

Republican Views

We object to the Democrats' Build More Inflation Act and using the Reconciliation process to pass it. This socialist agenda will destroy freedom and embolden our enemies on the backs of American families. This is a gargantuan, unnecessary bill that fundamentally changes American life and security for the worse.

In addition, the Democrats' Build More Inflation Act comes at a time when our economy is recovering from the damage done by COVID-19. Just seven months ago, Democrats used the Reconciliation process to pass the 1.9 trillion-dollar American Rescue Plan, which was on top of the approximately 3.5 trillion-dollar Congress appropriated in 2020. This is exactly the point made by one Energy and Commerce Committee Democrat during opening statements on the first day of our markup:

We need to stop spending. The economy is recovered. There are plenty of jobs out there. Wages are up dramatically. We just spent over 5 trillion dollars in the last 18 months on COVID alone – over three times what we spent on all defense and non-defense spending in one year, and we have not cut any of our regular appropriations. Indeed, we have increased it. . . . We're adding more to the deficit. This is insanity. It is fiscally irresponsible.

In addition, we recall the Committee Democrats' objections about regular order during the 2017 markup of the "Budget Reconciliation Legislative Recommendations Relating to Repeal and Replace of the Patient Protection and Affordable Care Act; Title I—Energy and Commerce American Health Care Act of 2017."

In their Minority Views to that legislation, Committee Democrats summarizes their "deep concern" about the lack of regular order during that Reconciliation process, writing:

Despite the wide-ranging, serious implications of this legislation for the health and financial security of all Americans, the Committee did not hold a single hearing on the details and effect of the legislation. Notably, stakeholders have not had the ability to weigh in on the impacts of the bill to the health care system. In fact, the Committee received letters from hospitals, doctors, and patient and advocacy groups all outlining their significant concerns with the legislation. Additionally, despite Speaker Ryan's claims that the bill would be considered through regular order and through a transparent process, the repeal bill was drafted in secret and introduced less than two days before markup. The minority is deeply concerned by the decision to proceed to markup without first receiving the views of the CBO on the impact of this legislation on health insurance coverage, costs, and the Federal budget. Given the likelihood that millions of Americans will lose their health insurance as a result of this legislation, proceeding to markup without a CBO score is highly

irresponsible and deprives Committee members of a full understanding of the implications of the legislation before voting on it.¹

During the markup of that legislation, Committee Democrats were also vocal in their objections about regular order. There were complaints about the lack of hearings, complaints about the lack of subcommittee markups, complaints about the lack of a cost estimate from the Congressional Budget Office (CBO), complaints about the amount of time for opening statements, and of course, complaints about how long the legislative text had been available to members.

In an allusion to their scavenger hunt across Capitol Hill in the days before the markup, searching for that legislative text (which included the harassment of visitors and staff in the office of the Committee's then-Chairman), one Democratic member even said:

And so I am outraged, Mr. Chairman, many Americans are outraged, that this secretive healthcare plan was finally made public after being sequestered in the bowels of the Capitol less than 2 days before this markup. The legislative text – and we have heard that from other members – was literally under lock and key and protected by armed Capitol police officers.

But in their return to the Majority, the Energy and Commerce Democrats outrage and deep concern for regular order has waned. Just seven months ago, the Committee considered Reconciliation legislation for fiscal year 2021. Unfortunately, the Democratic majority held no hearings, no subcommittee markups, and had no CBO estimate before that legislation was considered by the Committee. And just a few days ago, the Committee wrapped up a three-day markup of the most consequential and most expensive legislation that it has ever considered.

Every area of the Committee's broad jurisdiction was impacted by this legislation. As with their first Reconciliation legislation this year, again, there were no hearings, no subcommittee markups, and no CBO estimate (and as the markup began on Monday morning at 11:00 a.m., the amendments in the nature of a substitute to the 16 subtitles that were considered by the Committee were not shared with the Minority until 11:00 a.m. on Sunday.).

As one Energy and Commerce Committee Democratic said, "It is a terrible process. In one month, we put together a 3.5 trillion-dollar bill that has no chance of passing the Senate. Virtually no Member input. No amendments supposed to pass. No hearing on this gargantuan bill. Members had no chance to represent their districts."

We look forward the Democrats return to the Minority and rediscovery of their deep commitment to regular order.

We also note the bipartisan opposition to Subtitle E—Drug Pricing of the Reconciliation legislation during the markup. Subtitle E is bad for innovation, bad for health care, and bad for Americans, who will be denied important treatments and cures. This Subtitle will be directly responsible for the unnecessary suffering and deaths of Americans. It is so bad, three Committee

Democrats joined with Committee Republicans to kill it. Democrats may feel pressure to include Subtitle E in whatever Reconciliation legislation is considered on the Floor. Without Subtitle E in their Reconciliation legislation, Democrats will be forced scale back their gargantuan socialist agenda.

But the Energy and Commerce Committee has spoken, and House Democrats should listen.

Subtitle A: Budget Reconciliation Legislative Recommendations Relating to Air Pollution

The provisions in Subtitle A focus on Environmental Protection Agency (EPA) spending and regulatory authorities and contribute to the Democrats' socialist agenda to expand Federal government control over our economy, health, and welfare. And as with other provisions, the Subtitle was reported out without a single hearing in which Congress could review the impacts of the new provisions, which will have lasting effects on Federal environment and energy policies—far beyond the budget window.

The central theme of the Subtitle involves the radical drive to eliminate America's use of coal, oil, and natural gas—so essential to affordable, reliable power and the energy security and the robust economy working families rely upon. Provisions in this Subtitle reflect a combination of massive spending and expanded regulatory requirements and new taxes on disfavored fossil energy to incentivize, and in some cases compel, the expansion of the favored technologies of the environmental left (and the People's Republic of China) – weather-based wind and solar, and electrification of everything, no matter the costs to American families or the nation's energy security.

Notably, the Democrats chose to impose this spending, regulatory, and tax onslaught through several amendments to the Clean Air Act, revealing an underlying goal of the : to make lasting changes to our bedrock environmental laws, with no Committee process. The left's radical agenda is exposed here: take over the electricity system and prepare to impose new regulations and taxes to drive out existing fossil and natural gas.

Subtitle A contains at least \$37.2 billion of spending for numerous grant programs and funds. Many of the provisions overlap or add to funding priorities Congress has already addressed, effectively shoveling taxpayer dollars before we even understand where and how the money will be spent.

Most troubling, the Subtitle establishes in the Clean Air Act a natural gas tax on the oil and gas industry, which will raise the costs of energy and numerous other consumer products, including life-saving medical drugs and devices. The regulatory structure of this provision, as discussed below, will ensure the EPA's permanent, commanding influence over American energy, manufacturing competitiveness, relationships with states, and the costs of goods and services far beyond the budget window.

Committee Republicans offered and debated 12 amendments to reduce the cascading harms in the Subtitle, including subtitle-wide amendments to ensure products subsidized in this bill would not accelerate increased reliance upon critical minerals controlled by our adversaries; to ensure the provisions would not impose new requirements on any Federally recognized Indian Tribe; to require certification that none of the spending would increase the inflation that is currently ravaging household budgets. Democrats rejected these efforts to mitigate the harmful impacts of this subtitle.

Following are some of the questions and concerns about provisions in the Subtitle:

Section 30101. Clean Heavy-Duty Vehicles.

This section introduces a new program to the Clean Air Act to spend \$5 billion to rebate up to the full cost of electric medium and heavy trucks, with no Committee review to understand why full rebates, why EPA should manage this spending program, and how such a program would maintain stewardship of taxpayer dollars. How this works with section 30105 below remains an open question.

Section 30102. Grants to Reduce Air Pollution at Ports.

This section provides \$3.5 billion to help electrify ports and reduce emissions, with no review to examine how this spending intersects with provisions in the Senate infrastructure bill. Notably, the provision adds new requirements for so-called climate action plans, written vaguely, but clearly a new regulatory requirement under the Clean Air Act with enforcement implications, and with impacts on State air quality implementation planning and expenditures—the policy implications of this regulatory expansion were not reviewed.

