org/research/reports/2015/06/corporate-welfare-wastes-taxpayer-and-economic-resources.

> *A Blueprint for Balance: A Federal Budget for 2017*, The Heritage Foundation, February 23, 2016,
> http://www.heritage.org/research/reports/2016/02/a-blueprint-for-balance-a-federal-budget-for-2017.

PRIORITIES FOR THE SECRETARY

Evaluate Programs for Elimination. The Secretary should establish a working group consisting of the Deputy Secretary of Commerce, the Assistant Secretary for Administration, the Assistant Secretary for Legislative and Intergovernmental Affairs, the Under Secretary and Administrator of the National Oceanic and Atmospheric Administration (NOAA), the Under Secretary for Standards and Technology, and such other persons as the Secretary may appoint. The working group should evaluate the merit of other NIST programs as well as the National Telecommunications and Information Administration (NTIA) and the NOAA grant programs to determine whether they should be terminated. The work product of the working group should be published.

Reform U.S. Antidumping Law. The Secretary should draft legislation and work with Congress to reform U.S. antidumping law to make it subject to a predatory pricing test drawn from American antitrust law. Application of such a standard would strengthen the American economy and benefit U.S. consumers while precluding any truly predatory dumping designed to destroy domestic industries and monopolize American industrial sectors.

> Alden F. Abbott, "U.S. Antidumping Law Needs a Dose of Free-Market Competition," Heritage Foundation *Backgrounder* No. 3030, July 17, 2015,
> http://www.heritage.org/research/reports/2015/07/us-antidumping-law-needs-a-dose-of-free-market-competition.

Reform the Export Control System. The Secretary should draft legislation and work with Congress to implement a simpler, more streamlined and efficient export control system.

The current export control system is needlessly complicated and establishes counterproductive standards. As a result, America's allies find it difficult to work with U.S. government and industry partners to develop, procure, and ultimately operate advanced weapons systems in a cooperative fashion. Furthermore, U.S. industries can find themselves at a disadvantage in marketing their products to even close and reliable allies.

> Baker Spring, "The Obama Administration's Ambitious Export Control Reform Plan," Heritage Foundation *WebMemo* No. 3019, September 20, 2010,
> http://www.heritage.org/research/reports/2010/09/the-obama-administrations-ambitious-export-control-reform-plan.

EPA-HQ-2017-010625_0000541

Adopt a More Accurate Measure of Inflation in the Census Bureau. The Census Bureau calculates many important economic statistics, such as median household and family incomes. These statistics show how U.S. well-being has changed over time. However, the Census Bureau uses an inaccurate measure to adjust these statistics for inflation: the Bureau of Labor Statistics' Consumer Price Index (CPI). The CPI overstates inflation because it infrequently accounts for changes in household consumption patterns.

A different price index, the Personal Consumption Expenditures (PCE) index, published by the Department of Commerce's Bureau of Economic Analysis, corrects this problem. Economists widely agree that the PCE estimates inflation more accurately than the CPI. Hence, both the Federal Reserve and the Congressional Budget Office primarily rely on the PCE. The Secretary should instruct the Census Bureau to do the same and use the PCE to adjust historical dollar values for inflation.

> James Sherk, "Productivity and Compensation: Growing Together," Heritage Foundation *Backgrounder* No. 2825, July 17, 2013,
> http://www.heritage.org/research/reports/2013/07/productivity-and-compensation-growing-together.

Measure Poverty More Accurately. The Secretary should instruct the Census Bureau to include the value of government benefits as income when measuring poverty. The government defines a family as poor if its income falls below specified income thresholds. For 2016, the poverty income threshold for a family of four is $24,300. Out of the $1 trillion in government welfare spending, only about 5 percent is counted as income for purposes of measuring poverty. According to the government, entire programs such as food stamps, the Earned Income Tax Credit (EITC), and public housing are not counted as "income" and have no impact on poverty. Thus, it should be no surprise that government reports show that poor people spend $2.40 for every $1.00 of income the Census Bureau claims they have.

> Robert Rector and Rachel Sheffield, "Setting Priorities for Welfare Reform," Heritage Foundation *Issue Brief* No. 4520, February 24, 2016,
> http://www.heritage.org/research/reports/2016/02/setting-priorities-for-welfare-reform.

Study Privatization of the National Weather Service (NWS). The NWS provides information and services to news media and others that have value. Recipients and beneficiaries of this information and these services would pay for them. Thus, the NWS could become self-sustaining. The Secretary should establish a working group consisting of Deputy Secretary of Commerce, the Assistant Secretary for Administration, the Assistant Secretary for Legislative and Intergovernmental Affairs, the Under Secretary and Administrator of NOAA, and such other persons as the Secretary may appoint, to study the feasibility of privatizing the NWS. The work product of the working group should be published.

EPA-HQ-2017-010625_0000542

Department of Defense

The Department of Defense (DOD) should provide a sufficiently large, modern, and combat-ready military force to protect the vital interests of the United States. The President should develop a plan to address gaps between the threats facing U.S. interests and current DOD capabilities. The President should ensure that military personnel policy is based on combat readiness, not on a social agenda. The Secretary of Defense should focus on increasing combat readiness, growing the size of the military, investing in modern equipment for the military, and establishing a team focused solely on improving the mission effectiveness of the department. A dedicated experimentation force will help DOD rapidly develop solutions to address gaps in capabilities.

PRIORITIES FOR THE PRESIDENT

Produce a Plan to Address Current Gaps in National Security Posture. The President should conduct a national security review to measure the robust and diverse threats facing U.S. interests against the defensive capabilities provided by DOD. After determining the gaps between the DOD's capabilities and the capabilities needed to successfully protect U.S. vital interests, the President should produce a plan for addressing the gaps. This plan should include a prioritization of the gaps and an assessment of the time, attention, and resources necessary to address them.

At the conclusion of the national security review, the President should outline the conclusions so that the public and Congress understand the gravity of the U.S.'s national security gaps. The President should publicly articulate the vital interests of the United States, the current and future threats facing those interests, where the DOD is unable to defend those interests, and the plan for closing the gaps.

Many of these gaps will require significant investments over the course of many years, so the President must deliberately seek the support of the American public and Congress. National security capabilities are expensive, but the President should present a clear case for why national security investments are necessary and then work with Congress to ensure that the resources are provided to the DOD.

> Dakota L. Wood, ed., *2016 Index of U.S. Military Strength* (Washington, DC: The Heritage Foundation, 2015), http://index.heritage.org/military/2016/.

> Justin T. Johnson, ed., "The 2017 NDAA Should Begin Rebuilding America's Military," Heritage Foundation *Backgrounder* No. 3105, March 28, 2016, http://www.heritage.org/research/reports/2016/03/the-2017-ndaa-should-begin-rebuilding-americas-military.

> James Jay Carafano, Walter Lohman, Steven Bucci, and Nile Gardiner, "The Challenge for the Next President: Reversing the Decline in U.S. Power," Heritage Foundation *Backgrounder* No. 3050, October 20, 2015, http://www.heritage.org/research/reports/2015/10/the-challenge-for-the-next-president-reversing-the-decline-in-us-power.

Make Armed Forces Personnel Policy on the Basis of Military Readiness, Not a Social Agenda. Military personnel policy should be developed on the goal of increasing readiness. The President should make a clear policy statement that women will not be required to register for Selective Service and that current policy under the Military Selective Service Act, limiting registration to males who are 18–25 years of age, should be maintained. The President should direct military leaders to revise the policy of eliminating women's combat exemption, which removes a well-established limit on universal Selective Service registration and conscription. The President should reverse the transgender policy decision announced June 30, 2016, and restore the prior policy, which allowed persons with gender dysphoria to serve so long as their condition or treatments do not interfere with good order, discipline, or combat readiness. The Obama Administration advanced its liberal social agenda in the military through unilateral decisions to drop women's combat exemption and to give subjective gender identity priority over biology in sex-specific settings and standards. The steps recommended above would roll back policies issued despite evidence and concern, including from senior military personnel, that they would negatively affect readiness.

PRIORITIES FOR THE SECRETARY

Prioritize Combat Readiness. The Secretary of Defense should prioritize combat readiness by ensuring that military training and maintenance are fully funded. The Secretary's FY 2018 budget proposal should include a significant funding increase for combat readiness. As a result of budget cuts, the military has been underfunding maintenance and training for a

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number of years. The lack of maintenance results in a large percentage of equipment being unusable. The lack of training results in service members who are ill-prepared for their missions. When conflict arises, the U.S. will go to war with the military it currently has. Therefore the current force must be at all times ready for war. The specific readiness challenges facing the military are largely classified, which makes the Secretary's personal attention that much more important.

> Dakota L. Wood, ed., "An Assessment of U.S. Military Power," *2016 Index of U.S. Military Strength* (Washington, DC: The Heritage Foundation, 2015), http://index.heritage.org/military/2016/assessments/us-military-power/.

> Justin T. Johnson, ed., "The 2017 NDAA Should Begin Rebuilding America's Military," Heritage Foundation *Backgrounder* No. 3105, March 28, 2016, http://www.heritage.org/research/reports/2016/03/the-2017-ndaa-should-begin-rebuilding-americas-military.

Increase the Size of the Military. The Heritage Foundation's Index of U.S. Military Strength proposes using a two-conflict concept for military force structure. Under this model, the U.S. military should have sufficient forces to fight one war while maintaining the ability to deter other adversaries from harming U.S. interests elsewhere. This force structure also provides sufficient forces to provide for the day-to-day operations around the world necessary for protecting U.S. interests. Judged by the two-conflict standard, the U.S. military, as it now stands, is too small.

The Secretary of Defense should return the DOD to using a two-conflict concept for military force structure and immediately begin growing the military to support this force structure. The Secretary's fiscal year (FY) 2018 budget proposal should include an increase in the size of the military. The size of the military should be based on a strategic concept for how the military will be used to win wars.

> Daniel Gouré, "Building the Right Military for a New Era: The Need for an Enduring Analytic Framework," *2015 Index of U.S. Military Strength* (Washington, DC: The Heritage Foundation, 2015), http://index.heritage.org/military/2015/important-essays-analysis/building-right-military-new-era/.

> Justin T. Johnson, ed., "The 2017 NDAA Should Begin Rebuilding America's Military," Heritage Foundation *Backgrounder* No. 3105, March 28, 2016, http://www.heritage.org/research/reports/2016/03/the-2017-ndaa-should-begin-rebuilding-americas-military.

Modernize the Military, Including Nuclear Weapons and Missile Defense. The Secretary of Defense should ensure that the military's combat systems are being modernized, including both conventional systems and strategic systems, such as nuclear weapons and missile defense.

The Secretary's FY 2018 budget proposal should include increased modernization funding, targeted to key capability gaps identified in the President's national security review. Many of the military's primary combat systems (planes, ships, etc.) were designed and built during the Cold War. The lack of modernization is easily seen in the Air Force, where the main bomber fleet averages 53 years old and the main aerial refueling tankers entered the fleet in 1956. A Cold War-era military will not be prepared to protect the United States in the 21st Century. While modernizing nuclear weapons is funded through the Department of Energy, the Secretary of Defense should be a leading advocate for modernizing nuclear weapons and the full funding of modernizing delivery vehicles (submarines, ICBMs, and bomber aircraft) in the DOD's budget.

> Michaela Dodge and David Inserra, "Strategic Capabilities in the 21st Century," *2015 Index of U.S. Military Strength* (Washington, DC: The Heritage Foundation, 2015), http://index.heritage.org/military/2015/important-essays-analysis/strategic-capabilities-21st-century/

> Dakota L. Wood, ed., "U.S. Nuclear Weapons Capability," *2016 Index of U.S. Military Strength* (Washington, DC: The Heritage Foundation, 2015), http://index.heritage.org/military/2016/assessments/us-military-power/us-nuclear-weapons/

> Michaela Dodge and John Venable, "Why the United States Needs an LRSO Capability," Heritage Foundation *Issue Brief* No. 4580, June 17, 2016, http://www.heritage.org/research/reports/2016/06/why-the-united-states-needs-an-lrso-capability.

Develop a Robust Experimentation Capability. The Secretary of Defense should formally organize and resource a dedicated experimentation force. The Secretary's FY 2018 budget proposal should include funding and any needed authorities for this experimentation force. The size of this effort need not be large, and could, for example, comprise an Army brigade combat team, a Marine regiment, and similar or corresponding units from the Navy and Air Force. Such a representational force

EPA-HQ-2017-010625_0000544

should be sufficient for experimenting with operational concepts, new technologies, and methods for integrating and leveraging the combat power and capabilities of the joint force. Because experimentation is an iterative process, necessary to identify problems, possible solutions, and reveal unanticipated possibilities, this force needs stable attention from a command structure and participants able to maintain focus across multiple iterations. Establishing a joint experimentation force will take time; once established, it could help the DOD develop and deploy solutions for the capability gaps identified by the President's national security review.

> The Heritage Foundation, "Defense," in *Solutions 2016*, http://solutions.heritage.org/defense/defense-2/.

Continuously Improve the Department of Defense. The Secretary of Defense should establish a team focused on improving the mission effectiveness of the DOD. A small, high-caliber team should focus on reform as a means, not of saving money, but of improving how efficiently the DOD achieves its mission.

Areas of focus should include increasing the efficiency and effectiveness of the defense acquisition system, determining where the DOD's base infrastructure should be reduced or potentially increased, and ensuring that the DOD's civilian workforce is adequate and competent. Building on the defense reform efforts in Congress, this team should propose specific reforms that the Secretary can either implement directly or take to Congress for consideration.

> James Jay Carafano, "Defense Reform by the Numbers: Four Crucial Priorities for the Next Administration," Heritage Foundation *Backgrounder* No. 3001, March 23, 2015, http://www.heritage.org/research/reports/2015/03/defense-reform-by-the-numbers-four-crucial-priorities-for-the-next-administration.

> Justin T. Johnson, ed., "The 2017 NDAA Should Begin Rebuilding America's Military," Heritage Foundation *Backgrounder* No. 3105, March 28, 2016, http://www.heritage.org/research/reports/2016/03/the-2017-ndaa-should-begin-rebuilding-americas-military.

EPA-HQ-2017-010625_0000545

Department of Education

The Department of Education should devolve education dollars and decision making to the states, significantly reducing K–12 programs and limiting spending to a single, flexible funding stream on the basis of low-income student population, which states could use for any education purpose under state law. In higher education lending, the department should eliminate the Parent Loan for Undergraduate Students (PLUS) loan program and use a non-subsidizing interest rate for remaining federal loan programs. These changes take a first, significant step to restore state and local control of education and address the root cause of the college cost problem: runaway federal subsidies.

PRIORITIES FOR THE PRESIDENT

Rescind Guidance Redefining Sex to Mean Gender Identity for Purposes of Title IX Compliance. As part of a government-wide clarification, the President should affirm that, for the purposes of federal law, "sex" refers to biological sex.

The President should direct the Secretary of Education to update and reverse guidance jointly issued by the Office of Civil Rights at the Department of Education and the Department of Justice, which reinterpreted "sex" to include gender identity under Title IX of the Educational Amendments of 1972 (20 U.S.C. 1681–1688).

The President should also direct the Office of Civil Rights to cease any enforcement of Title IX's interpretation of sex to mean gender identity, or any other similar statute. Title IX prohibits educational programs receiving federal funds from discriminating on the basis of sex. The recently issued guidance, however, interprets this prohibition to mean that discrimination on the basis of "gender identity" violates Title IX. The guidance, as a whole, runs contrary to fundamental biological reality, threatens the safety and privacy of women and girls, impinges on the religious liberty of students, is contrary to the plain meaning of our nation's civil rights laws, is unworkable, and overrides principles of federalism in education.

Eliminate the PLUS Loan Program. The President's Budget for fiscal year (FY) 2018 should request that Congress eliminate the PLUS loan program, including both the Parent PLUS and Grad PLUS components. During the 2011–2012 academic year, taxpayers subsidized nearly $21 billion in federal PLUS loans. The availability of PLUS loans has resulted in students and families incurring substantial debt, while failing to ease the cost of college over time. Eliminating the PLUS loan program would help restore private lending, creating additional loan options for borrowers while removing the burden of defaults from taxpayers.

> Lindsey M. Burke, "Reauthorizing the Higher Education Act—Toward Policies that Increase Access and Reduce Costs," Heritage Foundation *Backgrounder* No. 2941, August 19, 2014, http://www.heritage.org/research/reports/2014/08/reauthorizing-the-higher-education-act-toward-policies-that-increase-access-and-lower-costs.

Redirect Additional Federal Funding to an Expanded DC Opportunity Scholarship Program. The President's Budget for FY 2018 should request that Congress redirect the additional $20 million authorized for DC Public Schools—at the enactment of the DC Opportunity Scholarship (DC OSP)—to additional Opportunity Scholarships. This would enable more children to attend safe and effective private schools of choice in Washington, DC, an alternative to the public schools that has proven more successful in increasing educational attainment. A congressionally mandated evaluation of the DC OSP found that students who receive a scholarship have graduation rates 21 percentage points higher than children in the control group. Expanding the number of available scholarships would create life-changing opportunities for poor children living in the nation's capital.

> Matthew Ladner, "Power to the People: Putting D.C. Parents in Charge of K-12 Education," Heritage Foundation *Backgrounder* No. 3092, February 9, 2016, http://www.heritage.org/research/reports/2016/02/power-to-the-people-putting-dc-parents-in-charge-of-k12-education.

Expand Access to Education Savings Accounts to Students Attending Bureau of Indian Education (BIE) Schools. The President's budget for FY 2018 should request that Congress redirect funding for Bureau of Indian Education schools into education savings accounts (ESAs) for the students who attend them. The President should direct the Secretary to lead coordination between the Department of Interior, the Department of Education, and the Department of Agriculture, which

EPA-HQ-2017-010625_0000547

contribute to the combination of federal funding that finances BIE schools, to allow eligible students to receive an ESA equal to 90 percent of their per pupil federal funding that would have been spent on BIE-funded and BIE-operated schools. Such an option would provide a lifeline to the 48,000 children currently trapped in BIE schools, which have been deemed the "worst schools in America."

> Lindsey M. Burke, "Education Savings Accounts for Children Attending Bureau of Indian Education Schools: A Promising Step Forward," Heritage Foundation *Issue Brief* No. 4537, April 1, 2016,
> http://www.heritage.org/research/reports/2016/04/education-savings-accounts-for-children-attending-bureau-of-indian-education-schools-a-promising-step-forward.

PRIORITIES FOR THE SECRETARY

End Funding for Common Core. The Secretary should clarify in a letter to all state education secretaries that access to federal K–12 programs will not be conditioned on states having uniform standards and assessments. In addition, the Secretary should clarify that no new federal funds are to be expended on Common Core or similar national standards and tests, and should assure state secretaries that an exit from Common Core does not jeopardize existing federal funding or invite other repercussions. This would further enable states to reclaim their education decision-making authority, and would foster diversity in the standards and assessment market, while driving decisions about state and school-level academic content standards closer to affected students.

> Lindsey M. Burke, Neal McCluskey, Theodor Rebarber, Stanley Kurtz, William A. Estrada, and Williamson M. Evers, "Common Core and the Centralization of American Education," Heritage Foundation *Special Report* No. 169, March 24, 2016,
> http://www.heritage.org/research/reports/2016/03/common-core-and-the-centralization-of-american-education.

> Lindsey M. Burke and Jennifer A. Marshall, "Why National Standards Won't Fix American Education: Misalignment of Power and Incentives," Heritage Foundation *Backgrounder* No. 2413, May 21, 2010,
> http://www.heritage.org/research/reports/2010/05/why-national-standards-won-t-fix-american-education-misalignment-of-power-and-incentives.

Allow States to Make Title I Funding for Disadvantaged Students Portable. The Secretary should prepare for submission to the President for the FY 2018 Budget a comprehensive plan to replace the existing Title I program with a straightforward per-pupil formula giving states the flexibility to make these dollars "portable." This would simplify the program's current, needlessly complex formula, and, if a state chooses, would allow its $15 billion in funding to follow children to the schools or education options of their parents' choice. Such a reform would ensure these tax dollars achieve the objective of aiding poor children by allowing them to choose safe and effective educational options, while improving efficiency in the use of resources directed toward their education.

> Lindsey M. Burke, "From Piecemeal to Portable: Transforming Title I into a Student-Centered Support System," Heritage Foundation *Backgrounder* No. 3066, September 28, 2015,
> http://www.heritage.org/research/reports/2015/09/from-piecemeal-to-portable-transforming-title-i-into-a-student-centered-support-system.

Eliminate "Gainful Employment" Regulations on Private For-Profit Universities. The Secretary should direct the Department of Education to begin the administrative rulemaking process to undo the Obama Administration's expanded "gainful employment" regulations.

New regulations promulgated on July 1, 2015, state that for-profit colleges and vocational programs are considered to fulfill the "gainful employment" language in the Higher Education Act (HEA), which stipulates that "a university must provide a program that prepares students for 'gainful employment'" in a given field—as long as a graduate's loan repayments do not exceed 20 percent of the student's discretionary income or 8 percent of total earnings. Failure to meet the new guidelines can result in an institution's loss of access to student loans and grants and other federal aid. This regulation is expected to impact 1,400 programs, an estimated 99 percent of which are at for-profit institutions, adversely affecting programs and schools meeting the needs of many non-traditional students. Ending this regulation will help to ensure there is a robust market of higher education options for all students.