Section 30103. Greenhouse Gas Reduction Fund.

This section is a brand-new, unexamined provision that provides EPA \$27.5 billion to establish a fund in the Clean Air Act to support expansion of rooftop solar and other local programs to reduce the use of natural gas and fossil energy, and related air emissions, particularly in low-income communities. EPA will control \$7.5 billion to spend as it sees fit, and \$20 billion will be given away to “eligible entities” to set up one or more independent, unaccountable, and permanent National Climate Banks. These Wall Street finance leveraging schemes would keep all proceeds from the funds so the self-selected members can operate these entities perpetually, far beyond any control by the Inspector General or Congress.

The central requirement, from what we can tell with the obscure text, is to leverage Wall Street investment and state financing to “decarbonize” and pursue local renewable energy and electric vehicles projects—projects already covered by funding throughout this monstrous bill, and in other programs Congress has enacted. The give-away provides private investors and states seed money simply to de-risk their own investments.

To be sure, there appear to be an increasing number of state level “climate banks.” The provisions here seek to boost their coffers by nationalizing the effort. Importantly, the national climate bank goals and decisions by its self-selected members may conflict with the interests of ratepayers and with supporters of clean fossil energy, which are not eligible for financing. Senate testimony from Texas and Wyoming experts indicated a national climate bank’s focus on renewable energy and “transition” away from fossil energy conflicts with state taxpayer interests—and the benefits of their resources for prosperity. Why should energy state taxpayers seed programs that will seek to undercut their future? Against the backdrop of increased Wall Street financing of environmental, climate, and “ESG” initiatives, the need for taxpayer spending here at the expense of energy security and reliability priorities has not been established.

To go back to the drawing board, Rep. Armstrong offered an amendment to strike the section; the Committee Democrats rejected it.

Section 30104. Collaborative Community Wildfire Air Grants.

This section provides \$150 million to help communities address wildfire smoke, a well-meaning program but one that underscores the lack of focus on solutions to the wildfire problem, which involve increased use of forest management practices, including prescribed burns (where EPA may assist in smoke mitigation) and related practices. As ever, the Democratic priorities are missing the mark.

Section 30105. Diesel Emissions Reductions.

This section provides some \$170 million more to the Diesel Emissions Reduction Act programs, which Congress just reauthorized in the Energy Act of 2020. Yet, in keeping with a pattern in this rushed process, the Democrats chose to add more spending, far beyond what had been agreed to in the bi-partisan, regular order process. How this spending works with section 30101 remains an open question.

Section 30106. Funding to Address Air Pollution.

This section provides \$315 million to a suite of air emissions monitoring grants, and to beef up spending related to several Clean Air Act regulatory authorities with respect to greenhouse gases. The monitoring spending alone adds to the \$100 million Congress already appropriated in the partisan “American Rescue Plan Act of 2021” (PL 117-2). There was no Congressional review of EPA’s need for this funding to execute its responsibilities. There was no review or testimony from state air regulators to examine how so-called community monitoring works in connection with federal reference method monitors and the potential impact on reliable air quality data and regulations. Skewed information can lead to harmful regulatory decisions, which impacts communities, leads to unnecessary litigation, and undermines legitimate air pollution priorities.

This section spends \$50 million to beef up EPA’s budget to exercise its greenhouse gas regulatory authorities, notably section 115 of the Clean Air Act, which would enable international environmental activists—and our nation’s adversaries like China—to use the Clean Air Act to codify the Paris Agreement, and impose harmful decarbonization policies, costing jobs and security. The long-term policy implications of this section deserve much more scrutiny than can be achieved in a rushed, partisan Reconciliation markup.

Section 30107. Funding to Address Air Pollution at Schools.

This section provides \$10 million that may overlap funding in the same Clean Air Act sections already increased in the American Rescue Plan, referenced above. Yet, there was no regular order to understand why these new sums were necessary.

Section 30108. Low Emissions Electricity Program.

This section provides \$100 million to carry out another brand-new regulatory program under Clean Air Act to measure, collect data, and provide new regulatory authority to expand “domestic electricity generation and use.” The provisions explicitly seek to ensure reductions in greenhouse gas emissions anticipated from “domestic electricity generation” by 2031 by issuing regulations – a major new intrusion of the EPA into electricity generation within states, with policy implications for state interests and other Federal authorities. The long-term policy implications of this section also deserve much more scrutiny than can be achieved in a partisan Reconciliation markup, with no hearings or technical comments from state authorities and commissions.

Section 30109. Funding for Section 211 of the Clean Air Act.

This section provides \$15 million for EPA to perform tests, protocols, analyses, and evaluations to determine the environmental and public health impacts of lifecycle emissions of transportation fuels. The U.S. Department of Energy already addresses these issues with respect to transportation fuels. This provision would be a waste of taxpayer dollars and Federal resources, and it could create confusion and misinformation.

Section 30110. Funding for Implementation of the American Innovation and Manufacturing Act.

This section, overall, provides \$42 million in supplemental funding for 5 years to implement requirements phasing down the domestic use of hydrofluorocarbons (HFCs) under the American Innovation and Manufacturing (AIM) Act. This section further apportions \$3.5 million to deploy “new” implementation and compliance tools and \$15 million for competitive grants related to reclaiming and innovative destruction technologies. We are concerned this funding potentially pursues implementation objectives that are inconsistent with the statute, including funding “new implementation and compliance tools” and efforts to snuff out the affordability and allowance benefits received by residential consumers from reclaimed and recycled HFCs.

Section 30111. Funding for Enforcement Technology and Public Information.

Under this section, EPA is appropriated \$50 million: \$33 million for updating EPA’s Integrated Compliance Information System; \$7 million for grants to EPA partners to update their systems; and \$10 million for EPA to acquire inspection software. According to EPA’s website:

[T]he Integrated Compliance Information System is a web-based system that provides information for the Federal Enforcement and Compliance (FE&C) and the National Pollutant Discharge Elimination System (NPDES) programs. The FE&C component supports EPA’s Civil Enforcement and Compliance program activities. These activities include Compliance Assistance, Compliance Monitoring and Enforcement. The NPDES program supports tracking of NPDES permits, limits, discharge monitoring data and other program reports.

No hearings or regular order process were conducted on this provision. It is unknown if these funds are required by the Agency, if they may duplicate existing programs or appropriations, or how these programs will be implemented with this infusion of funding.

Section 30112. Greenhouse Gas Corporate Reporting.

This section provides for a seemingly new program with \$5 million in funding for EPA to standardize “climate action commitments and plans” of corporations. It is unclear what exactly these funds and the programs are intended to accomplish. Corporations have their own environmental and sustainability goals – taxpayer dollars should not be spent to enhance and/or standardize these plans or goals on behalf of corporations. EPA already has an established greenhouse gas reporting program – this provision appears to be duplicative and a waste of resources. As with so much of this legislation, no hearings or regular order process took place on this provision.

Section 30113. Environmental Product Declaration Assistance Program.

This section provides EPA \$250 million, until fiscal year 2031, to develop and carry out a new environmental product declaration assistance program, including the development, standardization, and transparency of environmental product declarations for construction materials and products. Under this section, EPA may award grants to businesses subject to these declarations for developing and verifying environmental product declarations. EPA may also use funding to carry out other activities that assist in measuring and reducing the quantity of embodied carbon of construction materials and products. Again, there were no hearings and no regular order process-regarding this provision.

Section 30114. Environmental Protection Agency Methane Fee.

This is a tax.

The tax-and-spend Committee Democrats can call it whatever they want, but it is absolutely a tax and it will absolutely hurt Americans by making a wide range of essential goods and services more expensive.

This is a regressive tax on natural gas, and it will impose a cost of \$9 billion to the economy and as many as 90,000 jobs could be lost.¹ Taxes on natural gas will have harmful ripple effects, raising costs for customers, creating new burdens that will fall heavily on hardworking American families, and especially low income and rural Americans.

The full scope and impact of this new tax on natural gas is unknown. The methane tax has never been the subject of a hearing, and no input or technical assistance was provided by EPA to understand how the tax would be calculated and implemented. In the week preceding the Full

¹ Letter, dated September 12, 2021, to Chairman Pallone and Ranking Member McMorris Rodgers opposing the inclusion of the *Methane Emissions Reduction Act of 2021* in the reconciliation package, signed on behalf of oil and natural gas industry organizations.

Committee Markup, three variations of the methane tax were introduced. According to analysis by companies that make up the natural gas supply chain, the three variations of the methane tax would increase customers natural gas bills from 12 percent to 34 percent, with the average cost from \$85 to \$242 per year.²

The methane tax will raise the cost of doing business for every small business that uses natural gas for heat and electricity. The methane tax will increase prices for food and agricultural products at a time when inflation and high prices are already taxing American families enough. The methane tax will also increase the cost of plastics, personal protective equipment (PPE), and medicines derived from hydrocarbons that are essential to the fight against the COVID pandemic. If the \$1,500/ton methane tax were applied to the 2019 EPA Emissions Inventories for agricultural methane emissions, according to analysis by the American Farm Bureau, the tax would cost American farmers more than \$400 billion dollars. Broken down by livestock, the methane tax would cost about \$6,504 per dairy cow, \$2,607 per head of cattle, and \$503 per pig.

Republicans offered an amendment to strike sec. 30114, and several amendments to limit the scope of the methane tax, including amendments to exempt agricultural operations, protect live saving products such as medical devices and PPE, and exempt facilities needed to sustain critical missions on or near a military installation. The tax-and-spend Committee Democrats rejected each of these Republican amendments.

The harmful policies in this Subtitle received bipartisan opposition in the markup with a Committee Democrat joining Republicans in voting against.

² Letter, dated September 13, 2021, to House and Senate Leadership expressing concerns about the inclusion of Sec. 30114 in the reconciliation package, signed on behalf of companies and associations that make up the natural gas supply chain.

Subtitle B: Budget Reconciliation Legislative Recommendations Relating to Hazardous Materials

Subtitle B contains at least \$15.8 billion of spending for Superfund and grant programs relating to other hazardous liabilities under the Environmental Protection Agency. Its four sections that run the gamut from lost opportunities, to confusing choices, to outright startling policies. Importantly, this Subtitle's out of control spending levels dwarf historic funding for these programs – and the Subtitle does not contain any accountability mechanisms.

Section 30201 spends \$10 billion to fund Superfund site cleanups by the Federal government at Federal Facilities. This amount, which goes to only a subset of all Superfund sites, is almost seven times the amount of money annually given to Superfund and more than 450 times higher than the amount that currently goes to that account.

Unfortunately, this is the only spending on Superfund that this legislation undertakes. In addition, the funding is not focused on only remedial cleanup actions, so it could be wasted on the endless site study and lawyers' fees, which have prevented these site cleanups from finishing. Finally, this funding is only being spent on Federal sites; the funding is not prioritized for sites with the greatest level of risk to the community.

Superfund money should go to cleaning up the riskiest sites – regardless of whether the Federal government is a responsible party – particularly those that do not otherwise have the backing to get cleaned up. That is how we get the most pro-environment use of our tax dollars.

Next, section 30202 provides \$50 million for programs related to school siting selection, community outreach, and environmental health programs. Yet, this amount of funding is more than 47 times the last authorized level for a law whose funding authorization expired almost 9 fiscal years ago. Moreover, the Committee has conducted virtually no oversight of this program. Regardless of how well intentioned it may be, this section is excessive, unaccountable Federal spending.

After this comes section 30203. This section appropriates \$750 million for grants to a single unit of State, tribal, or local governments, a non-profit, or a combination of the two for projects that minimize waste, promote recycling infrastructure, including for organics, and create market demand for recyclable materials. Our concern is that creating market demand ignores and distorts the forces at play in free enterprise, including trying to create market demand and opportunities for certain commodities – regardless of their feasibility. We are also concerned about efforts to provide seed money to governing bodies or non-profits to force businesses to make production changes that may not be in their financial best interest.

Finally, Subtitle B contains a new program, section 30204, which appropriates \$5 billion for environmental and climate justice block grants for projects that “benefit disadvantaged communities,” which includes \$500 million for technical assistance funding, to award grants to community-based non-profits and schools or tribes that partner with these non-profits to promote community low-emissions technology, resilient infrastructure, and community-led pollution reduction efforts.

Yet, under section 30204, “disadvantaged communities” is defined by the Environmental Protection Agency (EPA) Administrator, giving EPA broad latitude to decide who gets benefits from the \$5 billion in Federal funding. Moreover, the original version of section 30204 directly aided “low-income” and “disadvantaged communities.” With “low-income” communities removed from the language, it is plausible that EPA’s administrative discretion will result in certain low-income communities being denied the ability to qualify as “disadvantaged” and benefit from this program.

Importantly, section 30204 specifically awards public funding to community groups for advocacy at the Federal and State level, and anything else the EPA thinks is appropriate. This is a horrible precedent. Congress should not be funding private groups to lobby – regardless of who they are – nor to create a situation where private parties become funding supplicants of an Agency when the statutory objective of the funding is policy advocacy – this is a conflict of interest.

Given the limited focus of Superfund spending, the enormous amount spent on a program that has not been subjected to Committee oversight, the meddling with the private market, the loose definition of who qualifies for grant funding, and the publicly funded advocacy in section 30204, we cannot support this Subtitle. We are particularly concerned that with this Subtitle, Congress permits EPA to treat this funding like petty cash, accessible any time it seems like a good idea, and especially when it benefits political allies.

Ultimately, we note that, at markup, Energy and Commerce Committee Democrats rejected a commonsense amendment by Rep. Carter to require the EPA Inspector General to conduct oversight of these programs and promptly report any instances of waste, fraud, or abuse to Congress. This Subtitle also received bipartisan opposition during the markup, with a Committee Democrat voting against it.

Subtitle C: Budget Reconciliation Legislative Recommendations Relating to Drinking Water

Republicans support safe drinking water and compliance with Federal requirements to protect public health. This is not a partisan issue.

Environment and Climate Change Republican Leader McKinley and full committee Republican Leader Rodgers are the lead sponsors of H.R. 3282, the Drinking Water Funding for the Future Act. This legislation reauthorizes the major funding, compliance, and drinking water protection programs in the Safe Drinking Water Act and the America's Water Infrastructure Act of 2018.

What Republicans do not want for our children and their futures, is the mountains of debt and increased inflation this Subtitle could create. Moreover, on top of this year's parade of fantastical spending bills, we are concerned with repeated efforts – and inadequate responses – to get information on how this spending has been conducted, whether previous spending has been exhausted, and what have been the impacts of these spending programs.

Subtitle C contains at least \$32.5 billion of spending for numerous grant programs under the Safe Drinking Water Act. For context, President Biden's proposed budget for the entire EPA in fiscal year 2022 is \$11.2 billion. Subtitle C provides triple EPA's proposed annual funding and target that funding to just the programs in Subtitle C.

Below are more specifics of this Subtitle:

Section 30301 spends \$30 billion for lead pipe replacement under the Drinking Water Revolving Loan Fund program. This is 500 times the existing annual authorization for lead pipe replacement – that Republicans support extending.

This supplemental money is being spent even though EPA admits it has no idea where all the lead pipes are or how much their replacement might cost. Because this Subtitle requires both the public and private portions of a lead service line to be replaced, this Subtitle gives free private property upgrades to anyone – regardless of income level.

At markup, Energy and Commerce Committee Democrats rejected an amendment from Rep. Curtis to have people whose annual adjusted gross income exceeds \$1 million to pay for their own private line replacement. If the wealthy can afford the significant tax increases that Democrats want to impose, this kind of handout to the wealthy is not something we can afford with the debt we have, and the mounting debt anticipated under this legislation.

Section 30302 provides \$500 million for grant programs that bolster risk and resilience at drinking water utilities – including cybersecurity protection. That is 20 times higher than the current annually authorized amount. We agree that this is an important program that should be funded, but we question providing 20 times the annual authorized funding.