> Lindsey M. Burke, "Reauthorizing the Higher Education Act—Toward Policies that Increase Access and Reduce Costs," Heritage Foundation *Backgrounder* No. 2941, August 19, 2014,
> http://www.heritage.org/research/reports/2014/08/reauthorizing-the-higher-education-act-toward-policies-that-increase-access-and-lower-costs.

EPA-HQ-2017-010625_0000548

Department of Energy

The current role of the Department of Energy (DOE) in administering a number of ineffective programs across a variety of areas should be eliminated. The recommendations below detail specific steps that the new Administration can take immediately to end the destructive role played by the federal government in the energy sector. Adopting these priorities for action will clearly signal that the new President and Secretary of Energy are determined to remove the federal government from efforts that are better driven by the private sector.

PRIORITIES FOR THE PRESIDENT

Eliminate Spending for Research, Development, and Commercialization in the Energy Sector. The President's budget submission should eliminate all spending in the DOE for research, development, and commercialization of specific energy sources and technologies. The DOE spends billions of dollars annually to drive specific energy technologies to the market. Commercially viable energy sources do not need support from the taxpayer. Instead, energy sources that meet the very large market demand to heat homes, power businesses, and transport goods will thrive on their own.

Eliminating such wasteful spending will remove government intervention that diverts capital from the private sector to government-supported projects. Eliminating spending on specific energy resources and technologies will also spur more innovation in the energy sector as companies become independent of government programs.

Appoint an Under Secretary to Phase Out Unnecessary Offices. In conjunction with eliminating spending on technological development in the energy sector in the presidential budget, the President should also appoint an under secretary for the sole purpose of phasing out the offices of Fossil Energy, Energy Efficiency and Renewable Energy, Electricity Deliverability and Reliable Energy, and Nuclear Energy. None of the spending activities within these programs is a legitimate function of the federal government. Eliminating these offices will send a strong message that the government does not need to intervene in energy markets, whether it is for conventional fuels or renewable ones.

> Nicolas D. Loris, "Department of Energy Budget Cuts: Time to End the Hidden Green Stimulus," Heritage Foundation *Backgrounder* No. 2668, March 23, 2012, http://www.heritage.org/research/reports/2012/03/department-of-energy-budget-cuts-time-to-end-the-hidden-green-stimulus.

Reinvigorate the Office of Civilian Radioactive Waste Management (OCRWM) and Develop a Plan to Empower Nuclear Waste Producers to Manage Their Own Nuclear Waste. The new President should reinvigorate OCRWM and charge the director with developing a plan, including recommended amendments to the Nuclear Waste Policy Act (NWPA) of 1982, to transfer responsibility for nuclear waste management away from the federal government and to the private sector. The NWPA obligated the federal government to begin collecting spent fuel (nuclear waste) by 1998 and it established the OCRWM to oversee the process. President Obama diminished the office by transferring most nuclear waste management responsibilities to the Office of Nuclear Energy.

Empowering the nuclear industry to take responsibility for its own spent fuel would reverse a fatal misalignment in America's nuclear industry. By making the federal government responsible for spent-fuel disposal, the NWPA removed any incentive for waste producers, who actually have the technical wherewithal and resources to manage waste, to develop that solution. It also grossly overestimated the incentive for the government to do so as demonstrated by over three decades of stasis. Absent government intervention, nuclear power plant owners would have the incentive to effectively manage and dispose of spent fuel, driving innovation throughout the nuclear industry.

> Katie Tubb and Jack Spencer, "Real Consent for Nuclear Waste Management Starts with a Free Market," Heritage Foundation *Backgrounder* No. 3107, March 22, 2016, http://www.heritage.org/research/reports/2016/03/real-consent-for-nuclear-waste-management-starts-with-a-free-market.

Revoke the Executive Order on Global Warming and Green Energy Mandates for Federal Agencies. In February 2015, President Obama signed Executive Order (EO) 13693, which mandates that federal agencies consume 25 percent of their total energy consumption from politically

EPA-HQ-2017-010625_0000549

determined clean energy sources by 2025. The EO also requires federal agencies to reduce their greenhouse gas emissions from vehicles and increase the use of zero-emission and plug-in hybrid vehicles.

Reducing energy use across federal agencies can save taxpayers money, but the government should not promote preferred energy technologies like solar thermal, fuel cell, electric vehicles, small modular nuclear reactors, and many others, as EO 13693 does. The President should immediately revoke EO 13693, emphasizing that any new energy, infrastructure, or vehicle investments should maximize taxpayer savings regardless of technology.

Revoke the Executive Order on Accelerating Investment in Industrial Energy Efficiency. In September 2012, President Obama signed EO 13624 to encourage manufacturing energy-efficiency investments in the United States. The EO charged the DOE and other relevant agencies to "coordinate policies to encourage investment in industrial efficiency in order to reduce costs for industrial users." The new President should revoke EO 13624.

While engineering analyses support the idea that an "efficiency gap" exists and new manufacturing investments will yield substantial savings, these analyses fail to take into account the costs of federal intervention and ignoring consumer choice. When a business is not spending money for the most energy-efficient technology, they are not acting irrationally; rather, they simply have other preferences, budget constraints, and other ignored costs. Revoking EO 13624 will allow the market to determine the value of energy investments without subsidies and government programs.

Completely Draw Down the Strategic Petroleum Reserve (SPR). The President has the statutory authority to order a drawdown of the reserve under the Energy Policy Conservation Act. The President should order the DOE to gradually sell the oil stored in the SPR in order to not disrupt oil markets. The President should use all revenues collected from the SPR drawdown for deficit reduction in the fiscal year (FY) 2018 budget submission. Completely drawing down the reserve will also prevent future Presidents from using the reserve for political reasons, which has been done in the past. Eliminating the government-controlled stockpile will reveal that private inventories and reserves are sufficient to meet U.S. needs, and private markets will respond more efficiently to supply shocks.

> Nicolas D. Loris, "Why Congress Should Pull the Plug on the Strategic Petroleum Reserve," Heritage Foundation *Backgrounder* No. 3046, August 20, 2015, http://www.heritage.org/research/reports/2015/08/why-congress-should-pull-the-plug-on-the-strategic-petroleum-reserve.

PRIORITIES FOR THE SECRETARY

Approve All Liquefied Natural Gas (LNG) Export Projects. The Secretary of Energy should automatically approve all LNG export applications. Section 3 of the Natural Gas Act of 1938 (15 U.S.C. 717b) empowers the DOE's Office of Fossil Energy to approve or reject a company's decision to export natural gas. The DOE can deny a permit if the agency believes the total volume of natural gas exported is not in the public's interest. A facility is automatically authorized if the recipient nation has a free trade agreement (FTA) with the U.S.; however, the Secretary can deny a permit application if the export destination is to a non-FTA country.

The ability to export natural gas should be a business decision, not a government one. Natural gas is like any other good that companies trade regularly around the world, and U.S. companies should be able to sell LNG to companies in other countries with or without a free trade agreement. Permitting energy exports will strengthen the American economy, creating jobs, growing the economy, and supporting relationships with global trading partners. Furthermore, free trade in energy bolsters national security by increasing supply diversity, reducing the effects of supply shocks, and increasing supplies readily available for national security needs.

> 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.

Refrain from Developing New Energy Efficiency Standards for Appliances and Urge Congress to Repeal Energy Conservation Standards Set in the Energy Policy and Conservation Act. The Secretary should order the DOE not to implement or revise any new efficiency standards and recommend that Congress pass legislation eliminating all efficiency standards, leaving it to the states unless state regulations violate interstate commerce.

The Energy Policy and Conservation Act, as amended, authorizes the DOE to develop and implement maximum energy-use standards for appliances and equipment. The DOE currently regulates

EPA-HQ-2017-010625_0000550

energy use from more than 60 appliances and products, including refrigerators, air conditioners, furnaces, televisions, showerheads, ovens, toilets, and lightbulbs, and whatever the Secretary determines or is petitioned to test. Sadly, efficiency regulations are more about cronyism and controlling consumer choice than improving the environment. In fact, the DOE's projected environmental benefits to Americans from reducing greenhouse gas emissions are a paltry 1 percent of the benefits projected from efficiency regulations.

In promulgating efficiency regulations, the DOE prioritizes energy efficiency over other preferences customers have. For instance, the purchaser of a washing machine may prefer a faster cycle time than a slower one that saves water. Moreover, the market generates efficiency without government intervention. The powerful incentive for families and businesses to save money sparks innovation to drive down prices, realize better performance, and provide greater efficiency.

> 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, http://www.heritage.org/research/reports/2016/08/the-energy-efficiency-free-market-act-a-step-toward-real-energy-efficiency.

Direct the Federal Energy Management Program (FEMP) to Perform Stringent Oversight on Energy Savings Performance Contracts. The Secretary should direct FEMP to implement more effective oversight and measurement to verify energy savings.

Since the federal government is not driven by the same market incentives as consumers and businesses when it comes to energy use, appropriate improvements on energy efficiency in the federal government can save taxpayer dollars. Federal agencies can enter into Energy Savings Performance Contracts (ESPCs), in which private contractors pay the upfront costs and agencies repay the companies through savings from lower energy bills. However, in several instances, contractors have been misleading with the savings estimates with little oversight and accountability from the federal government.

According to a 2015 Government Accountability Office report, a non-generalizable review of 20 projects found that contractors' reports overestimated the costs and the savings of 14 projects. In some ESPCs, the new installations resulted in the agency consuming more energy and spending more than it had before the contract. More effective oversight and transparency will protect taxpayers and yield actual energy savings.

EPA-HQ-2017-010625_0000551

Department of Health and Human Services

The Department of Health and Human Services (HHS) should focus on administering the health care entitlement programs in a patient-centered, market-based way and encouraging self-sufficiency by allocating federal welfare assistance only to those truly in need. The department should also ensure that marriage, family, life, and religious liberty are protected in everything it does.

The recommendations below detail specific steps that the new Administration can take immediately to demonstrate its commitment to this vision. Adopting these priorities for action will clearly signal that the new President and the HHS Secretary are determined to improve access to quality and affordable health care, as well as to reduce poverty and future dependence by promoting self-sufficiency through work and marriage.

PRIORITIES FOR THE PRESIDENT

Galvanize Support for Obamacare Repeal and New Patient-Centered Health Care Reform. The President should take immediate steps to galvanize public and congressional support for repealing Obamacare and replacing it with patient-centered, market-based health care reform.

In the inaugural address to the nation, the new President should recommit to repealing the Affordable Care Act (ACA) and outline broad policies that will empower individuals and families with direct control over their health care dollars and decisions.

The President's fiscal year (FY) 2018 budget should propose the following:

- Reforming the tax treatment of health insurance;
- Modernizing Medicare to meet its demographic, fiscal, and structural challenges;
- Restoring Medicaid as a true safety net for the poor; and
- Promoting a free market in health care by removing regulatory and policy obstacles that discourage choice and competition in health insurance and care delivery.

These new policies, focused on putting health care dollars and decisions in the hands of patients and their families, will dramatically expand personal freedom, control health care costs, spur innovation and productivity in health care delivery, and realign the supply of health care goods and services with the demands and values of individuals and families in a new and robust health care sector of the economy.

> Edmund F. Haislmaier, Robert E. Moffit, Nina Owcharenko, and Alyene Senger, "Fresh Start for Health Care Reform," Heritage Foundation *Backgrounder* No. 2970, October 30, 2014,
> http://www.heritage.org/research/reports/2014/10/a-fresh-start-for-health-care-reform.

> Edmund F. Haislmaier, "The Obama Administration's Design for Imposing More Health Care Mandates," Heritage Foundation *Backgrounder* No. 3093, February 11, 2016,
> http://www.heritage.org/research/reports/2016/02/the-obama-administrations-design-for-imposing-more-health-care-mandates.

Lead the Way to Welfare Reform Across Means-Tested Programs. The President's FY 2018 budget should present the total cost of federal and state spending on means-tested welfare programs across government agencies, with 10-year projections. The budget should also propose reforms aimed at:

- Requiring work for able-bodied adults,
- Addressing fraud in the Earned Income Tax Credit (EITC) program,
- Improving the way poverty is measured, and
- Implementing policies to reduce marriage penalties and to strengthen marriage in low-income communities.

Reform should also take steps to restore federalism by shifting revenue and administrative responsibility for welfare programs to the states. These steps would inform Americans of the size and scope of the welfare state, reform public assistance to promote self-sufficiency over government dependence, and help control massive welfare spending.

EPA-HQ-2017-010625_0000553

Robert Rector and Rachel Sheffield, "Setting Priorities for Welfare Reform," Heritage Foundation *Issue Brief* No. 4520, February 24, 2016,
http://www.heritage.org/research/reports/2016/02/setting-priorities-for-welfare-reform.

Reverse Administrative Actions Undermining Life and Religious Liberty. Even prior to taking office, the President-elect should outline the objectionable actions taken by the Obama Administration to weaken protections for conscience, religious liberty, and life.

Immediately upon taking office, the President should issue executive orders reinstating the Mexico City Policy, preventing taxpayer money from funding international groups involved in abortion, and ending funding to the United Nations Population Fund.

The President should include in the FY 2018 budget policies that reverse Obamacare's taxpayer funding of abortion, and direct the Secretary of HHS to undertake a rulemaking process to end mandated insurance coverage of abortion-inducing drugs and contraception, along with "gender transition" therapies and surgeries. Leadership by the President in these areas will protect the most basic rights of life and conscience, and reassure Americans that religious liberty and individual conscience will be protected.

Sarah Torre, "Religious Liberty at the Supreme Court: Little Sisters of the Poor Take on Obamacare Mandate," Heritage Foundation *Issue Brief* No. 4533, March 22, 2016,
http://www.heritage.org/research/reports/2016/03/religious-liberty-at-the-supreme-court-little-sisters-of-the-poor-take-on-obamacare-mandate.

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

Roger T. Severino and Ryan T. Anderson, "Proposed Obamacare Gender Identity Mandate Threatens Freedom of Conscience and the Independence of Physicians," Heritage Foundation *Backgrounder* No. 3089, January 8, 2016,
http://www.heritage.org/research/reports/2016/01/proposed-obamacare-gender-identity-mandate-threatens-freedom-of-conscience-and-the-independence-of-physicians.

PRIORITIES FOR THE SECRETARY

Cease Implementation of the Affordable Care Act. The Secretary should revoke the costly and objectionable regulations associated with the ACA. Specifically, the Secretary should direct the HHS to begin the administrative rulemaking process of undoing the following:

- The unduly restrictive requirements for plans to maintain pre-ACA "grandfather" status;
- The essential benefits requirements;
- The regulations barring discrimination in federal health programs that also impose sweeping regulatory micro-management on private health plans, such as "gender transition" therapies and surgeries; and
- The preventive services requirements, which include the objectionable ACA mandate to cover contraceptives, sterilization, and abortifacient drugs.

These administrative changes will stop the ACA from causing further damage to the health care system as Congress works toward a patient-centered, market-based replacement.

Edmund F. Haislmaier, Robert E. Moffit, Nina Owcharenko, and Alyene Senger, "A Fresh Start for Health Care Reform," Heritage Foundation *Backgrounder* No. 2970, October 30, 2014,
http://www.heritage.org/research/reports/2014/10/a-fresh-start-for-health-care-reform.

Propose Patient-Centered, Market-Based Reforms to Medicare and Medicaid. The Secretary should prepare for submission to the President for the FY 2018 budget a comprehensive plan to transform Medicare and Medicaid into patient-centered, consumer-driven programs based on choice and competition.

In Medicare, the proposal should transition Medicare to a defined-contribution ("premium support") model that enables seniors to choose from a wide range of competing health plans.

In Medicaid, the proposal should transition able-bodied, low-income individuals and families out of Medicaid and into the private health insurance market while providing states with greater flexibility to integrate choice and competition for low-income disabled Americans.

In addition, the Secretary, in coordination with the Secretary of Treasury, should develop a plan compatible with the Medicaid and Medicare

EPA-HQ-2017-010625_0000554

reforms that will end the federal tax discrimination against individuals who do not have, or cannot get, employer-based health insurance coverage and will also provide a mechanism that facilitates individual ownership.

Finally, the Secretary should assemble and lead a taskforce to review, identify, and remove costly federal regulations that curtail competition and inhibit innovation in health care. Such reforms would offer greater personal freedom, diminish bureaucracy and regulation, and improve the quality and affordability of health care.

> Edmund F. Haislmaier, Robert E. Moffit, Nina Owcharenko, and Alyene Senger, "A Fresh Start for Health Care Reform," Heritage Foundation *Backgrounder* No. 2970, October 30, 2014,
> http://www.heritage.org/research/reports/2014/10/a-fresh-start-for-health-care-reform.

Reverse the Obama Administration's Directive Undermining Work Requirements in TANF. The Secretary should revoke the Obama Administration's 2012 directive allowing Temporary Assistance for Needy Families (TANF) work requirements to be waived. The directive gutted the most critical element of the 1996 welfare reform. Removing the waiver option would prevent further undermining of the already weakened TANF work requirement.

> Robert Rector and Rachel Sheffield, "Ending Work for Welfare: An Overview," Heritage Foundation *Issue Brief* No. 3712, August 29, 2012,
> http://www.heritage.org/research/reports/2012/08/obama-administration-ends-welfare-reform-as-we-know-it.

End the Head Start Program. The new Secretary should prepare for submission to the President for the FY 2018 budget a comprehensive plan to sunset the federal Head Start program.

Specifically, the Secretary should submit a plan that restores revenue responsibility to the states over the course of a decade by reducing funding for Head Start by 10 percent in the first year and an additional 10 percent every year thereafter.

Vesting states with revenue responsibility would situate preschool programs closer to the young Americans they are designed to serve. It would also allow states to determine whether public funding is necessary to ensure access to early education and care beyond what is already subsidized in their states or provided through the private provision of care.

> Lindsey M. Burke and David B. Muhlhausen, "Head Start Impact Evaluation Report Finally Released," Heritage Foundation *Issue Brief* No. 3823, January 10, 2013,
> http://www.heritage.org/research/reports/2013/01/head-start-impact-evaluation-report-finally-released.

Disentangle Women's Health from Funding Abortion. The Secretary should allow states to maintain the integrity of their Medicaid systems by clarifying that state governments have the authority to disqualify certain abortion providers from receiving Medicaid reimbursements. The Secretary should also issue regulations ensuring that providers receiving family planning grants pursuant to the Family Planning Services and Population Research Act of 1970 (42 U.S.C. 300) are required to keep strict physical and financial separation between the services provided under the grant program and any abortion procedures and abortion-related services or counseling offered.

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

Enforce Conscience Protections in Current Law. The Secretary should swiftly and appropriately enforce long-standing federal conscience law, including the Church and Weldon Amendments, which protect from discrimination health care entities and providers that refuse to participate in abortions, and reverse all prior agency decisions to the contrary.

The HHS should ensure that the state of California, which currently requires all health plans in the state to cover elective abortion, comes into compliance with the Weldon Amendment. All Americans should be free to live in accordance with their conscientious beliefs concerning morally acceptable forms of health care, and should not be forced to perform, participate in, or subsidize procedures that run contrary to their beliefs.

> Sarah Torre, "Religious Liberty at the Supreme Court: Little Sisters of the Poor Take on Obamacare Mandate," Heritage Foundation *Issue Brief* No. 4533, March 22, 2016,
> http://www.heritage.org/research/reports/2016/03/religious-liberty-at-the-supreme-court-little-sisters-of-the-poor-take-on-obamacare-mandate.

EPA-HQ-2017-010625_0000555

Roger T. Severino and Ryan T. Anderson, "Proposed Obamacare Gender Identity Mandate Threatens Freedom of Conscience and the Independence of Physicians," Heritage Foundation *Backgrounder* No. 3089, January 8, 2016, http://www.heritage.org/research/reports/2016/01/proposed-obamacare-gender-identity-mandate-threatens-freedom-of-conscience-and-the-independence-of-physicians.

EPA-HQ-2017-010625_0000556

Department of Homeland Security

Formed following 9/11, the Department of Homeland Security (DHS) is responsible for protecting the homeland in a variety of ways including border security, cybersecurity, counterterrorism, disaster response, aviation security, and maritime security. The DHS is also responsible for much of the legal immigration system and the enforcement of immigration laws.

As much as possible, DHS policies should be cost-effective and focused on the greatest risks. A risk-based approach requires that the budgetary priorities of the department be revised to increase the focus on cybersecurity, credible immigration enforcement, intelligence and vetting, and Coast Guard issues. Furthermore, DHS leadership, planning, and policy functions should be strengthened, and the byzantine system of duplicative and contradictory congressional oversight should be streamlined to mirror that of the Department of Defense (DOD).

PRIORITIES FOR THE PRESIDENT

Reverse Executive Actions on Immigration. The President should immediately order the DHS to cancel the anti-enforcement policy memoranda put in place under the Obama Administration and replace them as appropriate. These memoranda instruct DHS officers not to enforce the law against most illegal immigrants and provide "deferred action" (a pseudo-legal status) to as many as five million illegal immigrants, who will be exempt from deportation and given work authorizations. These memoranda most notably include, but are not limited to, most of the policy memoranda put out on November 20, 2014,[1] as well as the June 15, 2012, policy memorandum creating the Deferred Action for Childhood Arrivals (DACA) program.[2]

Rescinding such memoranda is the first step to resuming and revitalizing immigration enforcement, thus restoring the rule of law and discouraging additional illegal immigration.