Section 30303 gives \$100 million to States for implementation and enforcement of the Safe Drinking Water Act. This is an 80 percent increase over currently authorized amounts.

Curiously, as a percentage, this is lower than other programs in this Subtitle considering that this money is meant to implement all the other sections in this Subtitle.

Section 30304 appropriates \$100 million in additional funding for fresh drinking water supplies or drinking water services in low-income areas in border town in the United States and Mexico. This is a 400 percent increase over the annual authorization in this program.

Section 30305 appropriates extra funding for three programs: voluntary lead testing programs in schools, installation and maintenance of lead filtration stations at schools and day care centers; and \$50 million to replace drinking water fountains in schools. That is nearly 23 times higher than the annually authorized amounts.

We support helping schools and day care centers struggling with lead concerns and included such funding in the Drinking Water Funding for the Future Act. However, creating gargantuan new lead programs that remove the responsibility of local officials to fund and maintain this infrastructure deserves much more careful consideration from the Committee.

Section 30306 appropriates supplemental funding of \$100 million to connect, expand, or repair drinking water systems on tribal lands in order to improve water quality, water pressure, or water services. This is five times the existing authorized amount for this program.

Section 30307 provides \$100 million in complementary funding for grants, including \$10 million in grants to Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands, to provide assistance to drinking water systems serving underserved areas that have been affected by a natural disaster and who are trying to restore or increase compliance with national primary drinking water regulations.

Section 30308 appropriates an additional \$200 million in funding for grant programs targeted to disadvantaged and underserved communities. That is an increase of 3.5 times current funding. Republicans included funding for this program in the Drinking Water Funding for the Future Act; but question how this this much money was determined appropriate for this item.

Section 30309 appropriates extra funding for the unregulated contaminant monitoring program at EPA at \$100 million. That is 10 times the current authorized amount. We supported a similar, existing program in the Safe Drinking Water Act and included it in the Drinking Water Funding for the Future Act. However, we are concerned that this amount is excessive, particularly in light of regular appropriations.

Section 30310 provides a further \$100 million for technical assistance for small public water systems. This type of aid has been historically supported by Republican members as a key bridge for rural communities to be able to achieve compliance and provide their communities drinking water free from serious threats. Yet, this appropriation is more than 6 times the annual authorized and appropriated amount. Certainly, additional resources can always be used, but we would like to know whether this is the right amount before voting to support it.

Finally, section 30311 re-ups additional funding of \$500 million for the Drinking Water Low Income Household Assistance Program. This program renewal comes despite repeated, unanswered questions to the Biden Administration about this funding, its status, and the results it has achieved. In addition, this program is untethered to a public health emergency and could remain available indefinitely.

While this Subtitle contains funding for many programs we support, the extremely high level of spending gives us serious pause. These levels of spending and debt may have serious adverse and long-term effects on future generations of Americans.

Moreover, this Subtitle contains many programs that were covered in the Senate amendment to H.R. 3684, the Senate infrastructure bill, and President Biden promised the Senate Negotiators that anything they agreed to in that bill would not be included in a partisan reconciliation. This Subtitle breaks that promise.

Finally, this Subtitle received bipartisan opposition during the markup, with a Committee Democrat voting against it. He raised similar issues about funding levels and the negative effect this level of spending would have on the economy.

Subtitle D: Budget Reconciliation Legislative Recommendations Relating to Energy

Subtitle D contains at least \$229.8 billion of spending for numerous grant and rebate programs under the Department of Energy (DOE) and at the Federal Energy Regulatory Commission (FERC).

Members must be deliberate to ensure the laws we enact do not raise costs on working families, undermine energy reliability and resilience, or harm our economy and security. For the past three years in particular, Republicans have advocated thoughtful policies to address future climate risks that build upon America's energy strengths and continue its steady progress reducing emissions and enhancing energy security, affordability, and reliability, all critical to a secure future for hardworking American families.

This work was reflected in provisions of the bi-partisan Energy Act of 2020, which made the path easier for the future deployment of carbon capture and advanced nuclear technologies. It is reflected in current legislative proposals by Republican Members implementing a "Securing Cleaner American Energy" agenda, which focuses on sensible improvements to our energy infrastructure and on updating rules and regulations to promote deployment of an all the-above-energy strategy, to unleash innovation in hydropower, nuclear, clean coal, and natural gas. These are real, workable solutions to make energy cleaner, reduce emissions, prioritize energy security, and keep energy costs low. These results-oriented policies build on the strengths of America's tremendous energy systems and seek to deploy new clean technologies on workable, affordable timelines.

Unfortunately, the Democrats' blind obedience to radical environmental policy threatens to dismantle existing systems—and the prosperity, security, and resilience these systems provide. You cannot address climate change risks by destroying energy systems. You cannot provide for a cleaner future by wrecking an economy with high taxes and fees, and burdensome regulations.

Yet in keeping with other provisions of the Act, Subtitle D continues a drive to eliminate America's use of coal, oil, and natural gas, with a combination of taxpayer subsidies, risky spending, and an audacious Federal takeover of the electricity system—all to fulfill the decades-old radical belief that the solution to addressing global climate risks is a massive transformation to weather-dependent wind and solar generation and electrification of everything in the United States, at a pace and scale to ensure no future use of fossil fuels.

Ample testimony in Committee was available to understand the dangers of this magical thinking, but that did not matter. The Democrats plowed forward, in the dark, planting the seeds of harm in ostensible budget legislation that purposely disguises massive new regulatory programs that will profoundly affect the American economy and hard-working families' lives for decades to come.

This Subtitle contains at least \$229.8 billion of spending for numerous spending, grant, and rebate programs under DOE and at FERC. Most importantly, it introduces a provision for DOE regulatory control over the make up the nation's electricity generation sector—the centerpiece of the Biden Administration's agenda to appease the international environmental community.

Republican Members offered and debated 13 amendments to reduce the harmful impacts of this Subtitle, if it were to become law, including amendments to strike the so-called Clean Electricity Performance Program, limit Federal self-dealing, prohibitions on use of critical minerals from forced labor, China, and Afghanistan, provisions to protect against rate and fuel price increases, jobs losses, and electricity reliability risks. Other provisions ensured grants would not subsidize the wealthy, and to ensure the future of nuclear energy. Democrats rejected these efforts to mitigate the harmful impacts of this Subtitle.

Following are some of the questions and concerns about provisions in the Subtitle:

Part 1. Clean Electricity Performance Program.

The part appropriates \$250 million to administer what, by most all accounts, would be an astonishing intrusion of the Federal government, without any hearing to explore, analyze, or discuss the complexities, the impacts on consumers, ratepayers, or on the ability to maintain and ensure the lights stay on.

This part amends the Federal Power Act in the most expansive Federal intrusion into state and local electricity decision-making in the 100-year history of this bedrock statute. The part extends far beyond mere funding for incentive payments to install zero-emission generation, and Democrats can only guess on how much those will cost - they estimated it as a \$150 billion program in one of their supporting documents; but that could be the tip of the iceberg. (Notably, the provision provides an open ended “such sums” appropriation authorization—hardly indicative of thoughtful policy formation.)

The part imposes a Federal mandate and penalties over all electric utilities with the intent to reduce electricity sector emissions by 80 percent by 2030, regardless of costs to ratepayers or to electricity reliability. This is effectively an accelerated clean electricity standard on some 3,700 utilities and 7,300 power plants across the nation, on top of existing state programs, to compel adherence to the Biden Administration’s Paris Climate pledge.

The scheme requires an annual 4 percentage point year-over-year increase in new “clean” generation deployment at all utilities, regardless of costs or local fuel/generation mix. Failure to meet this increase results in penalties, essentially a tax on noncompliance, that also compounds year-over-year, with no escape for fossil dependent energy but to raise rates or shift massively, if possible, to expensive weather-dependent wind and solar. Text here reflects no consideration of the numerous complexities created by imposing a one-size-fits-all standard on the diverse makeup of state electricity generation.