Enforce Immigration Laws. The President should advance policies that strengthen enforcement efforts through appropriate use of executive authority and request that Congress consider legislative changes to existing programs. Such policies include expanding DHS agreements with state and local governments through section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1357(g)), which enables state and local governments to help enforce federal immigration laws. The President should call on Congress to widen 287(g) usage by increasing funding for the program and requiring that the DHS in most cases enter into a 287(g) agreement with any state and local government that requests entry. To ensure that immigration courts work effectively, the President should require the DHS and the Department of Justice to institute policies that ensure more immigrants show up to immigration proceedings through the use of effective alternatives to detentions such as GPS tracking anklets. These courts must also be appropriately staffed, requiring increased immigration prosecutors and judges. Vetting and immigration officers should be allowed to more quickly draw on immigration and security information. Adopting such policies will improve immigration enforcement and security and deter additional illegal immigration.

> David Inserra, "Ten-Step Checklist for Revitalizing America's Immigration System: How the Administration Can Fulfill Its Responsibilities," Heritage Foundation *Special Report* No. 160, November 3, 2014, http://www.heritage.org/research/reports/2014/11/ten-step-checklist-for-revitalizing-americas-immigration-system-how-the-administration-can-fulfill-its-responsibilities.

Improve and Judiciously Expand the Visa Waiver Program (VWP). The President should order continuous enhancements to the Electronic System for Travel Authorization (ESTA), push member countries to share information as required by the program, and judiciously expand the VWP. The VWP provides visa-free travel for countries in the program in exchange for increasing their airport security and sharing of important counterterrorism, crime, and passport data.

The President should request Congress break the current link between VWP expansion and the completion of a cost-ineffective biometric exit system. Furthermore, the President should build on existing partnerships, such as with VWP member countries, and expand the Global Entry Program, which allows prescreened, low-risk individuals to receive expedited immigration and customs processing when arriving in the U.S. When paired with the VWP and TSA PreCheck, Global Entry and other trusted traveler programs can create a trusted travel superhighway that enhances security and facilitates travel.

EPA-HQ-2017-010625_0000557

David Inserra, "The Visa Waiver Program: Congress Should Strengthen a Crucial Security Tool," Heritage Foundation *Issue Brief* No. 4492, December 2, 2015, http://www.heritage.org/research/reports/2015/12/the-visa-waiver-program-congress-should-strengthen-a-crucial-security-tool.

David Inserra, "Congress Should Expand Trusted Traveler Programs and Private Airport Screeners," Heritage Foundation *Issue Brief* No. 4359, March 3, 2015, http://www.heritage.org/research/reports/2015/03/congress-should-expand-trusted-traveler-programs-and-private-airport-screeners.

PRIORITIES FOR THE SECRETARY

Streamline Oversight of the DHS. The Secretary should push Congress to reform the current byzantine and dysfunctional system of congressional oversight of the DHS through consistent messaging and meetings with congressional leaders. The DHS must answer to over 100 different congressional committees and caucuses. This glut of bureaucratic procedures saps the department's resources and often results in repetitive or conflicting oversight from Congress. As 61 preeminent homeland security experts—including the three former Secretaries of Homeland Security as well as members of the 9/11 Commission—have noted, Congress should "[c]ut the number of committees overseeing the Department of Homeland Security and consolidate primary oversight under one committee in the House and one in the Senate with coordinated jurisdiction." Such a reform would empower the primary homeland security committee to provide more effective and focused oversight while also freeing up DHS resources to better respond to oversight.

The Annenberg Public Policy Center, "The Nation Is Not as Safe as It Could and Should Be," Paid Advertisement in *The Wall Street Journal*, May 21, 2014, http://cdn.annenbergpublicpolicycenter.org/wp-content/uploads/WSJ-ad.pdf (accessed August 16, 2016).

Strengthen Border Security. The Secretary should provide Customs and Border Protection (CBP) with the infrastructure (including border fencing, facilities for housing illegal immigrants, and facilities that provide other immigration agencies with space to operate) and the technology (including sensors, cameras, and drones) necessary to better patrol the border and secure ports of entry. This will require working with Congress through the budget process to ensure these priorities are funded appropriately. The Secretary should allow immigration agents to remove any illegal border crosser by invoking the authority present in section 235 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1101 *et seq.*). The Secretary should request Congress reform the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (22 U.S.C. 7101 *et seq.*) to clarify that children who are not victims of human trafficking should also be removed in an expedited manner.

These policies will better secure the border from illegal immigrants and transnational drug trafficking organizations, thus combatting criminal and national security threats while discouraging future surges of illegal immigration.

David Inserra, "Ten-Step Checklist for Revitalizing America's Immigration System: How the Administration Can Fulfill Its Responsibilities," Heritage Foundation *Special Report* No. 160, November 3, 2014, http://www.heritage.org/research/reports/2014/11/ten-step-checklist-for-revitalizing-americas-immigration-system-how-the-administration-can-fulfill-its-responsibilities.

Improve and Reform the Transportation Security Administration (TSA). The Secretary should seek to expand enrollment in TSA PreCheck by expanding enrollment opportunities. The TSA should simplify the Screening Partnership Program (SPP) approval and contracting process to make it easier for airports to apply and use the program. Airports joining the SPP should be allowed to select and manage their own screening contractors from a list of TSA-approved companies instead of being micromanaged by the agency. TSA collective bargaining agreements should also be limited as they can pit workers against U.S. security interests, travelers, and taxpayers. The Secretary should continue and expand risk assessments and red-team testing so that the TSA can adjust its procedures and align its finite resources to face potential threats in a risk-based manner. These actions create a smaller TSA workforce that is focused on providing security in a risk-based and cost-effective manner, simultaneously improving security and better serving the traveling public.

David Inserra, "Congress Should Expand Trusted Traveler Programs and Private Airport Screeners," Heritage Foundation *Issue Brief* No. 4359, March 3, 2015, http://www.heritage.org/research/reports/2015/03/congress-should-expand-trusted-traveler-programs-and-private-airport-screeners.

Recapitalize the U.S. Coast Guard. The Secretary should consistently request at least $1.5 billion for the Coast Guard acquisitions account and

EPA-HQ-2017-010625_0000558

consider requesting more if the DHS and Congress consider the bare minimum fleet of record to be insufficient for the country's needs. Any additional resources requested should be used to meet important priorities, including cost-efficient acquisition of the Fast Response Cutter, polar ice breakers, and unmanned systems. The Coast Guard has steadily requested $1.5 billion for its acquisitions budget in order to field a fleet capable of handling the bare minimum of its missions but the DHS has consistently requested less than this level in the annual budget request. Providing the Coast Guard with such funding will allow the Coast Guard to modernize and recapitalize its aging fleet to protect U.S. waters.

> Brian Slattery, "Top Five Modernization Priorities for the Coast Guard in 2016," Heritage Foundation *Issue Brief* No. 4515, February 1, 2016, http://www.heritage.org/research/reports/2016/02/top-five-modernization-priorities-for-the-coast-guard-in-2016.

Improve Government Cybersecurity. The Secretary should ensure that the DHS's information-sharing program is operating effectively and should seek out additional areas for cooperation with the private sector. The DHS also needs to improve and expand its ability to monitor government networks as well as consider how Einstein, the DHS's intrusion-detection and prevention system, could incorporate more sophisticated anomaly-based detection capabilities. The Secretary should strive to break down bureaucratic barriers that prevent cooperation between civilian agencies, and reach agreements with civilian government agencies regarding how the DHS can improve cybersecurity and respond to cyber incidents using Einstein and other cyber tools.

> Steven Bucci, Paul Rosenzweig, and David Inserra, "A Congressional Guide: Seven Steps to U.S. Security, Prosperity, and Freedom in Cyberspace," Heritage Foundation *Backgrounder* No. 2785, April 1, 2013, http://www.heritage.org/research/reports/2013/04/a-congressional-guide-seven-steps-to-us-security-prosperity-and-freedom-in-cyberspace.

Reform the Federal Emergency Management Agency's (FEMA) Disaster Declaration Process. The Secretary should use existing regulatory authority to establish clear requirements in the Stafford Act (Disaster Relief and Emergency Assistance Amendments of 1988 (42 U.S.C. 5121-208)) that limit the situations in which FEMA can issue declarations. One way to do this is to raise the minimum-dollar threshold for requesting disaster declarations. Increasing the threshold to $3 per capita and properly indexing these sums for inflation would significantly reduce the number of events that would warrant a federal disaster declaration. The reduction would return responsibility for local disasters to state and local officials who have traditionally handled such disasters. FEMA's deductible model for states could perform a similar function. The Secretary should request that Congress reduce the federal share for all FEMA declarations to 25 percent of total cost per declaration. For catastrophes with a nationwide or widespread regional impact, a relief provision would provide a higher federal cost share if the total costs of the disaster exceeded an inflation-adjusted threshold. The Secretary should encourage state and local governments to be more prepared for disasters since they will be primary responsible parties in most cases; FEMA should be more focused on catastrophic disasters where it is most needed.

> David Inserra, "FEMA Reform Needed: Congress Must Act," Heritage Foundation *Issue Brief* No. 4342, February 4, 2015, http://www.heritage.org/research/reports/2015/02/fema-reform-needed-congress-must-act.

ENDNOTES

1. Department of Homeland Security, "Immigration Executive Actions," July 14, 2015, https://www.dhs.gov/publication/immigration-executive-actions (accessed August 15, 2016).
2. Janet Napolitano, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children," U.S. Department of Homeland Security, June 15, 2012, https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf (accessed August 15, 2016).

EPA-HQ-2017-010625_0000559

Department of Housing and Urban Development

The Department of Housing and Urban Development (HUD) should be eliminated. The recommendations below detail specific steps that the new Administration can take immediately to demonstrate its commitment to eliminating the department. Adopting these priorities will clearly signal that the new President and HUD Secretary are determined to transfer revenue responsibility for major subsidized housing to the state governments and other various government agencies.

PRIORITIES FOR THE PRESIDENT

Phase Out Federal Housing Subsidies. The President's fiscal year (FY) 2018 budget should phase out federal funding for major subsidized housing programs[1] at a rate of 10 percent per year over the next 10 years.[2]

States should determine how and to what extent they will replace these subsidized housing programs with alternatives designed and funded by state and local authorities. States would have greater incentive to spend dollars wisely if funding came from their own coffers, allowing resources to be better directed to help those in need. Funding and operation of other targeted housing assistance programs could be transferred to other departments. For example:

- Transfer homeless assistance programs and Housing Opportunities for Persons with AIDS to the Department of Health and Human Services;
- Transfer HUD-Veterans Affairs Supportive Housing Vouchers (HUD-VASH), which operates in conjunction with the Housing Choice Voucher program, to the Department of Veterans Affairs; and
- Transfer all Indian housing assistance programs to the Department of the Interior.

> Robert Rector and Rachel Sheffield, "Setting Priorities for Welfare Reform," Heritage Foundation *Issue Brief* No. 4520, February 24, 2016,
> http://www.heritage.org/research/reports/2016/02/setting-priorities-for-welfare-reform.

Wind Down the Federal Housing Administration (FHA) and Ginnie Mae. The President's FY 2018 budget should propose winding down the FHA and Ginnie Mae as part of a broader effort to remove the federal government from the housing-finance sector.

The FHA provides taxpayer-backed insurance for mortgages, and Ginnie Mae is the primary financing vehicle for all government-insured mortgage loans. Ginnie Mae provides principal and interest guarantees on the mortgage-backed securities, which consist entirely of government-insured mortgages (such as those guaranteed by the FHA). These federal programs have grown and contributed to an explosion of mortgage debt over the past few decades, while homeownership rates have barely changed. The long-term increase in mortgage debt spurred by these federal programs exposes homeowners and taxpayers to significant financial risks.

> John L. Ligon and Norbert J. Michel, "The Federal Housing Administration: What Record of Success?" Heritage Foundation *Backgrounder* No. 3006, May 11, 2015,
> http://www.heritage.org/research/reports/2015/05/the-federal-housing-administration-what-record-of-success.

End All Federal Involvement in Housing Finance. The President should encourage the Director of the Federal Housing Finance Agency (FHFA) to implement two policies that would shrink the dominance in the housing market of two government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac:

1. Decrease conforming loan limits (the maximum size of a loan the GSEs can buy); and
2. Increase the guarantee fee that lenders pay for Fannie and Freddie to buy mortgages (commonly referred to as the "g-fee").

> Norbert J. Michel and John L. Ligon, "Five Guiding Principles for Housing Finance Policy: A Free-Market Vision," Heritage Foundation *Issue Brief* No. 4259, August 11, 2014,
> http://www.heritage.org/research/reports/2014/08/five-guiding-principles-for-housing-finance-policy-a-free-market-vision.

> Norbert J. Michel and John L. Ligon, "Fannie and Freddie: What Record of Success?" Heritage Foundation *Backgrounder* No. 2854, November 7, 2013,
> http://www.heritage.org/research/reports/2013/11/fannie-and-freddie-what-record-of-success.

EPA-HQ-2017-010625_0000561

PRIORITIES FOR THE SECRETARY

End the "Sustainable Communities" Partnership Between HUD, the Department of Transportation (DOT), and the Department of Energy (DOE). The Secretary should immediately pull HUD out of its "sustainable communities" initiative. HUD entered into this initiative with the DOT and the DOE in 2009. The initiative is a top-down, ideologically driven approach to housing with the goal of dictating where people live and the types of homes and communities in which they live. Ending this initiative will help ensure that government is not incentivizing denser living conditions, curtailing freedom of choice in housing, or compelling people to pay more for their homes or to give up cars in favor of public transportation.

ENDNOTES

1. These include: the Housing Choice Voucher Program, the Project-Based Voucher Program, the Public Housing Capital Fund, the Public Housing Operating Fund, Choice Neighborhoods, HOPE VI, the Family Self-Sufficiency Program, Homeownership Voucher Program, Public Housing Homeownership (Section 32), Section 8 Moderate Rehabilitation Program, the Public Housing/Section 8 Moving to Work Demonstration Program, the Neighborhood Networks (NN) Program, the Resident Opportunity and Self-Sufficiency (ROSS) Program, and the HOME Investment Partnerships Program.
2. Robert Rector and Rachel Sheffield, "Setting Priorities for Welfare Reform," Heritage Foundation *Issue Brief* No. 4520, February 24, 2016, http://www.heritage.org/research/reports/2016/02/setting-priorities-for-welfare-reform.

EPA-HQ-2017-010625_0000562

Department of the Interior

The Department of the Interior (DOI) cannot effectively manage the millions of acres of public lands and natural resources under its control. Its administration of other programs has eroded property rights and inserted the federal government into decisions that have traditionally been made at the local and state levels. This overreach is of particular concern given that the federal government owns nearly one-third of U.S. land, amounting to 640 million acres of surface land, plus 700 million acres of subsurface mineral rights and 1.7 billion acres of submerged land on the Outer Continental Shelf—the majority of which is managed by the DOI. The recommendations below detail specific steps that the new Administration can take immediately to improve the management of federal lands, decrease the overall size of the federal estate, increase resource production on public lands, and protect property rights.

PRIORITIES FOR THE PRESIDENT

Make No Additions to Federal Lands and Recommend Congress Give States Responsibility for All Leasing and Permitting on Federal Lands Within Their State. The President should not exercise the limited authority available to the executive to add to the federal estate. Specifically, the President should:

- Refrain from designating new national monuments under the Antiquities Act or making additions to the existing National Wildlife Refuge System by executive order.
- Eliminate America's Great Outdoors Initiative, created by presidential memorandum in 2010, as it interferes in land management issues that should remain state, local, private, and tribal priorities.
- Call on Congress, in the President's budget for fiscal year (FY) 2018, to give states responsibility for all leasing and permitting on federal lands, recognizing that states share the costs of federal lands and have regulatory structures already in place for management of state and private land.

Nicolas D. Loris, "The Antiquated Act: Time to Repeal the Antiquities Act," Heritage Foundation *Backgrounder* No. 2998, March 25, 2015, http://www.heritage.org/research/reports/2015/03/the-antiquated-act-time-to-repeal-the-antiquities-act.

Deliver an Executive Order to Review the U.S. Relationship with the Territories. The relationships that the U.S. has developed with seven territories and freely associated states are now outdated and inappropriately assigned to management through the DOI.

The President should direct a review of U.S. economic, national security, and other interests with respect to the territories and freely associated states. The DOI should be the lead agency with participation from the Department of Defense and the State Department. The Secretary of the Interior should make recommendations for any adjustments to these relationships to the President and Congress. A review should also include, but not be limited to:

- Identifying the legal obligations of the U.S. to the territories and freely associated states and the extent to which the U.S. carries out those obligations effectively;
- Establishing precisely the legal status of each territory and freely associated state and their citizens;
- Assessing the views of the government and people of each territory and freely associated state for preservation of, or adjustments to, their respective relationships with the U.S.;
- Calculating the costs incurred by the U.S. government with respect to each territory and freely associated state; and
- Determining the economic, national security, and other interests of the U.S. with respect to each territory and freely associated state.

Many of these territories are now independent nations and should be treated as such, with U.S. assistance being provided through the Department of State and the U.S. Agency for International Development, rather than through legacy programs in the DOI.

Brett D. Schaefer, "How to Make the State Department More Effective at Implementing U.S. Foreign Policy," Heritage Foundation *Backgrounder* No. 3115, April 20, 2016, http://www.heritage.org/research/reports/2016/04/how-to-make-the-state-department-more-effective-at-implementing-us-foreign-policy.

EPA-HQ-2017-010625_0000563

PRIORITIES FOR THE SECRETARY

Revoke Hydraulic Fracturing Regulations. The Secretary should publish a notice and comment period to revoke the Bureau of Land Management's hydraulic fracturing (fracking) rules.

In March 2015, the Bureau issued rules regulating the fracking processes on federal lands, for which Congress has given the Bureau no authority and which are redundant to the permitting process of state and tribal governments. Instead, the generally applicable hydraulic fracturing regulation by states (in the case of federal, state, or private land) or by tribes (in the case of land in Indian country) should apply. Revoking federal regulations will empower states to continue effective regulation of fracking operations on private, state, and federal lands, as they have done for decades. Benefits include increased energy supplies, more economic activity, and a more effective regulatory structure that relies on site-specific knowledge to address environmental concerns.

> Nicolas D. Loris, "Hydraulic Fracturing: Critical for Energy Production, Jobs, and Economic Growth," Heritage Foundation *Backgrounder* No. 2714, August 28, 2012, http://www.heritage.org/research/reports/2012/08/hydraulic-fracturing-critical-for-energy-production-jobs-and-economic-growth.

Open Access to Energy Exploration in the Outer Continental Shelf. The Secretary should discard the current proposed 2017–2022 offshore oil and gas lease plan and develop a new plan opening access to all federal waters (excepting marine sanctuary areas and areas statutorily withheld until 2022 pursuant to the Gulf of Mexico Energy Security Act of 2006). The lease plan should strongly encourage state participation, recognizing that the best environmental policies are sight-specific and situation-specific. America is the only country whose territorial waters are largely off-limits to energy production. Opening America's coasts to resource development presents tremendous economic opportunity for coastal states.

> Nicolas D. Loris, "Energy Policy Agenda for the Next Administration and Congress," Heritage Foundation *Backgrounder* No. 3048, September 10, 2015, http://www.heritage.org/research/reports/2015/09/energy-policy-agenda-for-the-next-administration-and-congress.

Open Access to Energy Exploration on Federal Lands. The Secretary should increase access to natural resources on federal lands by conducting lease sales where a commercial interest exists and should expedite the permitting processes and paperwork required for a company to access natural resources. The Secretary should ensure competitive bidding processes that reflect the market value for resources on federal lands, generating revenue for federal and state governments.

Regulatory streamlining will significantly reduce the timeframe to process applications for permits to drill, which the federal government takes an average of four times longer to complete than state governments. Establishing an efficient permitting time-frame for natural resource projects until broader reform of federal land management happens will increase federal and state revenue through more royalties, leases, and rent, as well as create jobs and help lower energy prices in the process.

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

Cap and Reduce the Size of the Federal Estate. The Secretary should make no new purchases through the Land and Water Conservation Fund or additions to the National Wildlife Refuge System. In addition, the Secretary should immediately begin to sell lands and property already designated as unwanted in land-use plans. The Secretary should also use to the fullest extent the department's authority to sell lands to the private sector and nonprofits, using the proceeds to cover the cost of sale and pay down the national debt, by the close of FY 2017. Increased state and private ownership of lands will maximize land value and result in better environmental stewardship. Local land ownership will also best meet the concerns and needs of the citizens residing near federal lands. Moreover, the profits generated by the execution of such plans will help reduce National Park maintenance backlogs and pay down the national debt.

> Donald P. Hodel and Becky Norton Dunlop. "The Federal Estate: Opening Access to America's Resources," *Environmental Conservation: Eight Principles of the American Conservation Ethic* (Washington, DC: The Heritage Foundation, 2012), http://thf_media.s3.amazonaws.com/2012/EnvironmentalConservation/Environmental-Conservation-Full-Book.pdf.

EPA-HQ-2017-010625_0000564

Streamline Endangered Species Act (ESA) Regulations. The Secretary should pursue a proposed rulemaking aimed at:

- Putting a time limit ("sunset") on each listing of an endangered species or threatened species, to ensure that a scientifically rigorous reconsideration for renewal of a listing periodically occurs in light of any changed circumstances;

- Maximizing the quality, objectivity, utility, and integrity of the information on which the DOI relies to regulate under the ESA, and ensure the information's relevance and reliability under standards equivalent to those used in federal court under *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999);

- Shifting to the states maximum permissible authority and responsibility under the Act over most species within the state (whether off or on federal land), in implementation of the statutory instruction to "cooperate to the maximum extent practicable with the States";

- Construing more narrow terms in the statutory definition of "take" that do not involve possession of or physical harm to a species (e.g., "harass" or "pursue"); and

- Taking maximum permissible account of the countervailing needs of man as a species, including the economic benefit of man (e.g., energy development) and the security of the nation (e.g., military training).

Implementing these reforms described would improve the ESA by transforming an unsuccessful, burdensome, and unsustainable instrument of land-use control into a conservation tool that is consistent with several critical conservation principles:

1. Nature is resilient and dynamic.

2. Liberty is the key to effective environmental stewardship.

3. Human beings are the most important species of all when considering environmental regulations.

> John Shadegg and Robert Gordon, "The Endangered Species Act: An Opportunity for Reform," *Environmental Conservation: Eight Principles of the American Conservation Ethic* (Washington, DC: The Heritage Foundation, 2012), http://thf_media.s3.amazonaws.com/2012/EnvironmentalConservation/Environmental-Conservation-Full-Book.pdf.

EPA-HQ-2017-010625_0000565

Department of Justice

The Department of Justice (DOJ) should revise several existing policies that are contrary to the public interest. Specifically, pursuant to the President's direction, the DOJ should review and approve all regulations that impose criminal liability prior to their promulgation, in order to curb the application of criminal liability to unsuspecting individuals. The DOJ should also apply the civil rights laws only to acts of intentional discrimination, not to private actions that are non-discriminatory in intent but happen to produce a result that disproportionately affects members of protected classes of people. The DOJ should rescind "guidance" that discrimination on the basis of "gender identity" violates federal law. In order to discourage abusive seizures of private property, the DOJ should stop the "equitable sharing" of civil asset forfeitures with state law enforcement officials. The President also should recommend that Congress terminate the DOJ's Civil Asset Forfeiture Fund, with all funds from DOJ civil asset forfeitures going directly to the U.S. Treasury's General Fund. The DOJ should reissue then-Attorney General Edwin Meese's 1986 memorandum on consent decrees and settlement agreements that limited the discretionary authority of federal agencies to "sue and settle," in order to eliminate recent abusive settlements that are contrary to public policy. The DOJ should develop policies to disfavor the use of client agency "guidance" documents that are used to skirt administrative rulemaking requirements. All told, these actions would improve the administration of criminal and civil justice by the U.S. Government.

PRIORITIES FOR THE PRESIDENT

Require Department of Justice Review of Criminal Liability Regulations. The President should require the Department of Justice to review and approve regulations with criminal liability implications prior to their promulgation.

An estimated 300,000 or more criminal regulatory offenses are buried within the Code of Federal Regulations, but neither Congress nor the DOJ knows precisely how many actually exist, in part because agencies routinely write regulations that expand the universe of criminal conduct. For example, the Environmental Protection Agency (EPA) and the Army Corps of Engineers have promulgated criminal regulations pursuant to the Clean Water Act of 1972 (33 U.S.C. 1231–1387). Such decisions can affect the conduct of millions of unsuspecting Americans, potentially branding them as criminals. The DOJ should review and approve regulations that expand criminal liability to provide a much-needed check on agencies' misuse of the criminal laws and penalties to achieve regulatory objectives.

> John Malcolm, "The Pressing Need for *Mens Rea* Reform," Heritage Foundation *Legal Memorandum* No. 160, September 1, 2015,
> http://www.heritage.org/research/reports/2015/09/the-pressing-need-for-mens-rea-reform

> Daren Bakst, "What You Need to Know About the EPA/Corps Water Rule: It's a Power Grab and an Attack on Property Rights," Heritage Foundation *Backgrounder* No. 3012, April 25, 2015,
> http://www.heritage.org/research/reports/2015/04/what-you-need-to-know-about-the-epacorps-water-rule-its-a-power-grab-and-an-attack-on-property-rights

Limit the Use of "Disparate Impact" Analysis. The President should instruct the DOJ to focus its attention on enforcing federal laws against intentional discrimination. America's civil rights laws are a noble hallmark of federal legislation. The Fourteenth and Fifteenth Amendments to the U.S. Constitution, pursuant to which various federal prohibitions against discrimination on the basis of sex, race, religion, and other characteristics have been passed, are applicable only where there is disparate *treatment* of members of a protected class. Federal anti-discrimination laws should apply when there is *intentional* discrimination and not when public or private actions are non-discriminatory in intent but happen to produce a result that disproportionately affects members of protected classes.

> Roger Clegg and Hans A. von Spakovsky, "'Disparate Impact' and Section 2 of the Voting Rights Act," Heritage Foundation *Legal Memorandum* No. 119, March 17, 2014,
> http://www.heritage.org/research/reports/2014/03/disparate-impact-and-section-2-of-the-voting-rights-act

End Equitable Sharing and Eliminate the DOJ's Assets Forfeiture Fund. The President should instruct the Attorney General to eliminate the federal "equitable-sharing" program. Federal law allows, but does not require, the sharing of proceeds derived from successful civil forfeiture cases

EPA-HQ-2017-010625_0000567

with state and local law enforcement agencies that "participated directly" in the case (18 U.S.C. 981(e)(2)). Thus, the DOJ can terminate the equitable-sharing program without action from Congress. The DOJ should also be required to track any corresponding criminal cases against property owners, including whether a conviction was obtained, and make this data publicly available. Finally, the President should recommend to Congress that the DOJ's Assets Forfeiture Fund be terminated, the funds contained therein be permanently rescinded, and the funds (as well as the funds from all future DOJ asset forfeitures) deposited into the General Fund.

These policy changes would provide greater transparency, eliminate the financial incentive for federal agencies to employ dubious or abusive practices to seize and forfeit property and for state and local law enforcement agencies to circumvent more restrictive state forfeiture laws, and return oversight and budgetary authority to elected lawmakers who are accountable to the public for their appropriations.

> John Malcolm, "Civil Asset Forfeiture: Good Intentions Gone Awry and the Need for Reform," Heritage Foundation *Legal Memorandum* No. 151, April 20, 2015,
> http://www.heritage.org/research/reports/2015/04/civil-asset-forfeiture-good-intentions-gone-awry-and-the-need-for-reform.

> Jason Snead, "Instead of Raiding the Assets Forfeiture Fund, Congress Should Simply Discontinue It," Heritage Foundation *Issue Brief* No. 4469, November 20, 2015,
> http://www.heritage.org/research/reports/2015/11/instead-of-raiding-the-assets-forfeiture-fund-congress-should-simply-discontinue-it.

PRIORITIES FOR THE ATTORNEY GENERAL

Reissue the Meese Memorandum of 1986 to Limit "Legislation Through Settlement." The Attorney General should update and reissue the 1986 Meese memorandum on the DOJ's use of consent decrees and settlement agreements in order to curtail recent "sue and settle" practices.

A major problem in recent years has been de facto regulation through sham litigation, which occurs when an agency that has regulatory goals it cannot achieve through the ordinary rulemaking process resorts to settlement agreements to reach the same result. For example, during its first four years, the Obama Administration entered into more than 60 consent decrees (over twice the number under the Bush Administration) requiring the issuance of rules, such as the Environmental Protection Agency's effort to regulate ozone air quality, outside the requisite Administrative Procedure Act (5 U.S.C. 500 *et seq.*) process. In such cases, the agency might be on the hook for massive awards of attorney's or other fees, money that is transferred from the public fisc to (most often) left-wing groups.

Reissuing Attorney General Edwin Meese's 1986 memorandum—which prohibited the DOJ, on its own or on behalf of other agencies, from entering into consent decrees that limited the discretionary authority of agencies in various ways—would curtail current abuses of the DOJ's power to "sue and settle."

> U.S. Department of Justice, "Memorandum from Edwin Meese III, Attorney General, to All Assistant Attorneys General and All United States Attorneys, Re: Department Policy Regarding Consent Decrees and Settlement Agreements," March 13, 1986,
> http://www.archives.gov/news/samuel-alito/accession-060-89-1/Acc060-89-1-box9-memoAyer-LSWG-1986.pdf.

> Paul J. Larkin, Jr. "The Problematic Use of Nonprosecution and Deferred Prosecution Agreements to Benefit Third Parties," Heritage Foundation *Legal Memorandum* No. 141, October 23, 2014,
> http://www.heritage.org/research/reports/2014/10/the-problematic-use-of-nonprosecution-and-deferred-prosecution-agreements-to-benefit-third-parties.

> Andrew Grossman, "Regulation Through Sham Litigation: The Sue and Settle Phenomenon," Heritage Foundation *Legal Memorandum* No. 110, February 25, 2014,
> http://www.heritage.org/research/reports/2014/02/regulation-through-sham-litigation-the-sue-and-settle-phenomenon.

Limit the Use of Client Agency Guidance Documents in Litigation. The Attorney General should develop policies and instruct DOJ attorneys to disfavor the use of client agency guidance documents—agency documents often used to circumvent ordinary rulemaking procedures, shield agency actions from public notice-and-comment, and bludgeon regulated entities with dubious legal claims—in litigation.

The Administrative Procedure Act (APA) (5 U.S.C. 500 *et seq.*) requires many regulatory actions of administrative agencies to go through a formal, notice-and-comment rulemaking process; these procedures do not apply, however, to informal agency actions such as the issuance of guidance documents or the creation of "Frequently Asked Questions" sections on agency websites. (Such informal actions should be distinguished from APA "informal rules," which, despite their designation, require agencies to take certain formal steps.) The Obama

EPA-HQ-2017-010625_0000568

Administration, for example, has made extensive use of informal agency action to issue new mandates under Title IX and amnesty to fivemillion illegal aliens. The government has claimed that private parties cannot challenge an informal agency action in court, arguing that informal action is not binding on regulated entities, even though those who are regulated by the federal government know that they will likely face enforcement action if such guidance is ignored. The DOJ could lessen these problems by establishing policies to disfavor reliance on or citation to informal agency guidance in litigation and to defend any agency action solely on statutory grounds.

The DOJ could lessen these problems by establishing policies to disfavor reliance upon or citation to informal agency guidance in litigation, and to defend of any agency action solely on statutory grounds. This could be accomplished through a memorandum from the Attorney General to all agency general counsels.

> Andrew Kloster, "Down to Business: Supreme Court Appears Ready to Address Important Business Community Issues," Heritage Foundation *Legal Memorandum* No. 177, April 6, 2016,
> http://www.heritage.org/research/reports/2016/04/down-to-business-supreme-court-appears-ready-to-address-important-business-community-issues.

> K. C. Johnson, "How American College Campuses Have Become Anti-Due Process," Heritage Foundation *Backgrounder* No. 3113, August 2, 2016,
> http://www.heritage.org/research/reports/2016/08/how-american-college-campuses-have-become-anti-due-process.

Rescind the Joint Guidance with the Department of Education Equating "Gender Identity" with Sex Under Title IX, and Clarify that "Sex" in All Federal Civil Rights Statutes, Including Title VII, Means "Biological Sex." The Attorney General should make clear that "sex" means "sex" and not "gender identity" in all areas of federal law, including Title VII of the Civil Rights Act of 1964 and the Fair Housing Act of 1968. Title IX of the Educational Amendments of 1972 (20 U.S.C. 1681–1688) prohibits educational programs receiving federal funds from discriminating on the basis of sex. The DOJ has recently issued joint "guidance" with the Department of Education interpreting this prohibition to mean that discrimination on the basis of "gender identity"—which includes having separate showers, lockers, and bathrooms for men and women—violates Title IX. The DOJ should rescind that guidance, as it runs contrary to fundamental biological reality, threatens the safety and privacy of women and girls, impinges on the religious liberty of students, contradicts the plain meaning of our nation's civil rights laws, is unworkable, and runs contrary to principles of federalism.

> Ryan T. Anderson, "Obama Unilaterally Rewrites Law, Imposes Transgender Policy on Nation's Schools," The Daily Signal, May 13, 2016,
> http://dailysignal.com/2016/05/13/obama-unilaterally-rewrites-law-imposes-transgender-policy-on-nations-schools/.

> Roger T. Severino, "New Chicago Schools Bathroom Policy Proves Liberals' Extreme Agenda," The Daily Signal, May 6, 2016,
> http://dailysignal.com/2016/05/06/new-chicago-schools-bathroom-policy-proves-liberals-extreme-agenda/.

> Roger T. Severino and Ryan T. Anderson, "Proposed Obamacare Gender Identity Mandate Threatens Freedom of Conscience and the Independence of Physicians," Heritage Foundation *Backgrounder* No. 3089, January 8, 2016,
> http://www.heritage.org/research/reports/2016/01/proposed-obamacare-gender-identity-mandate-threatens-freedom-of-conscience-and-the-independence-of-physicians.

EPA-HQ-2017-010625_0000569

Department of Labor

The Department of Labor (DOL) should focus on protecting workers from legitimate risks and dangers instead of administering ineffective and duplicative job-training programs and impeding job creation. The recommendations below detail specific steps that the new Administration can take immediately to demonstrate its commitment to this vision. Adopting these priorities for action will clearly signal that the new President and Labor Secretary are determined to eliminate government-imposed barriers to achieving the American dream.

PRIORITIES FOR THE PRESIDENT

Repeal the Davis–Bacon Act. The Davis–Bacon Act (DBA, 40 U.S.C. §§3142–3148) forces federal construction contractors to pay inflated compensation, artificially increasing federal construction costs. The President should press Congress to repeal the DBA through the budget reconciliation process. Repealing the Act would reduce construction costs by approximately $8 billion a year. These savings would result in either reduced federal construction spending or more construction projects undertaken at the same expense.

Suspend the Davis-Bacon Act. If Congress does not repeal the DBA, the President has authority to suspend its application. The President should declare America's national debt and underfunded entitlements a national emergency and suspend the DBA. While the DBA is suspended, the President should direct the Labor Secretary to transfer responsibility for conducting DBA surveys to the Bureau of Labor Statistics (BLS). The DBA expressly allows the President to suspend its application during emergencies and gives the Labor Secretary discretion to decide how to best measure prevailing wage rates. Suspending the Act would temporarily reduce federal construction costs. Transferring DBA surveys to the Bureau of Labor Statistics would produce more accurate surveys that reflect actual market pay rates. Both measures would achieve some—but not all—of the benefits of full DBA repeal.

> James Sherk, "Examining the Department of Labor's Implementation of the Davis–Bacon Act," testimony before the Committee on Education and the Workforce, U.S. House of Representatives, April 14, 2011
> http://www.heritage.org/research/testimony/2011/04/examining-the-department-of-labors-implementation-of-the-davis-bacon-act.

Adopt A More Accurate Measure of Inflation. The President should direct the Labor Secretary to have the BLS improve the Consumer Price Index (CPI) by using a chained methodology.[1] The BLS has broad discretion to use the best techniques available; in fact, the Bureau has already developed a chained version of the CPI (the C-CPI) that the agency believes measures inflation more accurately.[2] Using this methodology in the official CPI calculations would reduce the inflation rate by approximately 0.25 percentage points annually. The Congressional Budget Office (CBO) estimates this would reduce the national debt by over $300 billion over the next decade through lowering the growth of federal benefits and income tax thresholds.[3] Because Social Security benefits are indexed to inflation via the official CPI, this change will attract considerable controversy and will require presidential leadership.

> Romina Boccia and Rachel Greszler, "Social Security Benefits and the Impact of the Chained CPI," Heritage Foundation *Backgrounder* No. 2799, May 21, 2013,
> http://www.heritage.org/research/reports/2013/05/social-security-benefits-and-the-impact-of-the-chained-cpi.

PRIORITIES FOR THE SECRETARY

Expand Union Transparency. Regulations promulgated between 2005–2008 under the 1959 Labor-Management Reporting and Disclosure Act required unions to disclose itemized spending to their members. The Obama Administration repealed many of these transparency requirements, including regulations extending transparency to union trust funds and local chapters of government unions. The DOL's Office of Labor-Management Standards (OLMS) should re-issue these rescinded transparency regulations. The OLMS should also issue administrative guidance requiring union-funded "worker centers" to file the same transparency reports regular unions do. The Labor Secretary, under the authority of the Labor-Management Reporting and Disclosure Act (LMRDA), should enact these measures to increase union transparency and accountability and expose malfeasance.

> James Sherk, "Congress Should Block Union Transparency Rollback," Heritage Foundation *WebMemo* No. 3084, December 16, 2010,
> http://www.heritage.org/research/reports/2010/12/congress-should-block-union-transparency-rollback.

EPA-HQ-2017-010625_0000571

Protect Union Pensions. The Secretary of Labor should rescind Interpretive Bulletin (IB) 2015-01 that allows unions to invest their members' pension funds on the basis of "collateral benefits [to the union], apart from the investment return." The Secretary should also investigate whether unions properly exercise their fiduciary duty when voting their pension plan proxies. IB 2015-01 severely undermined the Employee Retirement Income Security Act (ERISA) fiduciary requirement that pension plan investors act solely for the benefit of pensioners (29 U.S.C. 1001 *et seq.*). Government unions not subject to ERISA often invest in investment funds based on political criteria, sacrificing higher returns their members could have earned. The DOL should stop these abuses to promote solvency and maximum security for union retiree benefits.

> Elaine Chao, "Left-Wing Proxy Plays," Heritage Foundation *Commentary*, August 17, 2009, http://www.heritage.org/research/commentary/2009/08/left-wing-proxy-plays.

Protect the Self-Employed. The Secretary should immediately rescind the Wage and Hour Division's (WHD) 2015 administrative interpretation, which redefines independent contractor status, and replace it with one reaffirming the traditional six-factor balancing test where control over the contractor's work is the central factor. The WHD should also end its "misclassification initiative" and instead focus on preventing wage theft.

These steps would halt the Obama Administration's regulatory attempts to reclassify self-employed independent contractors as employees, thus protecting the viability of gig-economy jobs and the freedom and flexibility of many self-employed workers.

Refocus OSHA on Safety. The Secretary should direct the Occupational Safety and Health Administration (OSHA) to redirect resources toward its consultation program that assists companies attempting to improve workplace safety. Under the Obama Administration, OSHA has focused primarily on penalizing employers. Penalties matter for deterring bad actors; however, many firms want safe workplaces but know neither their legal obligations nor best practices. Helping firms voluntarily comply would improve workplace safety more than an enforcement-only approach.

Focus Enforcement Actions on Bad Actors Instead of High-Profile Cases. The Secretary should repeal the "targeted investigation" and "enterprise enforcement" initiatives of the Obama Administration. These initiatives are focused on bringing high-profile enforcement actions against targeted industries or companies. The WHD and OSHA would stop more illegal practices if they primarily investigated companies where workers report violations, rather than the majority of companies where these violations do not occur. An appropriate balance is 25 percent agency-directed investigations and 75 percent employee-complaint-directed investigations.

End Insistence on State Government Employees. The Employment and Training Administration should rescind the regulations requiring only state civil service employees to administer Employment-Services (ES) and Trade Adjustment Assistance (TAA) benefits. These restrictions unnecessarily increase costs and there is little evidence that state government employees provide these services better than others workers in the private sector. Eliminating these mandates would shift job-training resources toward helping workers and away from administrative bureaucracy.

ENDNOTES

1. A Laspeyres ("fixed-basket") methodology (currently used by the CPI) measures inflation less accurately than a Fisher ("chained") approach (as used by the C-CPI). See "Consumer Price Index Manual: Theory and Practice," International Labour Office; International Monetary Fund; Organization for Economic Co-operation and Development; Statistical Office of the European Communities; United Nations; World Bank, August 25, 2004, http://www.imf.org/external/pubs/cat/longres.aspx?sk=17165 (accessed September 22, 2016).
2. Robert Cage, John Greenless, and Patrick Jackman, "Introducing the Chained Consumer Price Index," U.S. Bureau of Labor Statistics, 2003, http://www.bls.gov/cpi/super_paris.pdf (accessed September 22, 2016).
3. Jeffrey Kling, Associate Director for Economic Analysis, Congressional Budget Office, testimony before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, April 18, 2013, https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/04-18-ChainedCPI-One-Column.pdf (accessed September 22, 2016).

EPA-HQ-2017-010625_0000572

Department of State

Along with U.S. assistance programs and contributions to international organizations, the Department of State is the primary civilian vehicle for advancing U.S. interests and policies internationally through diplomacy, communications, economic engagement and support for initiatives and policies that contribute directly or indirectly to those interests.

The next President will need a focused and efficient State Department that is capably led, properly structured, and wholly dedicated to implementing the President's foreign policy initiatives. Mere increase of resources will not address the shortcomings of the Department of State. The policy recommendations outlined in The Heritage Foundation's *Blueprint for Reform* would contribute to ensuring that the President is better served by a more effective and accountable State Department focused on advancing American interests and policy priorities. The priorities below detail specific steps that the new Administration can take immediately to demonstrate its commitment to achieving this vision.

PRIORITIES FOR THE PRESIDENT

Repair and Strengthen America's Alliances. America is a superpower with global diplomatic, economic, and security interests. In recent years, ties to vital allies have been neglected. In order to meet likely future threats, the next President will face the task of repairing and strengthening these ties.

In Europe, the President must reaffirm America's NATO commitments to mutual defense against foreign aggression while encouraging member countries to develop and increase their military capabilities to levels that will enable them to fulfill their commitments. Governments in eastern and northern Europe that have proven to be staunch allies should be recognized through new and increased defense and security relationships, a strong commitment to confront Russian aggression, and a redeployment of U.S. and NATO troops to those countries.

In Asia, the President needs to reassure Japan, South Korea, Australia, and other allies and partners that the U.S. will honor its security commitments, including support for Taiwan. The President should instruct naval and air forces to regularly assert navigation and overflight rights and freedoms on a global basis including territory wrongly claimed by China.