Structured as a ten-year payment/tax penalty scheme to meet Byrd requirements, this Federal mandate will have long-term impacts on the nation’s electric sector. The sweeping regulatory mandates and penalties on every customer-serving electric utility in the nation will have profound and cascading policy implications:

- Impacts on costs, on reliability, on the rates working families pay,

- Impacts on state and local authorities,
- Competitive impacts to our manufacturing sector,
- Costly disruptions to municipalities, the agriculture sector, the tax base upon which communities rely,
- And, of course, employment impacts in the sectors serving fossil-energy related generation.

There is no escape from the escalating mandates and fees if there is failure to comply with the mandates due to external factors or engineering reality. And the timeframe and requirements do not allow for the deployment of carbon capture and advanced nuclear technologies—the kind of advances that will provide real solutions to a cleaner, energy secure future.

Congress has not examined this legislation, has not considered the cascading risks to communities, families, or businesses from the regulations that will be designed to meet the goals in this 14-page provision—which effectively gives the Federal government control over the most critical sector of the United States economy.

This program also raises Constitutional questions concerning the Federal Power Act’s longstanding distinction between Federal and state regulatory authority over utilities. Congress was careful to draw a distinct line between interstate and intrastate matters in this regard. The language in the program dictating how utilities use grants invades and undermines state authority.

Initial expert commentary rolling into our offices as the Committee was marking up this Subtitle underscore the serious impacts. NRECA, representing the nation’s electric cooperatives, noted the “unrealistic” program implementation window, impacts on existing contractual obligations, the aggressive standards, and compliance burdens threaten the access to reliable and affordable electricity for 42 million electric cooperative consumer-members, who own the cooperatives. (Taxes on cooperatives are taxes on regular ratepayers.) The American Public Power Association echoed these concerns, noting that the standard was unachievable in the very short timeframe established in the provisions—with risk of “substantially increased costs for customers.”

While this provision was debated around 1:00 a.m. in the morning, Rep. Guthrie reminded Members of the last major hearing in the Committee examining electricity decarbonization in October 2019. During that hearing, no testimony supported 80 percent clean by 2030, and all identified challenges to reach 100 percent clean goal by 2050. Testimony from MISO—the independent system operator serving 42 million people across 15 states—noted:

We can no longer be confident that the system will be reliable for all 8,760 hours of the year based solely on utilities having enough generation capacity to serve load on the annual peak hour in the summer. We can no longer be confident that the region’s evolving mix of resources will provide enough, and the right kinds of, critical attributes that are needed to keep the system operating in a reliable, steady state, such as frequency response, voltage control, and black-start capability, among other things.

Rather than implement policies to address the threats to the reliable delivery of power, the Democrats, against all available evidence, are rushing this unvetted scheme to be centerpiece of their drive to meet the Administration's climate goals to decarbonize the electricity sector by 2035. Failure to address the serious impacts of this policy will pose significant risks to Americans across the nation and their ability to rely upon power, especially when they need it the most.

Part 2. Residential Efficiency and Electrification Rebates.

This part appropriates \$18 billion for consumer rebates to electrify homes. This section provides generous rebates for wealthy landlords and homeowners that purchase more expensive electric equipment and appliances for homes and buildings. The wasteful subsidies under this part will distort prices for electric alternatives, leading to fewer and more expensive options for consumers who cannot afford the upgrades.

Part 3. Building Efficiency and Resiliency.

This part would exacerbate the current housing affordability crisis and limit energy choices for consumers. Section 30433 provides incentive funding for States and local governments to adopt building energy codes that discourage the use of natural gas for heating and cooking. The aggressive energy efficiency requirements under this section are not appropriate or cost-effective for many States and regions. As a result, this section will increase the cost of homes and encourage people to remain in older, less energy-efficient homes. Home builders and natural gas utility companies are strongly opposed this provision because it fails to consider the true economic costs of required energy-use reductions in model building energy codes. The legislation also fails to address cost-effective efficiency upgrades with reasonable payback periods for the required investments.

Section 30431 appropriates \$3.5 billion for DOE's Weatherization Assistance Program, and section 30432 appropriates \$3.2 billion to DOE to provide funding to states for energy efficiency, renewable energy, and grid integration. The Energy Act of 2020 reauthorized DOE's Weatherization Assistance Program – that bipartisan law has not even had time to be implemented effectively before the Democrats dump billions of dollars more into it. These funding levels are gargantuan at a time when trillions of dollars have been appropriated in the last 18 months, and the country is facing rising inflation.

Part 4. Zero Emissions Vehicle Infrastructure Buildout.

This part appropriates \$13.5 billion to subsidize electric vehicle charging equipment. Almost 80 percent of those utilizing the electric vehicle (EV) tax incentives have incomes over \$100,000, making it not just a corporate handout but also a transfer from the middle-class to wealthier Americans. Pouring more money into the status quo will benefit only a handful of mostly coastal states. Before the COVID pandemic, over half of the electric vehicles sold in the U.S. were purchased in California and New York. According to DOE, California alone accounts for approximately 42 percent of all all-electric vehicle registrations in the United States. EVs are not yet cost-effective for most consumers, even with substantial subsidies. The least expensive EVs

with an average range of 100 miles per charge are roughly \$30,000 and Tesla vehicles that have industry leading range of about 350 miles per charge are \$80,000-\$100,000. Moreover, EV subsidies are a highly inefficient method to reduce carbon emissions. The nonpartisan Congressional Budget Office (CBO) has estimated that the EV credit cost the Federal government anywhere from \$230 to \$4,400 for every ton of CO₂ that the subsidy reduces. Additionally, there are serious questions about the actual environmental footprint of electric vehicles - with some of their key components manufactured in China and powered by coal-fired energy, and even more troubling, there are the supply chain issues associated with electrical vehicles. China – one of our key foreign adversaries – has cornered the market on certain components and manufacturing processes for electrical vehicles. And, there are proven concerns of forced labor and child labor associated with EV supply chains.

Part 5. DOE Loan and Grant Programs.

This part authorizes DOE to make upwards of \$30 billion in loans, and appropriate \$6.7 billion in grants and other subsidies. The sweep of these new provisions was not examined, and they include new loan programs for states and localities, earlier versions of which were rejected in bipartisan negotiations in the development of the Energy Act of 2020. Language in the provisions appear to prohibit loans for carbon capture and advanced nuclear projects demonstrated by DOE. Inserted in these provisions are \$700 million to cover so-called credit subsidy costs of the renewable energy and electricity projects seeking loans under the program. Covering these costs reduces the risk for borrowers and increases the risk for taxpayers—raising questions about the increased risks for waste, fraud, and abuse, and socializing this risk but privatizing the rewards. Combined with the manufacturing grants, the thrust of this part is increased spending to support electric vehicles, state and local electrification, and deployment of solar and wind resources at the expense of fossil energy.

Part 6. Electric Transmission.

This part appropriates \$9 billion for grants, loans and technical assistance to subsidize the construction of electric transmission lines. Properly planned transmission lines can provide numerous consumer benefits, including reliability, resilience, and access to alternative and competing sources of generation. However, improperly planned transmission lines can result in higher costs, grid instability, permitting and siting challenges, and stranded assets. Transmission siting decisions should be made from the bottom-up, rather than top-down, and they should respect regional differences. These sections empower Federal regulators to tip the balance to impose Federal solutions on states and utilities, potentially creating years of regulatory uncertainty and litigation. This part may also undermine the progress many states are already taking to reduce carbon emissions, especially in relation to preserving nuclear and natural gas generation for baseload electric generation. Creating a special class of transmission lines, as these sections allow, will also undermine state laws and regulations designed to minimize cost shifting and promote reliability. This part does nothing to improve the regulatory and environmental permitting process, which are the main obstacles to constructing new electric transmission lines.

Part 7. Environmental Reviews.

This part would appropriate \$200 million and \$100 million to DOE and FERC, respectively, to make environmental reviews under the National Environmental Policy Act (NEPA) more efficient by hiring more personnel to conduct reviews. This is another example of the Democrats throwing money at a problem without bothering to understand the true underlying causes and resulting solutions. Energy and Commerce Republicans have several bills in their Securing Cleaner American Energy agenda that would make permitting and licensing processes for energy infrastructure more efficient and streamlined. If Democrats were serious about addressing NEPA challenges for energy infrastructure permitting and construction, they would include those bills from the Securing Cleaner American Energy agenda.