In the Middle East, the President needs to confront Iranian nuclear ambitions and support for terrorism in Syria, Iraq, Libya, and other parts of the region. These policy decisions largely fall within the foreign policy authority of the President, but congressional support for funding is required in some instances, and the next President should identify these areas in the first presidential budget and promptly engage Congress.

> James Jay Carafano, Walter Lohman, Steven Bucci, and Nile Gardiner, "The Challenge for the Next President: Reversing the Decline in U.S. Power," Heritage Foundation *Backgrounder* No. 3050, October 20, 2015, http://www.heritage.org/research/reports/2015/10/the-challenge-for-the-next-President-reversing-the-decline-in-us-power.

Combat Nuclear Proliferation. Current policies have not dissuaded states like North Korea and Iran from pursuing nuclear weapons. In the case of North Korea, the U.S. has not applied the full extent of potential sanctions. The President should rectify this by applying the sanctions to the extent allowed by U.S. law, for example, by applying sanction authority in the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and the United Nations Participation Act of 1945 (22 U.S.C. 287c).

Similarly, despite the Joint Comprehensive Plan of Action (JCPOA), Iran continues its incendiary rhetoric against the U.S. and Israel, continues ballistic missile testing in defiance of Security Council sanctions, and has not complied fully with the terms of the nuclear agreement.

The next President should repudiate the JCPOA, reapply U.S. sanctions, and seek to "snap-back" United Nations Security Council sanctions until Iran completely dismantles its nuclear facilities and permits unfettered access to international inspectors. These actions would apply stronger—or, in the case of Iran, reapply—economic and diplomatic pressure on the two most recalcitrant proliferators of nuclear weapons, signaling that the U.S. will not tolerate or reward such behavior. While congressional approval of these decisions is not necessary, the next Administration would do well to consult with Congress on these matters and work to enact legislation that increases pressure where appropriate.

EPA-HQ-2017-010625_0000573

James Phillips, "The Dangerous Regional Implications of the Iran Nuclear Agreement," Heritage Foundation *Backgrounder* No. 3124, May 9, 2016, http://www.heritage.org/research/reports/2016/05/the-dangerous-regional-implications-of-the-iran-nuclear-agreement.

Bruce Klingner, "Moving Beyond Timid Incrementalism: Time to Fully Implement U.S. Laws on North Korea," testimony before Subcommittee on Asia and the Pacific, Committee on Foreign Affairs, U.S. House of Representatives, January 13, 2016, http://www.heritage.org/research/testimony/moving-beyond-timid-incrementalism-time-to-fully-implement-us-laws-on-north-korea.

William T. Wilson, "Lifting of Sanctions on Iran Complicates Policy Options," Heritage Foundation *Issue Brief* No. 4547, April 14, 2016, http://www.heritage.org/research/reports/2016/04/lifting-of-sanctions-on-iran-complicates-policy-options (accessed September 26, 2016).

PRIORITIES FOR THE SECRETARY

Restructure the Department of State. The State Department consists of regional bureaus that deal with bilateral relations between the U.S. and other countries and functional bureaus that deal with thematic issues, such as economics, arms control, human rights, migration, environmental issues, counterterrorism, and other issues that do not have a particular national or regional focus. Over the past 25 years, a gradual shift has occurred toward expanding the number, size, and resources of the non-regional bureaus. This expansion has wasted resources, contributed to policy discord, and confused lines of responsibility.

The Secretary should restructure the department and shift the responsibilities of most functional bureaus into the regional bureaus and a newly established Under Secretary for Multilateral Affairs. This new arrangement would emphasize diplomatic relations to facilitate support and advance primary U.S. foreign policy, economic, and security interests and reduce the zero-sum game in terms of resource allocation among bureaus and increase efficiency and effectivenessin the bureaucracy by simplifying the competing lines of authority within the State Department. Although the Secretary can accomplish some of this restructuring with personal authority and management practice, working with Congress on a new authorization bill would enable broader application and make changes more permanent.

Brett D. Schaefer, "How to Make the State Department More Effective at Implementing U.S. Foreign Policy," Heritage Foundation *Backgrounder* No. 3115, April 20, 2016, http://www.heritage.org/research/reports/2016/04/how-to-make-the-state-department-more-effective-at-implementing-us-foreign-policy.

The United States Commission on National Security/21st Century, "Road Map for National Security: Imperative for Change," Phase III Report, February 15, 2001, p. x, http://govinfo.library.unt.edu/nsg/PhaseIIIFR.pdf (accessed September 26, 2016).

Clarify the Treaty Process. Which international agreements constitute treaties requiring Senate advice and consent in accordance with Article II of the Constitution is often subject to dispute. This uncertainty persists despite internal regulations adopted by the State Department, originally in 1955 and updated most recently in 2006, known as the Circular 175 (C-175) procedure. The C-175 procedure lays out eight factors for determining whether an international agreement should be negotiated as a treaty subject to Senate advice and consent or as an "international agreement other than a treaty." While reasonable, these criteria leave substantial room for interpretation that ill-serves the constitutional process and America's negotiating partners who cannot be certain of the status, permanence, and legality of an agreement with the U.S.

The next Administration should work with Congress to examine past practice on how various subjects have been treated historically (treaty, executive agreement, or congressional-executive agreement) and specify the issues or contexts that should mandate consideration of international agreements as treaties under Article II. The purpose of this examination should be to update and modernize the C-175 procedure in order to restore its original role as an effective mechanism for distinguishing various forms of international commitments.

Brett D. Schaefer, "How to Make the State Department More Effective at Implementing U.S. Foreign Policy," Heritage Foundation *Backgrounder* No. 3115, April 20, 2016, http://www.heritage.org/research/reports/2016/04/how-to-make-the-state-department-more-effective-at-implementing-us-foreign-policy.

Steven Groves, "The Paris Agreement Is a Treaty and Should Be Submitted to the Senate," Heritage Foundation *Backgrounder* No. 3103, March 15, 2016, http://www.heritage.org/research/reports/2016/03/the-paris-agreement-is-a-treaty-and-should-be-submitted-to-the-senate.

EPA-HQ-2017-010625_0000574

Reform Foreign Assistance. Development is a lengthy endeavor and provision of assistance need not be based solely on U.S. direct interests, but neither should it be immune from evaluation or entirely divorced from those concerns. As the U.S. Commission on National Security/21st Century (Hart–Rudman Commission) correctly noted in 2001:

> Development aid is not an end in itself, nor can it be successful if pursued independently of other U.S. programs and activities... Only a coordinated diplomatic and assistance effort will advance the nation's goals abroad, whether they be economic growth and stability, democracy, human rights, or environmental protection.

The next Administration should evaluate all U.S. assistance programs to determine whether they are fulfilling national needs, and, if not, implement changes to address those failings.

Implementing lasting reform will require substantially revising or replacing the 1961 Foreign Assistance Act, the legislative foundation of most of America's foreign assistance programs. The Act is antiquated and burdened with 50 years of various and at times contradictory instructions, mandates, and tweaks, undermining the effective use of U.S. assistance.

The Secretary should press the next President to propose a fundamental restructuring of America's foreign assistance programs to focus on core purposes and work with Congress on legislation to implement this vision.

> Bryan Riley and Brett D. Schaefer, "Time to Privatize OPIC," Heritage Foundation *Issue Brief* No. 4224, May 19, 2014, http://www.heritage.org/research/reports/2014/05/time-to-privatize-opic.

> Bryan Riley and Brett D. Schaefer, "U.S. Food Aid Should Focus on Combating Hunger and Malnutrition in Poor Nations," Heritage Foundation *Issue Brief* No. 3910, April 15, 2013, http://www.heritage.org/research/reports/2013/04/us-food-aid-should-focus-on-combating-hunger-and-malnutrition-in-poor-nations.

> James M. Roberts, "Not All Foreign Aid Is Equal," Heritage Foundation *Backgrounder* No. 2523, March 1, 2011, http://www.heritage.org/research/reports/2011/03/not-all-foreign-aid-is-equal.

Review U.S. Participation in All International Organizations. Only a fraction of U.N. organizations provide important contributions to U.S. diplomatic, economic, and security interests. The U.S. lacks a comprehensive analysis of whether these contributions are advancing or undermining U.S. interests. The last time the U.S. conducted such an evaluation was under the Clinton Administration in 1995, which led directly to the U.S. decision to withdraw from the United Nations Industrial Development Organization. Two decades is too long to neglect such an evaluation.

The Secretary should instruct the Assistant Secretary for International Organization Affairs to conduct or contract an evaluation of U.S. membership in international organizations at the beginning of the next Administration and use that evaluation to guide decisions on continued U.S. membership and financial support.

> Brett D. Schaefer, "Key Issues of U.S. Concern at the United Nations," testimony before the Subcommittee on Multilateral International Development, Multilateral Institutions, and International Economic, Energy, and Environmental Policy, Committee on Foreign Relations, U.S. Senate, May 6, 2015, http://www.heritage.org/research/testimony/2015/key-issues-of-us-concern-at-the-united-nations.

Limit the Use of Special Envoys and Special Representatives. At present, approximately 60 special envoys, special representatives, coordinators, special advisers, and other senior officials are charged with leading numerous discrete issues. Some of these appointees focus on current crises, such as in the civil war in Syria, while others focus on broad thematic causes such as climate change. These senior officials frequently act outside normal State Department lines of authority. This can foment bureaucratic tensions, undermine the authority of U.S. ambassadors, create confusion as to who actually represents the U.S. position, and add additional costs. Moreover, the proliferation of special envoys and other appointees is symptomatic of the dysfunction and dissatisfaction with the performance of the State Department. While these positions can be of use in some instances, they should not be used as an alternative to existing, albeit underperforming, options within the existing bureaucracy.

The Secretary should discourage the use of special envoys, eliminate their offices and budgets, and place these responsibilities upon the officials and ambassadors traditionally charged with these duties. In some cases, this will require working with Congress to eliminate legislated positions.

EPA-HQ-2017-010625_0000575

Brett D. Schaefer, "How to Make the State Department More Effective at Implementing U.S. Foreign Policy," Heritage Foundation *Backgrounder* No. 3115, April 20, 2016, http://www.heritage.org/research/reports/2016/04/how-to-make-the-state-department-more-effective-at-implementing-us-foreign-policy.

Base Ambassadorial Appointments on Merit. Early in the post-election transition, the next Administration should identify key ambassadorial postings. This process should not devolve into rewarding political supporters. The most important factor is to appoint the most capable ambassadors, whether career or political, and vet appointees to ensure that they are well-qualified—even if they are nominated for ceremonial positions or ambassadorships in countries of minimal importance—to enhance the effectiveness of America's foreign policy and foster respect among foreign governments and people.

The Secretary should make it a priority to identify qualified candidates for important and vacant appointments in the post-election transition and work with Congress to secure confirmation or identify concerns early in the process.

Brett D. Schaefer, "How to Make the State Department More Effective at Implementing U.S. Foreign Policy," Heritage Foundation *Backgrounder* No. 3115, April 20, 2016, http://www.heritage.org/research/reports/2016/04/how-to-make-the-state-department-more-effective-at-implementing-us-foreign-policy.

EPA-HQ-2017-010625_0000576

Department of Transportation

The Department of Transportation (DOT) has long exceeded the proper scope of federal involvement in funding and regulating the nation's transportation network. This excess has come at the expense of the nation's vital infrastructure and fiscal responsibility. The DOT should be restructured to focus its authority on the interstate aspects of the nation's infrastructure. This restructuring would eliminate the vast majority of the DOT's funding responsibilities save for a limited role in funding the maintenance of the National Highway System. The remaining funding responsibilities would be conferred upon states and localities. Similarly, the DOT should review and consolidate its regulatory functions, eliminating any overreach or harmful ventures.

To demonstrate its commitment to return the nature of the federal government's involvement in transportation to a more prudent and effective level, the new Administration should immediately take the specific steps detailed below.

PRIORITIES FOR THE PRESIDENT

Overhaul the Federal Role in Transportation. The President should acknowledge the failures of the federal government's role as middleman in controlling surface transportation funding and propose a restructuring of the federal role in transportation as the centerpiece of a federalist agenda in his speeches.

The President should call on Congress to limit the federal government's role in transportation to its original mission by drafting and shepherding legislation that minimizes the DOT's involvement to the National Highway System. Similarly, the President should propose eliminating most of the DOT's agencies and reducing the DOT's budgetary resources in his budget request.

This innovative approach will return the bulk of funding responsibility to the states, which are more accountable to users of the system and can determine and act upon their own needs most effectively. Rebalancing responsibility would inject much-needed accountability, affordability, and efficiency to transportation funding while minimizing the budgetary and regulatory impact of the federal government in transportation.

> Ronald Utt, "'Turn Back' Transportation to the States," Heritage Foundation *Backgrounder* No. 2651, February 6, 2012, http://thf_media.s3.amazonaws.com/2012/pdf/bg2651.pdf

Advocate for a Review and Overhaul of DOT Regulatory Functions. The President should task the Secretary with a comprehensive evaluation of agency safety functions and a review of the major rules issued by the previous Administration and seek to overturn them, proposing legislation when it is required.

Since 2009, the DOT has layered on roughly $20 billion in new regulatory costs from major rules, the second most of any regulatory agency over that time. The President should call for a review and limitation of transportation regulations as part of a broad agenda to limit the costly effects of federal regulation in both his speeches and budget requests.

PRIORITIES FOR THE SECRETARY

Evaluate Transportation Safety Programs. The Secretary should conduct a top-down evaluation of DOT's safety regulatory functions to determine:

1. Which are ineffective or redundant and
2. Which could be more adequately or appropriately handled by the states.

On the basis of that study, the Secretary should then issue a memo recommending which activities should remain in the department, which should be handled by the states, and which should be eliminated. These recommendations should be proposed in the form of legislation and reflected in the President's budget requests. Identifying and addressing harmful and excessive regulatory functions would reduce the regulatory burden of the federal government in the transportation sector.

As with most federal regulatory agencies, the DOT's regulatory activities have grown substantially since its inception, especially with regard to safety. Although safety regulations may be necessary at the federal level in order to maintain uniform rules for interstate activities, many regulations could be better handled at the state level or eliminated outright.

> Ronald Utt and Wendell Cox, "How to Close Down the Department of Transportation," Heritage Foundation *Backgrounder* No. 1048, August 17, 1995, http://www.heritage.org/research/reports/1995/08/bg1048nbsp-how-to-close-down-the-department.

EPA-HQ-2017-010625_0000577

Review and Overturn Major Regulations Undertaken by the Previous Administration. The Secretary should review major regulatory actions taken by the DOT and its sub agencies during the previous Administration. The Secretary should then work with regulatory sub-agency administrators to reverse the most detrimental regulations. Three that deserve the Secretary's immediate attention are:

- **Positive Train Control (PTC) Mandate.** This Federal Railroad Administration mandate requires all major freight and passenger railroads to install PTC as required in the Rail Safety Improvement Act of 2008. The costs imposed by the regulation—$5.75 billion initially and $860 million annually for maintenance—clearly outweigh the $90 million in annual benefits.

- **Recreational Drone Registration Mandate.** The Federal Aviation Administration (FAA) established a federal registry for owners of recreational drones (or Unmanned Aircraft Systems (UAS)) in December 2015. Owners of recreational UAS are required to register or face up to three years in prison and up to $277,500 in fines. The registry was established in a direct affront to the 2012 FAA Modernization and Reform Act (Public Law No. 112–095), which strictly prohibited the FAA from regulating recreational aircraft, and skirted the normal rulemaking process established in the Administrative Procedure Act of 1946 (5. U.S.C. 500 *et seq.*). Furthermore, the registry does almost nothing to counter the perceived dangers the FAA cited and effectively criminalizes innovation via top-down edict.

- **Airline Price Regulation in the Guise of Limiting "Unfair and Deceptive Practices."** The Obama Administration has imposed various regulations that restrict air carrier pricing models and reduce consumer choice by relying on the dubious charges of "unfair and deceptive practices." Not only do these regulations constitute a large regulatory power grab by the department, but the intervention in carriers' pricing and business models goes directly against the deregulation efforts that revolutionized the industry and made air travel accessible to all Americans.

James L. Gattuso and Diane Katz, "Red Tape Rising 2016: Obama Regs Top $100 Billion Annually," Heritage Foundation *Backgrounder* No. 3127, May 23, 2016, http://www.heritage.org/research/reports/2016/05/red-tape-rising-2016-obama-regs-top-100-billion-annually.

Michael Sargent, "Senate's FAA Authorization Perpetuates Big-Government Intrusion into Aviation Industry," Heritage Foundation *Issue Brief* No. 4546, April 11, 2016, http://thf-reports.s3.amazonaws.com/2016/IB4546.pdf.

John-Michael Seibler and Jason Snead, "Purposeless Regulation: The FAA Drone Registry," Heritage Foundation *Issue Brief* No. 4514, February 2, 2016, http://www.heritage.org/research/reports/2016/02/purposeless-regulation-the-faa-drone-registry.

Revise Capital Investment Grants (New Starts) Eligibility Requirements. The Federal Transit Administrion's Capital Investment Grants (New Starts) program provides federal grants for new fixedguideway transit systems. Although out-right elimination of the New Starts program by Congress would be preferable, the Secretary should take several steps to ensure that grant funding is spent more responsibly.

1. Revise the Capital Investments requirements to specify that no transit agency is eligible to receive grant funding unless it can demonstrate that its existing system is currently in a state of good repair.

2. Require that fixed guideway projects demonstrate that they are more cost-effective than bus service on a shared route.

3. Expand eligibility for Bus Rapid Transit (BRT) services by classifying newly established high-occupancy toll (HOT) lanes as fixed guideways. This would correct the arbitrary distinction between newly constructed HOT lanes and HOT lanes that were converted from High Occupancy Vehicle (HOV) lanes, which currently fit the FTA's definition of fixed guideways. The FTA should also allow grant funding to be used for the construction of HOV or HOT lanes under the condition that BRT be provided. Fixing these requirements would help put bus service—which is generally more cost-effective than capital-intensive rail projects—on even footing with rail in terms of eligibility for funding.

EPA-HQ-2017-010625_0000578

4. Refrain from considering questionable "economic development effects" as a bona fide justification for New Starts eligibility.

These reforms will help to curb the detrimental effects of current New Starts policies and steering funding away from the most wasteful projects.

> Randal O'Toole, "Paint Is Cheaper than Rails: Why Congress Should Abolish New Starts," Cato Institute *Policy Analysis* No. 727, June 19, 2013.

Define the Parameters of Navigable Airspace with Regard to Private Property. The Secretary should require the FAA administrator to define the physical parameters of the navigable airspace above what is presently termed "Class G" airspace, or ground-level to a height of 500 feet. This classification would limit the agency's regulatory purview and prevent the FAA from encroaching on low-altitude airspace and private property rights. The FAA is tasked with regulating the nation's navigable airspace—defined as the minimum safe altitude for flight—and upholding a "public right of transit" through such space. The recent proliferation of small aircraft that are capable of flight at very low altitudes—specifically unmanned aircraft systems (UAS)—has raised the question of whether navigable airspace extends all the way to the ground.

> Jason Snead and John-Michael Seibler, "Seizing the Sky: Federal Regulators Use Drones to Justify Controlling the Airspace Over Your Backyard," Heritage Foundation *Issue Brief* No. 4565, May 19, 2016, http://www.heritage.org/research/reports/2016/05/seizing-the-sky-federal-regulators-use-drones-to-justify-controlling-the-airspace-over-your-backyard.

Reform the Railroad Rehabilitation and Improvement Financing Program. The Railroad Rehabilitation and Improvement Financing Program (RRIF) (49 U.S.C. 24101) provides taxpayer-backed, subsidized loans to the railroad industry. Short of eliminating this program, the Secretary should reform the program to better protect taxpayers and minimize the opportunity for it to be used for overly risky or wasteful projects.

1. The Secretary should require the FRA administrator to prohibit Amtrak from receiving RRIF loans because it relies on federal funds to repay them, essentially rendering RRIF loans another direct federal subsidy.
2. High-speed rail projects should be precluded from receiving RRIF loans because of the unlikelihood that they could generate the net revenues required to pay them back.
3. The Secretary should reduce RRIF's maximum share of a project's costs from the current 100 percent to 33 percent for viable projects, mirroring the DOT's more stringent (and successful) Transportation Infrastructure Finance and Innovation Act (TIFIA) program (23 U.S.C. 601-10).

To further promote financial accountability, the FRA should require primary sources of project financing to receive an investment-grade rating. These reforms will protect federal taxpayers and limit loans that are allocated to wasteful and unfeasible projects.

Determine Total Federal Subsidies to Passenger Transportation. The Secretary should recommission a 2004 study that details the federal subsidies to various modes of transportation.

In 2004, the DOT's Bureau of Transportation Statistics produced a report that assessed the federal subsidies to passenger transportation.[1] The report detailed the amount of federal subsidies since 1990 that were bestowed upon rail, transit, air, and highway travelers and presented them using comparable metrics. Since 2004, however, the DOT has not updated the report, leaving most policymakers and the travelling public with outdated information about how federal subsidies are distributed amongst transportation modes.

Committing to reproduce the study on a periodic basis will provide lawmakers and travelers with consistent data regarding the federal government's activities in subsidizing transportation.

Reverse the Obama Administration's "Livability" Agenda. The Obama Administration committed overreach into local affairs through its "livability" agenda, which aims to dictate housing, transportation, and environmental decisions to conform to a predetermined federal vision. Former Secretary Ray LaHood revealingly quipped that these programs are really meant to "coerce people out of their cars" by imposing on citizens a federally approved way of living. This agenda includes both the DOT's Livability Initiative and the Department of Transportation–Department of Housing and Urban Development–Environmental Protection Agency Partnership for Sustainable Communities.

EPA-HQ-2017-010625_0000579

The new Secretary should terminate these efforts, and repurpose any funding or personnel devoted to these programs to a more worthwhile cause.

> Wendell Cox, "America Needs a Rational Transit Policy," Heritage Foundation *Issue Brief* No. 4368, March 24, 2015, http://www.heritage.org/research/reports/2015/03/america-needs-a-rational-transit-policy.

ENDNOTES

1. U.S. Department of Transportation, "Federal Subsidies to Passenger Transportation," December 2004, https://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/federal_subsidies_to_passenger_transportation/pdf/entire.pdf (accessed September 22, 2016).

EPA-HQ-2017-010625_0000580

Department of the Treasury

The Treasury Department's mission should be to help maintain a strong economy and efficiently manage the U.S. government's finances in ways that do not confer favoritism on particular individuals, businesses, or industries. To these ends, the new President and new Secretary of the Treasury should take the steps below soon upon taking office to show commitment to this vision.

PRIORITIES FOR THE PRESIDENT

Reverse Counterproductive Anti-inversion Rules. Specifically, the Obama Administration issued new rules through the Treasury Department in an effort to stop corporate inversions. These rules, released in April 2016, allowed Treasury to retroactively look back at a business's mergers and acquisitions for three years and granted it the authority to disregard those transactions for purposes of determining an inverting business's size. Reducing the size of a business makes it harder for the business to meet already existing anti-inversion laws in the Internal Revenue Code. Furthermore, Treasury granted to itself the power to change debt to equity based on its own discretion, making fundamental financing decisions for businesses subject to change at the whim of the Treasury Department. In doing so, Treasury created uncertainty and increased risk for foreign businesses investing in the U.S. This will reduce such investment, which is a vital part of expanding the economy. Once the April 2016 rules are abolished, their derogatory impact on investment will be abolished as well.

> Curtis S. Dubay, "Business Inversions: Tax Reform Is the Only Way to Curb Them," Heritage Foundation *Backgrounder* No. 2950, September 4, 2014,
> http://www.heritage.org/research/reports/2014/09/business-inversions-tax-reform-is-the-only-way-to-curb-them.

> Curtis S. Dubay, "Obama Is Abusing His Authority to Try to Stop American Tax Inversions," The Daily Signal, April 7, 2016,
> http://dailysignal.com/2016/04/07/obamas-abusing-his-authority-to-try-and-stop-american-tax-inversions/.

Appoint a New Commissioner of the Internal Revenue Service (IRS). In 2013, the IRS admitted that it had improperly targeted conservative non-profit groups by delaying their approval for tax-exempt status. This was a clear violation of the law. Lois Lerner, then head of the nonprofits division of the IRS, apologized for the illegal action. Yet no official at the IRS has yet to be held accountable. Even Lerner was allowed to retire instead of being terminated for cause. While the current head of the IRS, Josh Koskinen, was appointed by President Obama to clean up the agency, he has instead stonewalled Congress's investigation into the wrongdoing and has made no changes.

> Hans A. von Spakovsky, "Protecting the First Amendment from the IRS," Heritage Foundation *Legal Memorandum* No. 104, October 2, 2013,
> http://www.heritage.org/research/reports/2013/10/protecting-the-first-amendment-from-the-irs.

> Hans A. von Spakovsky, "The IRS Tries to Silence Political Speech Again—This Time with New Regulations," Heritage Foundation *Legal Memorandum* No. 122, May 12, 2014,
> http://www.heritage.org/research/reports/2014/05/the-irs-tries-to-silence-political-speech-again-this-time-with-new-regulations.

End Unauthorized Cost-Sharing Payments for Obamacare. The new President should instruct the IRS through the Treasury Department to follow the law and immediately cease all Obamacare cost-sharing payments. This will restore constitutional propriety and reduce spending. The President should also instruct Treasury to stop making payments to the states for the Basic Health Plan program based on the same necessity to follow the law.

In 2014, the House of Representatives filed suit against the Obama Administration, challenging its implementation of the Patient Protection and Affordable Care Act of 2010 (42 U.S.C. 18001 *et seq.*) (ACA). In *United States House of Representatives v. Burwell, et al.*, the House expressed its position that the ACA does not provide an appropriation for the additional cost-sharing payments authorized under section 1342 of the law. The Obama Administration ordered the IRS to make those payments—even though Congress had not appropriated them—and it continues making them. This constitutes a clear violation of the law, the intent of Congress, and the Constitution.

> Hans A. von Spakovsky and Elizabeth Slattery, "Obama Administration Loses Key Obamacare Case," The Daily Signal, May 12, 2016,
> http://dailysignal.com/2016/05/12/obama-administration-loses-key-obamacare-case/.

EPA-HQ-2017-010625_0000581

PRIORITIES FOR THE SECRETARY

Reform the Office of Tax Analysis. The Secretary of the Treasury should issue a directive requiring the Office of Tax Analysis (OTA) to change the way it analyzes tax policy. The directive should include the following specifics:

- The OTA should follow the lead of the House of Representatives and take macroeconomic effects of tax policy changes into account when conducting revenue estimates, a method known as dynamic scoring.

- The OTA should take these macroeconomic effects into account when conducting distributional analysis so that the economic effects of tax policies are considered. (Unlike the current zero-sum methodology, which assumes one group's tax reduction must come at the expense of another's tax increase, the analysis of positive tax policies would show that economic growth can improve the economic position of most people.)

- The OTA should change its tax expenditure analysis so that it is consistent with the two leading economic definitions of income accepted by economists (Haig–Simons or Ture–Fisher) rather than the current highly idiosyncratic definition of a "normal" tax system that has no basis in economic theory.

Reform the Financial Crimes Enforcement Network (FinCEN) and the Existing U.S. Tax Information-Sharing Regime. Existing anti-money laundering and know-your-customer rules impose tremendous costs on financial institutions and other businesses. The Secretary of the Treasury should conduct a thorough review of these rules to distinguish those that generate information that results in a material number of convictions from those that do little to further law enforcement aims or actually impede law enforcement by using scarce private or public resources ineffectively.

The Secretary should also withdraw the Amendments to the Definition of Broker or Dealer in Securities, which would amend the definition of broker-dealers in securities to require crowdfunding portals to conduct Anti-Money Laundering (AML) and Know Your Customer (KYC) compliance. Funding portals are prohibited from handling customer funds. The banks and broker-dealers that do handle customer funds must comply with AML/KYC rules. Thus, the proposed rules impose duplicative and overlapping requirements. They require both the financial institution holding customer funds and the funding portal which cannot hold customer funds to perform the same function twice with respect to the same customer funds.

Lastly, compliance with the Foreign Account Tax Compliance Act of 2010 (26 U.S.C. 1471 *et seq.*) and its qualified intermediary rules impose high costs on banks and impede the ability of Americans and others to obtain normal financial services. The Secretary should streamline these rules.

Oppose Problematic Tax Treaties. The Protocol Amending the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information are part of a new and extraordinarily complex international tax information-sharing regime that also involve two Organization for Economic Co-operation and Development (OECD) intergovernmental initiatives.

These initiatives will result in the automatic sharing of bulk taxpayer information among governments worldwide, including many that are hostile to the U.S., are corrupt, or have inadequate data safeguards. These treaties will:

- Lead to substantially more transnational identity theft, crime, industrial espionage, financial fraud, and the suppression of political opponents and religious or ethnic minorities by authoritarian and corrupt governments;

- Put Americans' private financial information at risk, especially for American businesses involved in international commerce; and

- Add another layer to the already voluminous compliance requirements imposed on financial institutions and have a disproportionately adverse impact on small banks and broker-dealers.

The Competent Authority Agreement implements many aspects of the Protocol and the intergovernmental agreements. The President should withdraw the Protocol from Senate consideration. The Treasury Department should oppose its

EPA-HQ-2017-010625_0000582

implementation at the OECD and other international forums. The President should also oppose the Competent Authority agreement in international forums and decline to sign it.

David R. Burton, "Two Little Known Tax Treaties Will Lead to Substantially More Identity Theft, Crime, Industrial Espionage, and Suppression of Political Dissidents," Heritage Foundation *Backgrounder* No. 3087, December 21, 2015, http://www.heritage.org/research/reports/2015/12/two-little-known-tax-treaties-will-lead-to-substantially-more-identity-theft-crime-industrial-espionage-and-suppression-of-political-dissidents.

Anthony B. Kim and Curtis S. Dubay, "FATCA Hurts Law-Abiding Americans Living Abroad," Heritage Foundation *Issue Brief* No. 4237, June 10, 2014, http://www.heritage.org/research/reports/2014/06/fatca-hurts-law-abiding-americans-living-abroad.

Protect and Improve Pensions. The Secretary should protect pensioners and taxpayers by approving proposals from multiemployer pension plans to reduce benefits in accordance with the Multiemployer Pension Reform Act of 2014. Moreover, the Secretary should issue a statement indicating his willingness to approve a proposal by the Central States pension plan substantially similar to that which the Treasury recently rejected. By approving these multiemployer, or union, pension proposals, the Secretary of the Treasury can ensure current and future pensioners receive more than they would under current law and can reduce the likelihood of a taxpayer bailout of private pensions.

Rachel Greszler, "Bankrupt Pensions and Insolvent Pension Insurance: The Case of Multiemployer Pensions and the PBGC's Multiemployer Program," Heritage Foundation *Backgrounder* No. 3029, July 20, 2015, http://thf_media.s3.amazonaws.com/2015/pdf/BG3029.pdf.

Rachel Greszler, "The Left's Not-So-Secret Agenda for Bailing Out Union Pensions," The Daily Signal, June 6, 2016, http://dailysignal.com/2016/06/06/the-lefts-not-so-secret-agenda-for-bailing-out-union-pensions/.

EPA-HQ-2017-010625_0000583

Department of Veterans Affairs

The Department of Veterans Affairs (VA) should focus on administering health benefits and services to veterans in the most effective and efficient way. The recommendations below detail specific steps that the new Administration can take immediately to demonstrate its commitment to providing the highest quality of specialized care to meet the unique and complex health care needs of veterans.

PRIORITIES FOR THE PRESIDENT

Make Effective Management of Veterans Affairs an Administration Priority. In the inaugural address to the nation, the new President should make clear that improving the quality and timeliness of health care for the nation's veterans will be a top Administration priority. To that end, the President should appoint a Secretary with strong managerial and military experience and a proven record of success in organizational management. The President should also promise ongoing scrutiny of the VA leadership, particularly in the area of personnel management.

PRIORITIES FOR THE SECRETARY

Investigate the Recent Scandal and Punish Those Culpable. The Secretary should use the authority provided under the Veterans Choice Act of 2014 (38 U.S.C. 713) to fire senior executives based on poor performance or misconduct. The Secretary should dismiss those senior executives who manipulated or falsified data. In addition, the Secretary should apply ordinary civil service laws that allow for dismissal. For example, federal employees can be disciplined or removed for such cause as will "promote the efficiency of the service" (5 U.S.C. 7513). This includes criminal or dishonest activity and conduct that has an adverse impact on the mission of the agency or that subverts the ability of agency employees to perform their duties. Effective use of these personnel management provisions will result in a more effective and efficient Veterans Health Administration (VHA) workforce.

Hire More Clinical Personnel for Immediate Needs. The Secretary should use the existing authority provided under the Veterans Choice Act to hire temporary medical personnel to serve the immediate needs of today's veterans while more far-reaching reforms to allow for greater choice of care are authorized and implemented. This enhanced level of medical personnel would address the current crisis by reducing existing wait times and increasing timely access to care.

Increase Flexibility in the Veterans Choice Program. The Secretary should submit a proposal for inclusion in the fiscal year (FY) 2018 presidential budget that removes the arbitrary time and distance restrictions on veterans who seek private care. The absence of these restrictions will improve access to high-quality care outside the VHA and begin to transition the VHA to a model focused on outsourcing non-combat-related care to the private sector.

Prepare a Report Outlining Longer-Term Restructuring of the VHA. Simultaneous with resolving the immediate access problems, the Secretary should also assemble a panel of experts to develop a comprehensive plan to modernize the outdated VHA for the next generation of veterans. These reforms should be based on a model that concentrates the VHA on providing specialized medical services for combat-related conditions, such as traumatic brain injuries, spinal cord injuries, poly-trauma and post-traumatic stress disorders, and transition non-combat related conditions to the private sector. These reforms would maximize the VHA's unique expertise in the treatment of combat related medical conditions while ensuring veterans with non-combat related conditions are receiving care in the most appropriate setting.

John S. O'Shea, MD, "Reforming Veterans Health Care: Now and for the Future," Heritage Foundation *Issue Brief* No. 4585, June 24, 2016,
http://www.heritage.org/research/reports/2016/06/reforming-veterans-health-care-now-and-for-the-future.

EPA-HQ-2017-010625_0000585

Environmental Protection Agency

The Environmental Protection Agency (EPA) has evolved into a vast command-and-control regulatory regime that impedes the flourishingof a free and vibrant society. The EPA has used ever-expanding authority to implement stringent regulations with increasingly higher compliance costs for very little, if any, environmental benefit.

The following recommendations will immediately reduce the regulatory burden imposed by previous Administrations and empower states and private individuals to care for the environment. The reforms reflecttoday's cleaner and healthier environment in which any current environmental challenges do not require a big government solution.

PRIORITIES FOR THE PRESIDENT

Cut Spending for All Greenhouse Gas Regulations in the Presidential Budget and Work with Congress to Pass Legislation Clarifying that the Clean Air Act Does Not Provide Authority to Regulate Greenhouse Gasses. The President should not include funding for greenhouse gas regulations in the fiscalyear (FY) 2018 budget submission. The President should also call on Congress to pass legislation that prevents all agencies from regulating greenhouse gas emissions. No credible evidence suggests that anthropogenic warming poses a threat to the earth's climate or that climate regulations will significantly affect global temperatures. Reversing the Obama Administration's global warming agenda will prevent power plants from closing and energy bills from rising on American households, resulting in a more competitive energy sector, the economic benefitsof which will ripple throughout the economy.

> David W. Kreutzer, Nicolas D. Loris, Katie Tubb, and Kevin D. Dayaratna, "The State of Climate Science: No Justification for Extreme Policies," Heritage Foundation *Backgrounder* No. 3119, April 22, 2016,
> http://www.heritage.org/research/reports/2016/04/the-state-of-climate-science-no-justification-for-extreme-policies

Eliminate Obsolete and Unwarranted Programs. The President should not include funding for unnecessary programs in the FY 2018 budget submission. The following should be eliminated:

- Funding for categorical grants (which are only necessary because the EPA imposes an unsustainable level of regulation on states);
- Revolving funds that provide communities with subsidized financing for a range of water quality infrastructure projects;
- Superfund;
- Sustainable and livable communities programs;
- Indoor air quality programs and environmental education; and
- Environmental justice programs.

These programs interfere with local priorities and exceed the size and scope of the federal government. Eliminating them will save taxpayer dollars and stress that the private sector and/or state and local governments should be responsible for these activities.

Revoke Executive Orders (EOs) on Chesapeake and Great Lakes Restoration Initiatives. The President should immediately revoke Executive Order 13508 on Chesapeake restoration and protection effortsand Executive Order 13547 on Oceans, Coasts, and the Great Lakes protection, maintenance, and restoration efforts.Revoking these EOs will reduce federal control over projects that are state and, at most, regional in nature and for which federal intervention has slowed innovative solutions. In place of a top-down, prescriptive regulatory approach, shifting protection and restoration to the states and private organizations will better solve environmental challenges, unleash innovation, and reward creativity.

PRIORITIES FOR THE ADMINISTRATOR

Use Waiver Authority to Reduce Volumetric Renewable Fuel Standard Requirements to Zero. The Administrator should use the agency's waiver authority to reduce the volumetric renewable fuel requirements to zero gallons. The Clean Air Act authorizes the agency to adjust the volumes set by Congress as part of an annual rulemaking process. Furthermore, the statute permits that the

EPA-HQ-2017-010625_0000587

Administrator can waive part or the entire volumetric requirement based on determinations of economic or environmental harm or insufficient domestic supplies.

The Renewable Fuel Standard (RFS) has in fact caused both economic and environmental harm, distorting commodity production and prices, artificially raising the price of fuel and food, and having adverse environmental effects. Incentivizing more biofuel production with government policies resulted in the increased use of fertilizers and land-use conversion from prairies to agricultural production, resulting in increased soil erosion, sedimentation, and nitrogen and phosphorous runoff into lakes and streams. The current supply of cellulosic and advanced biofuels is vastly insufficient to meet the volumetric requirements. Reducing the targets to zero would save Americans money at the gas station and the grocery store, allow the market to best allocate farmland and fuel, and send an important signal that the federal government should not centrally plan energy markets.

> Nicolas D. Loris, "Examining the Renewable Fuel Standard," testimony before the Committee on Oversight and Government Reform, Subcommittee on the Interior and the Subcommittee on Healthcare, Benefits, and Administrative Rules, U.S. House of Representatives, March 16, 2016, http://www.heritage.org/research/testimony/examining-the-renewable-fuel-standard.

Withdraw the Social Cost of Carbon. The Administrator should initiate a rulemaking process that withdraws the use of the social cost of carbon (SCC) for cost-benefit analyses of regulatory actions. The EPA misleads on the benefits of the regulations by estimating the monetization of global warming benefits using the social cost of carbon. The EPA uses three statistical models, known as integrated assessment models, to estimate the value of the social cost of carbon, defined as the economic damage that one ton of carbon dioxide emitted today will cause over the next 300 years. However, these models arbitrarily derive a value for the social cost of carbon. Subjecting the models to reasonable inputs for climate sensitivity and discount rates dramatically lowers the estimated social cost of carbon figure. Revoking the use of SCC will prohibit agencies from artificially increasing the estimates of climate-related regulations in agency cost-benefit analyses.

Withdraw and Rewrite Waters of the United States Rule. The Administrator should use the formal rulemaking process to withdraw the EPA's Waters of the United States (WOTUS) rule. The Administrator should then write a new rule that protects private property rights and emphasizes the states' role in managing water resources.

Withdrawing the WOTUS rule would prevent a broad abuse of power in which the EPA's authority would extend to many non-navigable waters such as intermittent streams, mudflats, sandflats, wetlands, and even to depressions in land that are completely dry most of the year. Withdrawing the rule would also protect the rights of private property owners who otherwise would have to secure a permit to engage in common activities like farming and home building. Rewriting the rule that narrowly defines "navigable waters" and places responsibility in the hands of the states and private individuals will yield better economic and environmental outcomes as the best stewards of property are the property owners.

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

Withdraw Global Warming Regulations on Vehicles, Power Plants' Oil and Gas Activities, and Airline Emissions. The Administrator should direct the agency to begin the administrative rulemaking process to undo the Obama Administration's carbon dioxide regulations on light and heavy-duty vehicles, new and existing power plants, and possible future airline greenhouse gas emissions. The Administrator should also commence a new rulemaking to undo the Obama Administration EPA's methane regulations for oil and natural gas production, transportation, and storage. Each regulation imposes significant economic costs for minimal, if any, climate benefit. Unwinding the Obama EPA's climate regulations will keep these resources and technologies as affordable, dependable options as well as prevent consumers from incurring higher costs.

> David W. Kreutzer, Nicolas D. Loris, Katie Tubb, and Kevin D. Dayaratna, "The State of Climate Science: No Justification for Extreme Policies," Heritage Foundation *Backgrounder* No. 3119, April 22, 2016, http://www.heritage.org/research/reports/2016/04/the-state-of-climate-science-no-justification-for-extreme-policies.

EPA-HQ-2017-010625_0000588

Make Federally Funded Research Transparent and Publicly Available. The Administrator should direct the EPA to make all data produced under any federal grant publicly available. Furthermore, the Administrator should ensure strict information quality standards for rulemaking are imposed, along with oversight to ensure that the standards are met. The EPA too often masks politically driven regulations as scientific imperatives. By making all data publicly available, the Administrator will improve the integrity and accountability of scientific and economic analyses. Furthermore, making the data available will result in a more rigorous review of the Administration's regulations from outside experts. Increasing integrity and transparency in agency research will result in more credible science with trusted and verifiable data guiding sound policymaking.

> Diane Katz, "Environmental Policy Guide: 167 Recommendations for Environmental Policy Reform," Heritage Foundation White Paper, http://www.heritage.org/research/reports/2015/03/environmental-policy-guide/.

> James Jay Carafano, Jack Spencer, Bridget Mudd, and Katie Tubb, "Science Policy: Priorities and Reforms for the 45th President," Heritage Foundation *Backgrounder* No. 3128, June 13, 2016, http://www.heritage.org/research/reports/2016/06/science-policy-priorities-and-reforms-for-the-45th-president.

Discontinue Justifying Rules Based on the Co-benefits from Reducing Emissions of Criteria Pollutants. The Administrator should forbid including co-benefits from reducing emissions of criteria pollutants in all cost-benefit regulatory analyses. Rather than justifying a rule based on the direct benefits connected with the purpose of a regulation, co-benefits from reducing emissions of criteria pollutants are often used to justify the rule in question. This abuse of co-benefits allows the EPA to regulate a pollutant without ever making the case that regulation of the pollutant is warranted; often the benefits from addressing the regulated pollutant are greatly outweighed by the regulation's costs. This co-benefits abuse allows the EPA to justify rules when costs greatly exceed benefits and also to do an end-run around the standard-setting process for criteria pollutants that is prescribed under the Clean Air Act. Instead of setting a stricter criteria pollutant standard, the EPA can just use non-criteria pollutant rules to achieve reductions of emissions from criteria pollutants. Prohibiting the inclusion of co-benefits would also prevent the agency from exaggerating public health and environmental benefits of its regulations and clarify the true benefit of taking a particular regulatory action. Furthermore, it would prevent the agency from double-counting the benefits in multiple regulations.