Part 8. Other Energy Matters.

Section 30481 of this part appropriates \$17.5 billion to assist Federal agencies in reducing carbon emissions of new or existing buildings and Federal fleets. The fund allows Federal agencies to by-pass the existing procedures to ensure building upgrades are necessary and cost-effective. This only promotes wasteful government spending.

Section 30482 of this part also appropriates \$5 billion to provide grants -to phase out fossil fuels by subsidizing renewable energy and electric vehicles. As mentioned above, almost 80 percent of those utilizing the electric vehicle tax incentives have incomes over \$100,000 and those with the highest income received 90 percent of plug-in car credits. We are disappointed, but not surprised, that Committee Democrats rejected Rep. Bucshon's amendment to focus finite resources away from those most likely to be able to afford these cars and into the hands of those who would more greatly benefit.

Section 30483 of this part appropriates \$2.5 billion to subsidize solar projects with no safeguards or eligibility restrictions to prevent waste, fraud, and abuse. Without subsidies, solar costs significantly more than traditional electric utility service. In addition to the solar panels, there are additional costs, including installation, maintenance, additional equipment, service fees, and property use restrictions. To minimize or conceal the upfront costs to homeowners, numerous financing options have become available, including power purchase agreements and so-called "community solar" projects which requires customers to purchase or subscribe to a large solar project and apply for a credit to their traditional utility bill. This part could benefit wealthy solar developers at the expense of low-income households by obscuring the full costs of solar installations and overstating the benefits of supplementing or replacing their traditional utility service.

Section 30484 of this part appropriates \$50 million to the DOE Inspector General for oversight of activities in this Subtitle. The DOE IG's office received \$57 million in appropriations for FY2021. Another \$50 million on top of that is a huge increase without sufficient explanation for what exactly the funds will be used or the necessity of such an increase in funding. Again, these radical proposals to completely upend American energy security and decrease affordability and reliability do not have bipartisan support. In fact, the harmful policies in this Subtitle received bipartisan opposition in the markup with a Committee Democrat joining Republicans in voting against.

Subtitle E: Budget Reconciliation Legislative Recommendations Relating to Drug Pricing

Reducing prescription drug prices for consumers and seniors in the Medicare program continues to be an important issue to Americans. Republicans have demonstrated a continued commitment to initiatives that lower prices *and* protect the United States' uniquely successful medical innovation system. Our nation's status as the world's preeminent biotechnology hub is no mere accident to be taken for granted. There is no immutable law that the United States remain the biotechnology leader in an increasingly competitive and interconnected world, especially as our adversary China and other countries continue to invest an astonishing amount of capital and resources to create or lure opportunities outside of the United States.^{3,4}

The central conceit of this Subtitle is that Americans can afford and should be eager to sacrifice an unknown number of cures and medical advances in the name of artificially lower prices. But this begs the question, what price does government set for a cure that does not exist? And it also raises the age-old series of problems embedded in government price setters' inability to know which price levers to pull, how much to pull them, and when to do so in order to minimize distortions and harm to our innovators.

There is a middle ground that does not sacrifice the next generation of miracle drugs and innovations while addressing the root problems of high out-of-pocket spending for our most vulnerable patients. H.R. 19, the Lower Costs More Cures Act, is a bipartisan alternative with dozens of common-sense drug pricing provisions that are ready to be signed into law today. Already 19 of these provisions were signed into law by Presidents Trump and Biden.

Republicans remain committed to bipartisan progress on lowering drug prices, but we are concerned that the provisions within this Subtitle will do nothing to lower the cost of drugs for patients, but will harm innovation and access to life-saving treatments. We are particularly concerned with provisions within the bill that would grant the Department of Health and Human Services (HHS) the authority to set prescription drug prices based off of discriminatory policies in foreign countries as well as the institution of both retroactive and prospective inflation caps on drugs covered under Part B and Part D of Medicare that could end up raising launch prices, causing prices on drugs to rise that would not have seen an increase and do nothing for consumers' out-of-pocket costs. Furthermore, we are concerned with the legislation's repeal of the rebate rule as an offset for unrelated spending as well as its impact on patients' out-of-pocket costs. These concerns are bipartisan, and fortunately three Democrats on the Committee joined Republicans in opposing these harmful policies, which resulted in the Subtitle failing.

Part 1. Lowering Prices Through Fair Drug Price Negotiation.

One of the key platforms of this legislation is granting HHS the authority to "negotiate" prices on up to 250 covered drugs. Under this framework, HHS and a manufacturer would "negotiate" a price for an individual drug. But if the manufacturer and HHS cannot come to an agreement on what that price is, the manufacturer would up to a 95 percent tax based on the prior year's gross

³ Congressional Research Service. "Made in China 2025" Industrial Policies: Issues for Congress. Available at: <https://fas.org/sgp/crs/row/IF10964.pdf>.

⁴ <https://www.oecd.org/sti/msti-highlights-march-2021.pdf>

sales for the product in question. That is not negotiation – it is price-setting. It is hostage taking, or the government making drug makers “an offer they can’t refuse.” Moreover, the punitive nature of the tax raises serious Constitutional questions.

This Subtitle also institutes a price ceiling on drugs, pegged to 120 percent of the average price of the drug among a basket of foreign countries (Australia, Canada, France, Germany, Japan and the United Kingdom). International reference pricing has consistently been shown to harm innovation and limit access to new treatments. Approximately 86 percent of new drugs are covered within the United States, versus only 60 percent in the United Kingdom, 47 percent in Canada, or 52 percent on average for the six international “reference countries” in this legislation.⁵ Not only is the volume of drugs available to Americans greater than anywhere else, but the speed with which Americans benefit from that access is second to none. For instance, 90 percent of new cancer medicines are available to Americans within one year of launch, whereas Canadians only have access to 33 percent of new cancer treatments and Australians only have access to 11 percent of them during that time.⁶ Overall, Americans enjoy access to 78 percent of all new medicines from 2011 through 2020 within one year of their global launch while the average “reference country” only has access to 29 percent.⁷

It is likely that research and development spending would be impacted as well, as one of the primary reasons other countries can keep their drug prices lower is that they refuse to subsidize their share of innovation costs. The Department of Commerce estimates that in countries with some form of price control on products, total research and development spending decrease approximately 11 percent-16 percent.⁸ Innovation continues to drive the development of new and life-saving treatments for consumers. According to a study of the 57 companies in the S&P 100 that disclose their research and development costs, biopharmaceutical companies spend on average 16 percent of their total revenue to research and development.⁹

The provisions in H.R. 3 could lead to approximately \$1 trillion in costs on the industry,¹⁰ which would likely result in them examining workforce reductions across the country. Moreover, these significant reductions in biotechnology investment would be most acute for smaller and emerging companies as these provisions would be expected to reduce the number of medicines developed by small and emerging companies by greater than 90 percent of 61 fewer medicines as well as eliminating nearly 200,000 biopharmaceutical jobs and nearly 1 million jobs across the economy.¹¹

⁵ Kevin Haninger, *Access to New Medicines in the United States vs. H.R.3 Reference Countries*, Pharmaceutical Research and Manufacturers of America, May 2021

⁶ Id.

⁷ Id.

⁸ U.S. Department of Commerce, *Pharmaceutical Price Controls in OECD Countries: Implications for U.S. Consumers, Pricing, Research and Development, and Innovation*, December 2004, <https://2016.trade.gov/td/health/DrugPricingStudy.pdf>.

⁹ Craft, *What Industry Spends the Most on Research and Development?*, <https://craft.co/reports/s-p-100-r-d>.

¹⁰ Congressional Budget Office, *Effects of Drug Price Negotiation Stemming from Title 1 of H.R. 3, the Lower Drug Costs Now Act of 2019, on Spending and Revenues Related to Part D of Medicare*, October 11, 2019, <https://www.cbo.gov/system/files/2019-10/hr3ltr.pdf>.