> Diane Katz, "An Environmental Policy Primer for the Next President," Heritage Foundation *Backgrounder* No. 3079, December 14, 2015, http://www.heritage.org/research/reports/2015/12/an-environmental-policy-primer-for-the-next-president.

EPA-HQ-2017-010625_0000589

National Security Council

The National Security Council (NSC) is the President's chief source of national security advice. Composed of the President, the Vice President, the Secretaries of State, Defense, Energy, and, at the President's pleasure, other Senate-confirmed secretaries and undersecretaries, the NSC is best staffed by a small group of disciplined, loyal experts.

> Kim R. Holmes, "Memo to a New President: How Best to Organize the National Security Council," Heritage Foundation *Backgrounder* No. 3098, April 14, 2016, http://www.heritage.org/research/reports/2016/04/memo-to-a-new-president-how-best-to-organize-the-national-security-council.

> For details on the current structure of the NSC, see *The National Security Council*, The White House, https://www.whitehouse.gov/administration/eop/nsc (accessed September 26, 2016).

PRIORITIES FOR THE PRESIDENT

Define the NSC's Purpose. The President should limit the NSC's main purposes to:

1. Ensuring that the President has all the relevant intelligence and advice needed to make a decision;
2. Making sure that the President is provided with a wide range of options explored by advisers, complete with their recommendations provided in a fair and open way;
3. Advising the President of the means necessary to implement the President's decisions; and
4. Evaluating the effectiveness of policy implementation and assisting the President in assessing the performance of agencies in that regard.

Issue Presidential Directives Early. The first presidential directive describing the NSC organization (PD-1) is the top priority. The goal should be to outline the NSC structure on day one of the new presidency. Subsequent documents should include:

1. A presidential letter to heads of departments and agencies articulating the President's expectations for the national security interagency system;
2. A letter to the Senate-confirmed Secretary of State outlining the President's expectations regarding chiefs of missions;
3. An executive order establishing the formalities of the interagency system, including key personnel and structures;
4. A presidential directive describing the role and authorities of any special interagency teams created;
5. A budget request to fund the NSC staff and system; and
6. Letters to the Department of Homeland Security and other departments and agencies involved in homeland security explaining the new system.

A draft can be prepared during the transition period after a presidential election, following extensive briefings and consultations with existing NSC members and staff as well as department and agency personnel and outside experts.

Hire Team Players. The President should only hire qualified candidates capable of working effectively on a team, and avoid appointments based merely on political connections, friendships, and reputations. Principals in the NSC should be philosophically compatible and understand clearly that their success will be judged on how well they function inside the team.

The President should never tolerate:

- Unauthorized leaks;
- Open warfare between principal agencies; or
- A Cabinet member's elevation of an agency's interests at the expense of everyone else.

Refusal to adhere to these rules should be a firing offense.

In addition, the Secretary of State should be the President's principal, but not sole, foreign policy adviser. The National Security Advisor also plays an important advisory role. The President needs the unified advice of all of his principals—this is

EPA-HQ-2017-010625_0000591

something that only the Assistant to the President for National Security Affairs (APNSA) can ensure.

> Jack A. LeCuyer, *A National Security Staff for the 21st Century*, U.S. Army War College, Strategic Studies Institute Monograph, December 2012.
> http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB1142.pdf (accessed September 26, 2016).

Adopt the Adviser/Honest-Broker Model for the APNSA. The APNSA's main job should be to coordinate all the advice to the President fairly and clearly, not to be a completely independent player. The APNSA should give frank advice to the President, provided it is done privately and only after all views of other principals have been made known to the President.

In addition, the APNSA's responsibilities include:

1. Setting agendas and defining priorities;
2. Working as an arbiter and adjudicator of conflicting interagency recommendations;
3. Providing independent advice when requested by the President;
4. Serving as a national security professional and creating a firewall against the influence of domestic politics; and
5. Creating an efficient staff management system that clearly reflects the President's priorities and needs.

The APNSA should remain an adviser to the President protected by executive privilege and not be subjected to confirmation by the Senate.

After numerous reviews and studies, most experts have settled on the "honest broker" model as best for the APNSA.

Refine the Existing NSC Structure. The President should abolish the current position of Deputy National Security Advisor for Strategic Communications. There should be no formal APNSA deputy other than the Principal Deputy National Security Advisor, who should be responsible for managing the activities of the NSC. The National Security Advisor should continue to chair meetings of the NSC principals in the President's absence, and the NSC staff should continue to chair the various interagency meetings.

Both the President and the APNSA should hold informal weekly meetings with the principals of the NSC team to air views outside the formal NSC process. The President should always want the APNSA to be present when the President is in attendance. In addition, the APNSA should have informal meetings and perhaps even daily phone calls to discuss decisions with the President. Formal NSC meetings chaired by the President are at the President's discretion, but they should be reserved only for extremely important issues or during crises.

> Karl F. Inderfurth and Loch K. Johnson, *Fateful Decisions: Inside the National Security Council* (New York: Oxford University Press, 2004).

Keep the NSC Staff Small. The NSC staff need not exceed 150, and anything above that number should receive scrutiny. The size and structure of the NSC staff should be determined by the President, not legislated by Congress. Executive privilege and the unique styles and demands of each President require those decisions be made by the President.

The President must find a balance between political appointees and federal agency professionals on the NSC staff. Too heavy a presence of agency employees who are seconded to the NSC staff, sometimes for budgetary reasons, should be avoided. Agency professionals are often more beholden to their parent departments than they are to the President's agenda. The President deserves the best technical advice, which sometimes only agency professionals can provide; political appointees, however, particularly at the most senior levels of the NSC, are also essential. If the staff size is smaller, the temptation to add seconded agency officials to save money could be reduced.

> Shawn Brimely, Dafna H. Rand, Julianne Smith, and Jacob Stokes, *Enabling Decision: Shaping the National Security Council for the Next President*, Center for a New American Security, June 2015, p. 7,
> http://www.cnas.org/sites/default/files/publications-pdf/CNAS%20Report_NSC%20Reform_Final.pdf.

Keep the NSC Staff Streamlined. To carry out the NSC's objectives, the functions of the NSC staff should be:

1. Developing and communicating the President's vision, goals, and objectives to the agencies;
2. Engaging the agencies in developing clear sets of options for implementing these goals and objectives;

EPA-HQ-2017-010625_0000592

3. Evaluating the implementation of the policies decided by the President;

4. Establish a crisis-management system that involves the principals of the NSC and their staff but avoids making everything a "crisis;"

5. Integrating into the NSC system a greater emphasis on not only long-range perspectives and strategic planning but also new cross-cutting influences of science, technology, communications, and international economics; and

6. Developing a consultation and communications strategy that engages and informs key national security constituencies, especially Congress and the media.

This last function should be done only with the President's full knowledge and approval and with strict coordination of information among all members of the NSC team.

Integrate the Process of Strategic Planning into Decision Making and Policymaking. A separate strategic planning directorate inside the NSC structure is necessary for the following:

- Assessing strategic challenges and capabilities,
- Overseeing national security review studies,
- Creating a National Security Strategy, and
- Providing national security planning and resource guidance to the agencies.

The work of the planning directorate must be inserted into the advice and decision-making process of the NSC's regular order of business. The strategic planning directorate should work with the Office of Management and Budget to develop long-range budget plans. Strategic planning should focus on the complex interaction of all issues on the evolution of national security threats, including those outside the perimeters of so-called military security.

> Project on National Security Reform, *Turning Ideas into Action*, September 2009, http://www.voltairenet.org/IMG/pdf/Turning_Ideas_into_Action.pdf (accessed November 24, 2015).

Internally Signal a New Direction in Foreign Policy. This should include:

1. Strategic and policy review plans with short deadlines;

2. A review of top crises to be addressed immediately;

3. Decisions on budget planning, including adjustments to be made in existing budgets;

4. The first foreign trips to be made by the President; and

Major presidential speeches and statements explaining the new direction in foreign and security policies.

> Peter Feaver and William Inboden, "Implementing an Effective Foreign Policy," Chapter 27 in *Choosing to Lead: American Foreign Policy for a Disordered World*, The John Hay Initiative, 2015, p. 268, http://www.choosingtolead.net/implementing-an-effective-foreign-policy (accessed September 26, 2016).

Refine the Existing Homeland Security Structure. A separate Assistant to the President for Homeland Security and Counterterrorism currently reports to the Assistant to the President for National Security Affairs. This practice should continue in order to integrate the strategies and policies of national security and homeland security.

In addition, the Deputy Advisor for Counterterrorism should report to the Assistant to the President for Homeland Security and Counterterrorism, as well as coordinate day-to-day activities with the Principal Deputy National Security Advisor. The current structure of Principals Committees, Deputies Committees, Interagency Policy Committees, and Sub-Interagency Policy Committees is adequate.

Conduct Strategic Reviews of Policy and Interagency Processes. The new President should overturn existing directives or executive orders deemed to be incompatible with the direction of policy under the new President. The Homeland Security Advisor should conduct a similar review of homeland security in coordination with the National Security Advisor. This should be done formally when the full team of Cabinet members is in place, but the National Security Advisor can begin the preparatory planning and staff work earlier.

EPA-HQ-2017-010625_0000593

Office of the Director of National Intelligence

The Office of the Director of National Intelligence (ODNI) leads intelligence integration among the 16 elements of the Intelligence Community (IC).[1] With the vital support of the President, the Director of National Intelligence (DNI) serves to unite and focus information sharing among the various intelligence elements regardless of whether the information is collected abroad or domestically.

The White House needs to lift policy restrictions on foreign intelligence collection. Cyber intelligence operations and analysis must be elevated to a much more prominent role within the IC with the creation of a robust interagency center of excellence. Professionals within the IC need to draw from more open-source data, deliver more diversity in the assessment of the threats, and focus beyond current analysis to longer-term strategic planning.

PRIORITIES FOR THE PRESIDENT

Lead and Integrate the Intelligence Community. The President should ensure that the pre-9/11 legal "wall" that limited information sharing between America's foreign and domestic agencies related to national security is not re-established. In the face of unprecedented foreign and domestic national security threats, the IC requires unity of effort in sharing information. The re-emergence of a barrier between foreign and domestic information collection and sharing risks over-emphasizing law enforcement information over intelligence.

> David R. Shedd, "Intelligence and National Defense," *2016 Index of U.S. Military Strength*, The Heritage Foundation, http://index.heritage.org/military/2016/essays/intelligence-and-national-defense/.

> The Heritage Foundation, "The Role of Intelligence," March 30, 2016, http://www.heritage.org/events/2016/03/intelligence.

> David R. Shedd, Charles D. Stimson, and Paul Rosenzweig, "Maintaining America's Ability to Collect Foreign Intelligence: The Section 702 Program," Heritage Foundation *Backgrounder* No. 3122, May 13, 2016, http://www.heritage.org/research/reports/2016/05/maintaining-americas-ability-to-collect-foreign-intelligence-the-section-702-program.

Rescind Presidential Policy Directive 28. The next President should rescind President Obama's January 2014 Policy Directive 28 (PPD-28) which requires that U.S. operatives, when collecting foreign intelligence on threats, recognize that all persons should be "treated with dignity and respect, regardless of their nationality or wherever they may reside and that all persons have legitimate privacy interests." The incoming President can remove these restrictions without congressional approval.

PPD-28 makes U.S. intelligence professionals forgo collection opportunities lest information be gathered that may fall outside the narrow bounds set by the Presidential Directive. The restrictions of PPD-28 contradict the direction provided to the IC by every President since Ronald Reagan took office. This provision seriously limits foreign signals-intelligence collection. PPD-28 imposes on the IC layer upon layer of process-reporting requirements that slow information collection to the point of outright discouraging it; in addition, it gives foreign targets of signals intelligence-gathering privacy and civil-liberties rights that largely mirror the constitutional rights of U.S. citizens. Rescinding the directive will remove an intelligence-collection barrier that essentially forces the IC to prove that its projected foreign-intelligence or counterintelligence collection activities serve a confined national or departmental mission purpose.

> David R. Shedd. "How Obama Unilaterally Chilled Surveillance," *The Wall Street Journal*, November 30, 2015, http://www.wsj.com/articles/how-obama-unilaterally-chilled-surveillance-1448833262 (accessed September 26, 2016).

Establish a National Cyber Center. Cyber threats are growing exponentially in number and sophistication. The President should direct the DNI to establish a National Cyber Center (NCC) to conduct all the national-level cyber analysis for the nation and direct national cybersecurity.

The NCC, created under DNI authorities, would be modeled after the National Counterterrorism Center (NCTC). While the NCC need not be enacted in law (as was the NCTC), the instantiation of an NCC in legislation would give the NCC greater standing as a national intelligence center. The NCC would be staffed by existing personnel to avoid increasing the size of the government. Personnel would be drawn from IC agencies focused on foreign cyber collection, such as the NSA and the CIA, as well as domestic cyber collection

EPA-HQ-2017-010625_0000595

such as the FBI. The NCC would focus on identifying cyber policy gaps requiring policymaker attention.

The IC's role continues to evolve in this mission area alongside those of the Department of Homeland Security and the law enforcement elements of government, principally the FBI. No single national intelligence entity is presently providing the President coherent analysis on cyber threats. Cyber legislation was stalled for years, but with the passage of the Cybersecurity Information Sharing Act of 2015 (6 U.S.C. 1501 *et seq.*), a framework for addressing cyber-related activities is beginning to take form. The recent establishment of a small IC office known as the Cyber Threat Intelligence Integration Center (CTIIC), ostensibly to conduct analysis of cyber threats, falls far short of what is needed to address one of the most pervasive threats the United States faces today and will face for the foreseeable future. The CTIIC neither has the resources nor the standing among the larger departments and agencies to assess cyber threats.

PRIORITIES FOR THE DIRECTOR

End the Open Source-Classified Divide. The DNI should broaden the mandate of the Open Source Center to allow it to truly serve the entire IC by providing open-source tools and, as appropriate, open-source products to all the IC elements.

The ODNI established the Open Source Center in 2005. Since then, the Center has remained predominantly shaped by its efforts to meet the CIA's open-source needs instead of those of the larger IC. The DNI can direct this more expansive role for the Open Source Center without additional authorities. Given the highly complex security environment that the U.S. and its allies are facing globally, the IC can no longer neglect publicly available information, as it has tended to do. Classified information is the centerpiece of intelligence analysis, because it is the sole provenance of the IC and is often unequaled in value. If correctly evaluated, classified material can give a view of the adversary that is closer to reality than just relying on open-source information alone. At the same time, the IC must exploit publicly available sources as an additional resource that can be combined with classified information to present a more complete picture of reality.

Promote Diversity in Analysis in the Intelligence Community. The centrality of consensus and convention in the IC is a concern. Groupthink, confirmation biases, and cultural norms have limited how intelligence analysts have perceived and described problem sets and policy solutions. From the lowest to the highest levels of the IC, consensus-driven, group production of analyses threatens dissenting opinions and alternative viewpoints and can diminish objections to received wisdom or downplay alternative viewpoints. For example, the ongoing investigation into allegations of intelligence-analysis manipulation at Central Command has exposed the problem of a preferred "narrative" that analysts were pressured to maintain. Moreover, potential politicization, whether directly by an Administration or by IC members eager to please political leadership, remains a serious problem.

To promote diversity in analysis, the DNI should:

- **Ensure** that fair hearing is given to alternative views to conventional thinking and analysis;
- **Reward** analysts for supplying intelligence analysis based on supporting evidence that is counter-current to conventional thought; and
- **Hold** each leader of the IC responsible for fostering a "truth to power" culture.

Remove Impediments to More Effective DNI Leadership of the IC. The DNI requires strong backing from the President that includes a clear and strong mandate to lead the IC, including the CIA. There are a variety of ways the DNI would benefit from this support. The President could signal an unwavering support for the DNI beginning by allowing the DNI to hire and fire the heads of IC elements along the direction contained in Executive Order 12333.

Under the DNI's supervision, the bureaucratic layers between analysts and their customers need to be reduced to allow more analytical freedom and diversity, and to prevent the massaging of information to fit a preferred narrative or achieve consensus. Even with strong leadership among the IC agencies to ensure good cooperation and coordination at the very highest levels of the community, it will not easily break down the walls that exist among the all-source analysis agencies (such as the CIA, DIA, or State Department's Bureau of Intelligence and Research). The increased exposure to the culture and viewpoints of other agencies will also help to foster a broader range of views and undermine groupthink around the IC.

EPA-HQ-2017-010625_0000596

Stephen Slick, David R. Shedd, and Jamil Jaffer, "Demystifying Executive Order 12333," John Hay Initiative *Backgrounder*, June 1 2016, https://drive.google.com/file/d/0B2ANBF239-tbl4S294a2bNUk/view?pref=2&pli=1 (accessed September 26, 2016).

Establish Offices for Strategic Analysis. In each of the all-source analytical IC elements, (the CIA, the DIA, and the State Department's Bureau of Intelligence and Research), the DNI should mandate the establishment of an office for long-range forecasting and strategic thinking and planning, perhaps called the Office of Strategic Analysis (OSA). The DNI has the authority to call for the establishment of the OSAs. Within the IC, too little attention is paid to strategic and long-term analysis. Certainly, it is in part customer-driven, and current intelligence must remain the primary focus of analysts; however, a neglect of longer-term thinking and writing will force the IC to remain reactive rather than proactive when dealing with the many challenges ahead. Tactical and strategic analyses are two completely different sorts of efforts, often requiring different analytical skills.

The National Intelligence Council (NIC) and the IC elements with analytical offices need to create separate structures to adequately cover this distinction. These OSAs would be charged with producing a series of strategic documents, looking, for instance, one year, two years, and five years ahead, taking into consideration the national security landscape as a whole, not just narrow issues or current topics. These strategic assessments should build on each other and should be produced every year, with "lessons learned" taken from past products to improve and sharpen strategic thinking.

David R. Shedd and Matthew F. Ferraro. "Intelligence Reform 2.0," Defense One, April 21, 2015, http://www.defenseone.com/ideas/2015/04/intelligence-reform-20/110659/ (accessed September 26, 2016).

ENDNOTE

1. The IC is a federated system of agencies and elements composed of both foreign-focused collection agencies like the Central Intelligence Agency (CIA), the National Security Agency (NSA), and the Defense Intelligence Agency (DIA) and U.S.-focused agencies such as the Federal Bureau of Investigation (FBI) and elements of the Departments of Homeland Security and Treasury, among others.

EPA-HQ-2017-010625_0000597

Office of Personnel Management

The Office of Personnel Management (OPM) should spearhead reforms that will bring federal compensation in line with the private sector. The OPM should also eliminate taxpayer subsidies to federal government unions. These reforms would signal that the new Administration intends to pursue policies that would create opportunity for all and favoritism for none.

PRIORITIES FOR THE PRESIDENT

Lead Effort to Bring Federal Compensation in Line with the Private Sector. The President should press Congress to reduce the significant disparity in compensation for federal employees and those working in the private sector. These reforms should be highlighted in the State of the Union speech. The President should also pressure Congress to adopt these reforms by recommending zero percent federal pay increases each year until Congress acts to reduce the significant disparity that exists between federal and private-sector pay, health care, retirement benefits, and hiring and firing decisions. Reducing this disparity will save taxpayers hundreds of billions of dollars over the next decade.

> Rachel Greszler and James Sherk, "Why It Is Time to Reform Compensation for Federal Employees," Heritage Foundation *Backgrounder* No. 3139, July 27, 2016, http://www.heritage.org/research/reports/2016/07/why-it-is-time-to-reform-compensation-for-federal-employees.

End Automatic Collection of Union Dues Used for Political Activities. The President should issue an executive order, followed by OPM regulations, prohibiting federal unions from spending dues deducted by the federal government's payroll system for politics or lobbying. Unions who do not comply with this requirement would lose access to automatic dues deduction. The Hatch Act prohibits federal employees from using federal resources for political purposes; the Civil Service Reform Act (CSRA) of 1978 (5 U.S.C. 1101 *et seq.*) authorizes union dues collection but does not relax Hatch Act requirements. This reform would require federal unions to collect the political portion of their dues separately, without using federal resources. The government should not show favoritism toward highly politicized interest groups by subsidizing their political fundraising.

Prohibit Use of Official Time for Collective-Bargaining Purposes. The President should issue an executive order, followed by OPM regulations, limiting official time to statutorily mandated purposes. The CSRA requires agencies to allow federal union officers to negotiate contracts and resolve grievances while on the clock as federal employees; it permits, but does not require, agencies to allow this for other purposes as well. Limiting this "official time" to statutorily mandated subjects would eliminate an approximately $120 million subsidy to federal employee unions. It would require all federal employees to work for the public instead of working to provide private benefits for politically influential unions.

Cap and Measure Use of "Official Time." The OPM should issue regulations establishing official time budgets for each agency, and requiring them not to exceed that budget during negotiations without OPM approval. The budget should restrict federal unions to no more than $40 million worth of official time a year. The OPM should also require agencies to calculate the dollar value of the time individual employees spend on official time and publicize that information annually. The CSRA requires the government to negotiate over official time use for certain purposes, but does not require issuing unlimited official time for those purposes. Such budgeting would prevent unions from bypassing official time use restrictions by creatively reclassifying activities as pertaining to contract negotiations or dispute resolution.