¹¹ Vital Transformation, available at [H.R. 3 and Reference Pricing. Total Market Impact - Vital Transformation](#)

It is also clear that despite language which purports to prevent the HHS Secretary from using evidence that discriminates against the elderly, disabled, or terminally ill, this legislation imports discriminatory policies against Americans with disabilities and debilitating diseases into the United States from abroad. The very language in question, which was inserted into the base text in 2019, explicitly exempts the international price setting provisions from the prohibition, meaning that if the countries of Australia, Canada, France, Germany, Japan, and the United Kingdom use such discriminatory measures such as Quality Adjusted Life Years (QALYs) to restrict access to drugs that advantage people with disabilities or debilitating diseases, those discriminatory policies will be imported directly into the US. It turns out that all six of these countries deploy measures to restrict access to drugs or determine prices and reimbursement, including five out of the six countries using QALYs to do so.

We note that the Democratic National Committee platform's commitment regarding QALYs states, "Democrats will ensure that people with disabilities are never denied coverage based on the use of QALY indexes."¹² Furthermore, we are encouraged by the Biden Administration's September 2021 Comprehensive Plan for Addressing High Drug Prices which states:

[T]here are important concerns about the equity implications of certain methodologies, such as Quality Adjusted Life Years (QALYs), for people of all ages with disabilities and chronic conditions. Drug pricing reforms should avoid utilization of methodologies that adversely impact access to needed medications for vulnerable populations.¹³

Unfortunately, these discriminatory provisions were not removed prior to the markup despite repeated concerns expressed by patient and disability advocates over the years including a 2019 letter from the Citizens Council on Disability (CCD) to Chairman Pallone cautioning that:

Many of the nations used to create the average international market price rely on QALYs to determine their coverage and prices. CCD is very concerned that these provisions effectively import a QALY-based and discriminatory system from abroad. These systems are discriminatory against people with disabilities and do not have a place in the United States health care system.¹⁴

These concerns were echoed again by the National Council on Disability, an independent Federal agency, to this Committee and to the general public on numerous occasions.^{15,16} Fundamentally, QALYs and other discriminatory policies are baked into these international drug pricing regimes.

¹² 2020 Democratic Party Platform, available at [2020-Democratic-Party-Platform.pdf \(democrats.org\)](#)

¹³ Department of Health & Human Services, *Comprehensive Plan for Addressing High Drug Prices*, available at [Drug Pricing Plan 9-9-2021.pdf \(hhs.gov\)](#)

¹⁴ CCD Letter to Chairman Pallone, September 2019, available at [CCD-Letter-HR-3-Final-9.24.19.pdf \(c-c-d.org\)](#)

¹⁵ National Council on Disability Report available at [Quality-Adjusted Life Years and the Devaluation of Life with Disability: Part of the Bioethics and Disability Series \(ncd.gov\)](#)

¹⁶ National Council on Disability Letter to House Committees, available at [NCD letter to House Committees with concerns regarding H.R. 3 | NCD.gov](#)

Discriminating against Americans with disabilities and debilitating diseases is unacceptable. Republicans offered an amendment during our markup that would prevent HHS from setting prices based on countries that use QALYs, which was unfortunately rejected by Committee Democrats.

Part 2. Prescription Drug Inflation Rebates.

This legislation would set a maximum cap on yearly price increases for a drug, pegged to the yearly rate of inflation. In addition, this bill would require any retroactive price increases above the rate of inflation since 2016 to be reversed and refunded, or drug makers would face a 100 percent tax on those increases. We have many concerns about the impact on future innovation with regards to these caps and doubt their ability to lower drug costs for consumers. We also have concerns about the legality of imposing retroactive inflation caps and provisions within the bill that would shield these determinations from judicial review.

Instituting an inflationary cap on drug prices will incentivize manufacturers to increase their prices without any consideration of other pricing metrics. Given concerns that they will be unable to recuperate development costs over a longer period of time, manufacturers will simply raise their prices to the maximum allowed each year. Manufacturers may also raise their introductory or “launch” prices so that they can compensate for future pricing limitations. Indeed, the Congressional Budget Office (CBO)¹⁷ and the CMS Office of the Actuary^{18[16]} confirmed these policies would result in higher launch prices and would increase beneficiary premiums and cost-sharing responsibilities. This would have many negative consequences for the consumer. CBO has found that insurance plans are less likely to cover new drugs with high introductory prices immediately upon release,¹⁹ lengthening the time consumers would have to wait to obtain new and innovative treatments.

We understand that the Part D inflation rebate requirements apply to particular drug units outside of the Medicare Part D program such that this would likely apply to employer plans and drug manufacturers would have to pay rebates on commercial drug plans too since those drugs are reported for purposes of the Average Manufacturer Price (AMP). Essentially, this means that rebates would be paid on behalf of employer plans to the Federal government and effectively seize voluntary price concessions from the private market to be redirected to the Federal government.

The legislation also does not address the government-created monopoly of protected class drugs within Part D. Under the protected classes, Part D plans are required to cover “all or substantially all” drugs used to treat one of the six protected classes (antidepressants,

¹⁷ CBO, December 2016 Budget Options, Require Manufacturers to Pay a Minimum Rebate on Drugs Covered Under Part D of Medicare for Low-Income Beneficiaries, available at [Require Manufacturers to Pay a Minimum Rebate on Drugs Covered Under Part D of Medicare for Low-Income Beneficiaries | Congressional Budget Office \(cbo.gov\)](https://www.cbo.gov/publications/2016/12/16-12-16-require-manufacturers-to-pay-a-minimum-rebate-on-drugs-covered-under-part-d-of-medicare-for-low-income-beneficiaries)

¹⁸ CMS Office of the Actuary Analysis of H.R. 3, November 2019, available at [Financial Impact of Titles I and II of H.R. 3, “Lower Drug Costs Now Act of 2019” \(cms.gov\)](https://www.cms.gov/actuary/analysis/2019/11-19-19-analysis-of-hr-3-lower-drug-costs-now-act-of-2019)

¹⁹ Congressional Budget Office, *Options for Reducing the Deficit: 2019 to 2028*, Page 74-76, December 2018. <https://www.cbo.gov/budget-options/2018/54735>.

antipsychotics, anticonvulsants, immunosuppressants, antiretrovirals and antineoplastics). Because of this requirement, manufacturers face no competition on the sale of these drugs and can price them without consideration to market demand. Over a 5-year period, drugs covered within the protected classes had a median net price increase of 36.5 percent, versus the inflation rate of 6.8 percent.²⁰ This program allows for manufacturers to operate within a government-created monopoly that discourages market competition and artificially inflates prices.

We have consistently seen that when the government attempts to set prices within a market, it creates a distorting effect on the true value of a product. These distortions have been seen within the Medicaid Drug Rebate Program and the negative effects it has had on both drugs sold to Medicaid as well as conflicts within the commercial market.

Part 3. Improvements and Maximum Out-of-Pocket Cap for Medicare Beneficiaries.

Republicans remain eager to work with Democrats to modernize Medicare Part D in order to make the program resemble true catastrophic insurance such that seniors are incentivized to seek savings and are empowered with greater transparency to make informed drug pricing decisions.

Since the enactment of Part D in 2003, it has been an enormous success in providing lower-cost prescription drugs to seniors. Part D premiums have continued to see year-on-year decreases, saving seniors an estimated \$6 billion since 2016.²¹ Part D has also proven to be a cost-effective program for the taxpayers. In 2004, CBO estimated the 10-year cost at \$957.3 billion,²² but as of May 2019, the program only had a cost of \$83 billion.²³

We support provisions that would close the coverage gap for seniors and lower the total out-of-pocket expenses for seniors within Part D. Republicans also support measures that would require manufacturers and insurers to contribute greater rebate amounts, ultimately reducing government spending within the catastrophic phase of coverage.