> James Sherk, "Official Time: Good Value for the Taxpayer?" testimony before the Committee on Oversight and Government Reform, U.S. House of Representatives, June 1, 2011, http://www.heritage.org/research/testimony/2011/06/official-time-good-value-for-the-taxpayer.

EPA-HQ-2017-010625_0000599

Office of Management and Budget

The Office of Management and Budget (OMB) has evolved over its 95-year history from playing an administrative role to one that is heavily involved in the policymaking process of the Administration. The agency is responsible for developing presidential budgets that reflect the policy agenda of the Administration. It also administers the regulatory review process, manages agency requests for information collection, and oversees data quality government-wide. The reforms here would instill rigor to the budgeting decisions made by agencies as well as the regulatory review process. These reforms will help to shrink the size and scope of the federal government.

PRIORITIES FOR THE PRESIDENT

Institute Evidence-Based Policymaking. The next Administration should improve the Program Assessment Rating Tool (PART) along with a fiscally disciplined, evidence-based review within OMB. PART was an attempt by the Bush Administration to assess the effectiveness of every federal program's purpose, management, and results. The extremely ambitious PART was a first-of-its-kind attempt to link federal budgetary decisions to performance. President Barack Obama regrettably terminated PART. A revitalized review process would require federal agencies to present OMB with credible evidence on their performance. Budget requests from agencies should be based on their performance, not just desired levels of funding.

The next President can encourage Congress to be more fiscally disciplined by requiring evidence of program efficacy in budget recommendations. Instituting an improved PART and an evidence-based review would help the President pressure Congress to eliminate wasteful spending, and to make federal programs operate as efficiently as possible. Agencies should be required to review programs at intervals no longer than every five years, and require ongoing performance monitoring.

When practiced correctly, evidence-based policymaking would allow policymakers, especially at the OMB, to base funding decisions on empirically rigorous evaluations of program results. Given scarce federal resources, federal policymakers should fund only those programs that have been proven to work.

Leadership is crucial to setting an evidence-based agenda.

1. The next President needs to send a clear message to the OMB and the entire federal bureaucracy that the West Wing believes evidence-based policymaking should influence budget decisions.

2. The OMB director needs to develop clear standards for collecting and analyzing evidence of program efficacy for budgetary decision making.

> David B. Muhlhausen, "Evidence-Based Policymaking: A Primer," Heritage Foundation *Backgrounder* No. 3063, October 15, 2015,
> http://www.heritage.org/research/reports/2015/10/evidence-based-policymaking-a-primer.

> David B. Muhlhausen, *Do Federal Social Programs Work?* (Santa Barbara, CA: Praeger, 2013).

> David B. Muhlhausen, "Evaluating Federal Social Programs: Finding Out What Works and What Does Not," testimony before the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, July 17, 2013,
> http://www.heritage.org/research/testimony/2013/06/db-federal-social-programs-for-children-work.

PRIORITIES FOR THE DIRECTOR

Increase the Standards and Enforcement of the Information Quality Act. The Information Quality Act requires the OMB to issue guidelines for "ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies" in the rulemaking process. The effectiveness of the Act has been limited by the lack of an enforcement mechanism. Congress should codify information-quality standards and permit judicial review of an agency's compliance with the provisions. The Act also should be amended to hold that agency failure to comply with the standards would be an automatic finding of arbitrariness and capriciousness under the Administrative Procedure Act. Congress may amend the Information Quality Act as established under the 2001 Consolidated Appropriations Act (Public Law No. 106–554, §515).

Agencies too often mask politically driven regulations as scientifically based imperatives. Credible

EPA-HQ-2017-010625_0000601

science and transparency are necessary elements of sound policy. Higher standards and enforcement of the Information Quality Act would contribute to more effective regulation.

Shift Funding to Office of Information and Regulatory Affairs from Agencies to Support Regulatory Review. The Office of Information and Regulatory Affairs (OIRA) is responsible for reviewing proposed and final regulations to determine if they comply with a variety of statutory and executive order requirements, including cost-benefit calculations and paperwork reduction. OIRA consistently fails to complete reviews within the timeframes set by law. OIRA's meager staff of approximately 45 is outnumbered 6,000-to-1 by the regulators whose work they are charged with reviewing. Congress should shift funding from agency budgets to OIRA for the purpose of increasing professional staff levels. This should be done at no additional cost to taxpayers.

Major regulations that do not conform to rulemaking requirements are routinely issued by agencies and approved by OIRA without a thorough review. OIRA staff levels should be proportionate to the reasonable worst-case volume of new major regulations produced annually to ensure that every regulation is thoroughly reviewed. Upholding rulemaking standards is necessary to help ensure that regulations are necessary and likely to be effective.

James L. Gattuso and Diane Katz, "Red Tape Rising 2016: Obama Regs Top $100 Billion Annually," Heritage Foundation *Backgrounder* No. 3127, May 23, 2016, http://www.heritage.org/research/reports/2016/05/red-tape-rising-2016-obama-regs-top-100-billion-annually.

EPA-HQ-2017-010625_0000602

Social Security Administration

The Social Security Administration (SSA) should focus on providing benefits to individuals and their families to protect against poverty due to old age or disability. The recommendations below detail specific steps that the new Administration can take immediately to demonstrate its commitment to returning Social Security to true insurance.

PRIORITIES FOR THE PRESIDENT

Set an Agenda to Reform Social Security. The President should lead in building public support for Social Security reform. To that end, the President should commit in the inaugural address to relieving younger generations of undue tax and debt burdens from excessive entitlement spending with a new social contract that is fair to all generations. The President should also establish a bipartisan national commission to devise a comprehensive plan to return Social Security's programs to meeting their original goals of poverty prevention among the elderly and individuals with disability in an affordable and targeted manner. The President should then use the commission's recommendations and call on Congress to take action to implement them. A reformed Social Security system will protect America's elderly and individuals with disabilities from poverty without burdening younger generations with undue tax and debt burdens, freeing up resources for higher take-home wages which American workers may spend or invest as they see best.

> Romina Boccia, "Social Security: $39 Billion Deficit in 2014, Insolvent by 2035," Heritage Foundation *Backgrounder* No. 3043, July 29, 2015, http://www.heritage.org/research/reports/2015/07/social-security-39-billion-deficit-in-2014-insolvent-by-2035.

> Romina Boccia, "Social Security Disability Insurance: Benefit Offsets Encourage Work—But Achieve Little to No Savings," Heritage Foundation *Backgrounder* No. 3032, July 15, 2015, http://www.heritage.org/research/reports/2015/07/social-security-disability-insurance-benefit-offsets-encourage-work-but-achieve-little-to-no-savings.

> The Heritage Foundation, "Social Security," in *Solutions 2016*, http://solutions.heritage.org/entitlements/social-security/.

PRIORITIES FOR THE COMMISSIONER

Eliminate Non-Medical Factors in the Disability Determination Process. Social Security's commissioner should pursue regulatory action to eliminate the SSA's Grid rules and instruct disability determination officers to rely exclusively on physical and mental factors when making disability determinations. The Social Security commissioner should further instruct disability determination officers to note which physical and mental factors were taken into consideration in making disability determinations for individual applicants, and improve its recordkeeping with respect to assigning a needs-based period of disability to any individuals with temporary conditions that are expected or likely to improve. These steps will ensure that Social Security disability insurance funds go toward those individuals who need them the most and increase labor force participation among those individuals no longer eligible for disability insurance benefits based on non-medical factors or because their eligibility conditions have improved.

> The Heritage Foundation, "Social Security," in *Solutions 2016*, http://solutions.heritage.org/entitlements/social-security/.

Establish Guidelines for Qualified Private Disability Insurance Plans. Social Security's commissioner should begin laying the groundwork for incorporating an optional, private disability insurance component into the public disability insurance system, including establishing guidelines that private plans must meet to qualify for the payroll tax credit and facilitating the administrative changes and processes to handle disability insurance claims that come through private insurers as opposed to the existing public application process. These preparations will help the Administration and federal taxpayers benefit from the advantages of the private disability insurance market in terms of lower costs, a superior determination process, and improved outcomes for the disabled.

EPA-HQ-2017-010625_0000603

Rachel Greszler, "Private Disability Insurance Option Could Help Save SSDI and Improve Individual Well-being," Heritage Foundation *Backgrounder* No. 3037, July 20, 2015, http://www.heritage.org/research/reports/2015/07/private-disability-insurance-option-could-help-save-ssdi-and-improve-individual-well-being.

Eliminate Direct Payment of SSDI Attorney Fees. Social Security's commissioner should pursue regulatory action to eliminate direct payment of attorneys who represent SSDI claimants. Under the current structure, payment is a function of the benefit back-pay due to the eligible individual as part of the individual's waiting period, thereby creating an incentive for attorneys to delay cases so as to maximize payouts. Attorneys will be more responsive to clients' needs when they depend on clients paying them directly. This will better serve disabled individuals seeking assistance from attorneys to obtain SSDI benefits.

Rachel Greszler, "Time to Cut Out the SSA as Middleman in SSDI Representation," Heritage Foundation *Issue Brief* No. 4489, November 24, 2015, http://www.heritage.org/research/reports/2015/11/time-to-cut-out-the-ssa-as-middleman-in-ssdi-representation.

Close the Evidentiary Record. Social Security's commissioner should pursue regulatory action to close the evidentiary record at least five days before individuals appealing their Social Security disability insurance benefit denials have their scheduled hearings with an administrative law judge. Closing the evidentiary record will reduce hearing delays and help to reduce the current hearing backlog. Exceptions could be allowed for evidence that was not included in the file due to no fault of the applicant.

Prevent Overpayment. The Social Security commissioner should direct agency staff to improve its use of technology for preventing overpayment and to adequately respond to alerts submitted by SSA technology systems to eliminate, reduce, and, where necessary, collect on overpayments. This will save taxpayer dollars from being wasted.

Romina Boccia and Amber Athey, "Report: Nearly Half of Social Security Disability Beneficiaries Were Overpaid By Government," The Daily Signal, June 22, 2015, http://dailysignal.com/2015/06/22/report-nearly-half-of-social-security-disability-beneficiaries-were-overpaid-by-government/.

EPA-HQ-2017-010625_0000604

The Heritage Foundation

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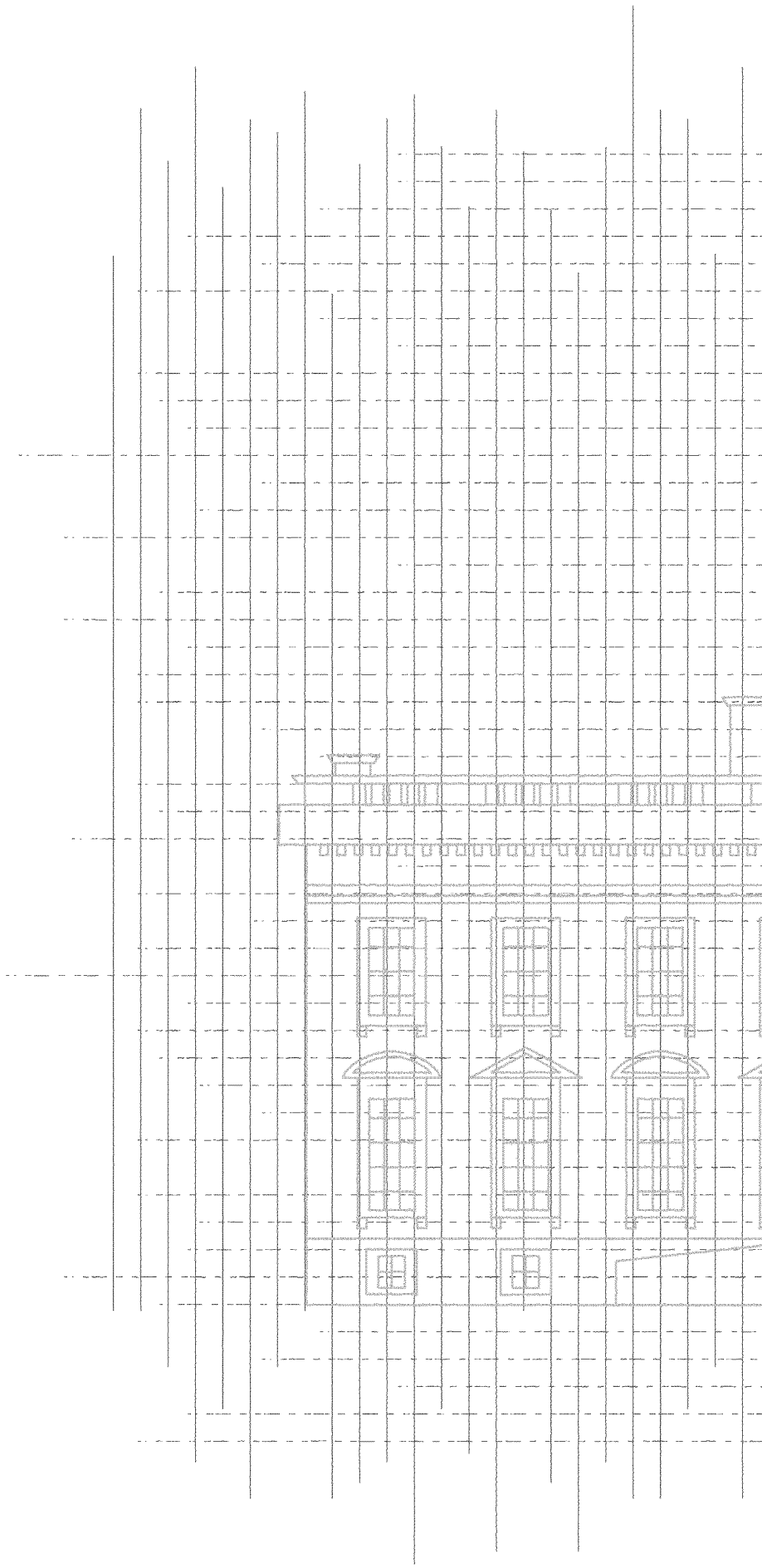

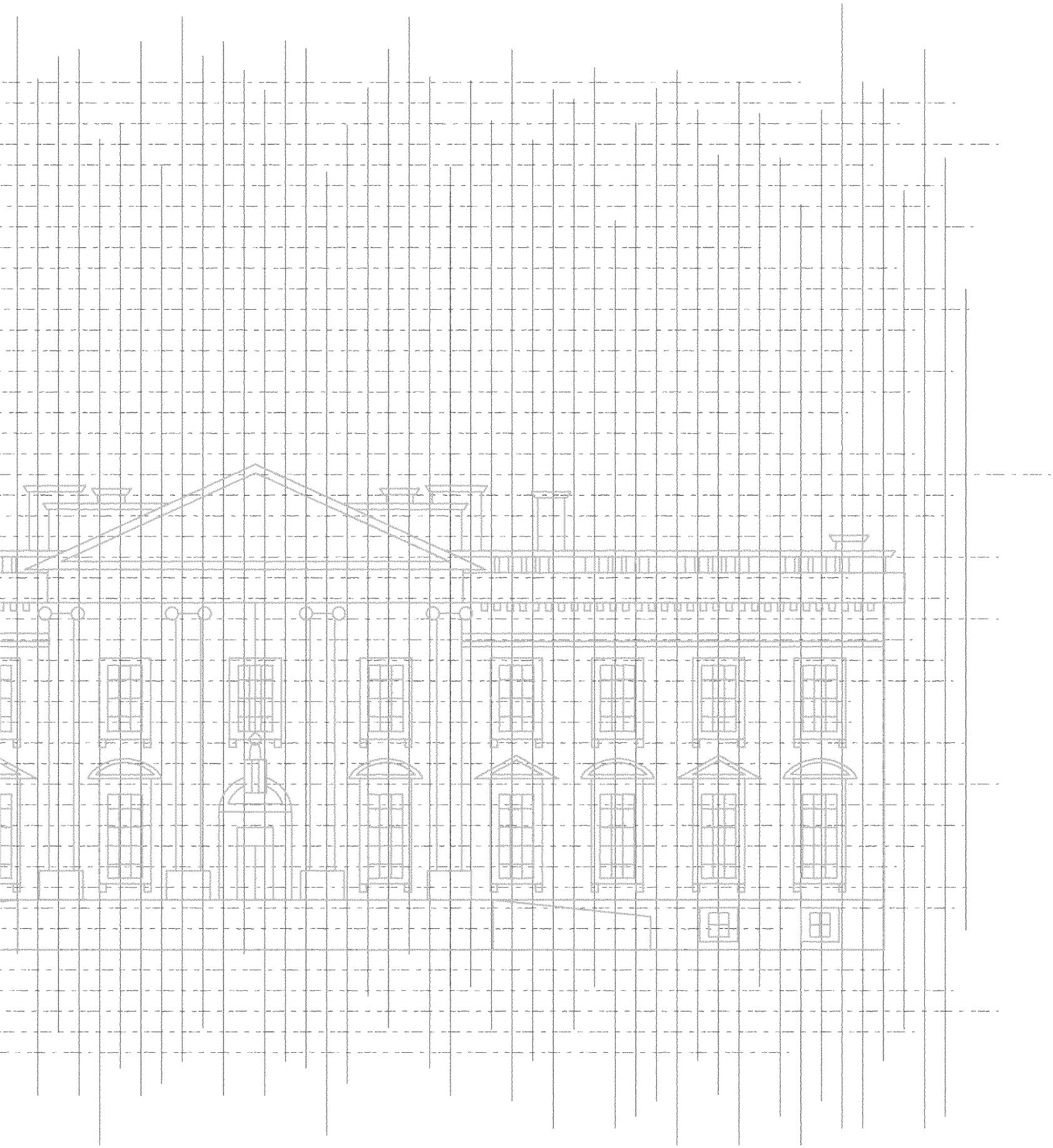

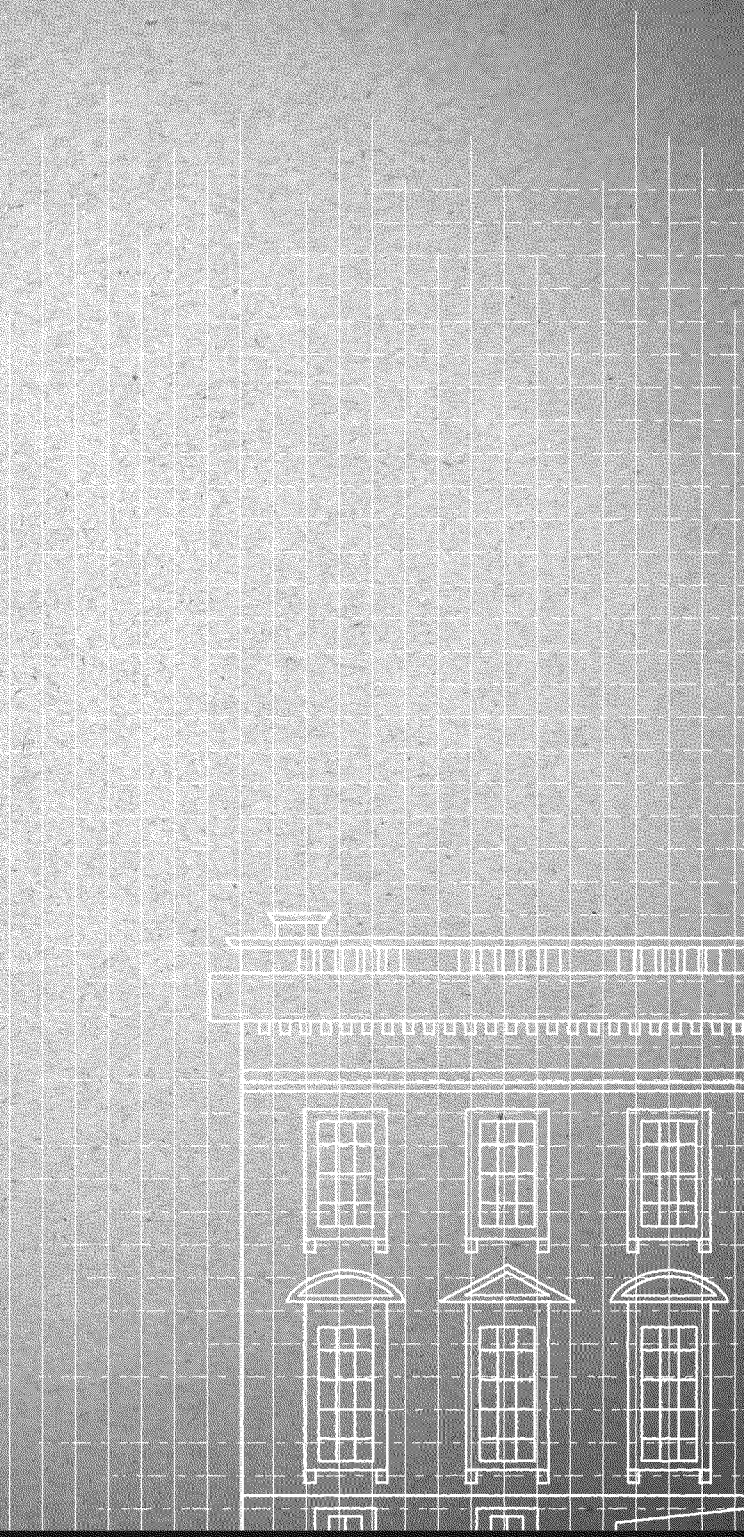

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