While the Democrat's legislation sets a lower out-of-pocket (OOP) cap and imposes significantly greater financial liability on drug makers than H.R. 19, this legislation would *not* reduce seniors' OOP spending or the government's reinsurance costs as much as the bipartisan alternative introduced by Republicans. First, most beneficiaries do not reach the \$2,000 limit and will not see any reduction in their OOP costs because of the cap. Additionally, this legislation maintains a coinsurance rate of 25 percent while H.R. 19 reduces beneficiary coinsurance to 15 percent. Finally, for those beneficiaries who do reach the OOP cap, the Democrat legislation would result

²⁰ Tara O'Neill Hayes, *The Latest Drug Pricing Bill – A Mixed Bag*, AMERICAN ACTION FORUM, August 7, 2019, <https://www.americanactionforum.org/daily-dish/the-latest-drug-pricing-bill-a-mixed-bag/>.

²¹ Centers for Medicare & Medicaid Services, *Trump Administration Drives Down Drug Costs for Seniors*, July 30, 2019, <https://www.cms.gov/newsroom/press-releases/trump-administration-drives-down-drug-costs-seniors>.

²² Douglas Holtz-Eakin and Robert Book, *Competition and the Medicare Part D Program*, AMERICAN ACTION FORUM, September 11, 2013, <https://www.americanactionforum.org/research/competition-and-the-medicare-part-d-program/>.

²³ Congressional Budget Office, *Medicare – CBO's May 2019 Baseline*, May 2 2019, https://www.cbo.gov/system/files/2019-05/51302-2019-05-medicare_0.pdf.

in a greater overall share of spending in the catastrophic phase in which the government is liable for those catastrophic costs and encourage higher prices and overall greater spending.²⁴

Part 4. Repeal of Certain Prescription Drug Rebate Rule.

We have significant concerns with the misleading nature of this provision as it has been made clear from its inclusion that it is merely an attempt to create a budgetary savings to “offset” separate spending in different subtitles within the legislation. We are concerned that seniors with high OOP drug spending would not be provided any relief if the Democrats were to instead funnel a significant portion of these government savings (approximately 60 percent of more than \$177 billion in government savings over a ten-year period)²⁵ towards new unrelated spending as opposed to seniors’ drug costs. This budgetary gimmick would be achieved by repealing a rule from the prior administration that the current administration has already delayed and indicated will not go into effect.

As a reminder, this rule was issued to “reduce the incentives for Part D plans to choose high-cost...drugs over comparable drugs with lower prices (and) lower beneficiary out-of-pocket-spending” and ensure that any reduction in price agreed to between an insurance company and a pharmaceutical manufacturer is reflected at the point of sale, protecting patients from higher prices at the pharmaceutical counter.²⁶ Ultimately, this policy would result in lower list prices and lower OOP costs for patients through point-of-sale reductions in price and this policy would have provided the greatest level of benefits to patients who are prescribed and dispensed high cost drugs.

Unfortunately, this legislation blocks this rule from lowering the True Out of Pocket (TrOOP) limit for patients by 20 percent over a 10 year period of time, thus depriving seniors of much needed savings at the pharmacy counter.²⁷

We urge Democrats to move on from this politically divisive exercise. We note that in addition to our significant and strong policy opposition, this legislation does not garner any Republican support and has lost support of numerous key Democrat members in both the House and Senate, and the Biden Administration just released a report admonishing one of the central planks of the legislation. To that end ten House Democrats, including a number of our own colleagues on this Committee, wrote to Speaker Pelosi earlier this year expressing their interest in “working

²⁴ Tara Hayes, American Action Forum, Analysis of the Competing Proposals to Reform Medicare Part D, available at <https://www.americanactionforum.org/insight/analysis-of-the-competing-proposals-to-reform-medicare-part-d/#ixzz76zDURzjE>

²⁵ CBO, 2019 “Rebate Rule” analysis available at [Incorporating the Effects of the Proposed Rule on Safe Harbors for Pharmaceutical Rebates in CBO’s Budget Projections—Supplemental Material for Updated Budget Projections: 2019 to 2029](#)

²⁶ HHS “Rebate Rule” issued November 30th 2020 available at [Federal Register :: Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees](#)

²⁷ Id.

collaboratively in a bipartisan manner with our colleagues in the Senate and the Biden Administration” to deliver health care results.²⁸

They write:

As we have just seen with the lifesaving, record-breaking development of COVID19 vaccines and therapies, America benefits from the most innovative and capable researchers in the world, and from public-private partnership that encourages world-leading biomedical research and development.

The letter continues:

[I]t is imperative that we pass legislation that can reach the President’s desk to deliver on our promise of bringing down health care costs for the American people. To achieve this, we must garner bipartisan, bicameral support, with buy-in from a majority of Americans and stakeholders in the public and private sectors. If this pandemic has taught us anything, it’s that we all, truly, must be in this together.

We sincerely hope that the House will join with our Senate counterparts and the Biden Administration to lead the way in crafting health care legislation that will lower costs across the board for patients, expand access to coverage and care, preserve our invaluable innovation ecosystem so that it can continue to prevent and treat disease, and assure that the act of legislating is bipartisan and meaningful.

Unfortunately, Speaker Pelosi’s fewer cures agenda is anything but collaborative or bipartisan and it even divides Democrat members in both the House and Senate. Notably, Senator Wyden, Chairman of the Senate Finance Committee remarked hours before this Committee marked up the drug pricing legislation that, “They have had a proposal that they feel strongly about over a year,” and “To me over here, a number of our members say that’s something that they can’t support.”²⁹ We urge our colleagues to reconsider this legislation and work together with us on bipartisan drug pricing solutions.

²⁸ STAT News, Key House Democrats’ push for a ‘bipartisan’ drug pricing bill could doom Pelosi’s signature legislation [Key House Democrats demand a ‘bipartisan’ drug pricing bill \(statnews.com\)](https://www.statnews.com/2021/09/14/key-house-democrats-demand-a-bipartisan-drug-pricing-bill)

²⁹ STAT News, “House moderates rebel against Pelosi drug pricing plan, leaving bill’s fate uncertain” <https://www.statnews.com/2021/09/14/house-moderates-rebel-against-pelosi-drug-pricing-plan-leaving-bills-fate-uncertain/>

Subtitle F: Budget Reconciliation Legislative Recommendations Relating to the Affordable Care Act

The cost of health care and health insurance is an issue that we can, and should be, tackling on a bipartisan basis. While we do not have a final cost estimate from the Congressional Budget Office (CBO) on the costs of the expansions in this section, we cannot continue to sign taxpayers up to subsidize permanently a system that is getting even more expensive over time.

Along with the other health care subtitles, these policies increase Americans' reliance on the Federal government for their health care at a massive cost to taxpayers. If they are signed into law, the Democrats dream of socialized health care through Medicare for All will be several steps closer to reality at the expense of quality, affordable, and accessible health care for all Americans. Unlike support for this gargantuan, dangerous bill, these significant concerns are bipartisan with a Committee Democrat voting with Republicans in opposition to this Subtitle.

Section 30601. Ensuring Affordability of Coverage for Certain Low-Income Populations.

This section makes all individuals and families purchasing insurance in the individual health insurance market with income below 138 percent of the Federal Poverty Level for the family size eligible for Cost Sharing Reduction payments in 2023 and 2024. The Cost Sharing Reduction payments will be such that 99 percent of health care costs will be covered. The section appropriates such sums as are necessary to cover such Cost Sharing Reduction payments.

In addition, the section establishes a “continuous” special enrollment period for anyone below 138 percent the Federal Poverty Level. The continuous special enrollment period raises concerns about the stability of the market, as individuals could wait to enroll until they are sick and need health insurance.

The section also amends the definition of a Qualified Health Plan (QHP) for those enrollees below 138 percent Federal Poverty Level in 2023 and 2024 so that silver-level QHPs must provide non-emergency medical transport and family planning services, both of which are defined in the Social Security Act sections relating to Medicaid. However, counsel clarified during the markup that the Hyde amendment, which applies to Medicaid funding, does not apply to family planning services in this context. Republicans are extremely concerned and disturbed that QHPs for low-income individuals are required to provide coverage of abortion as family planning.

Lastly, the section requires the Secretary of Health and Human Services to notify those under 138 percent of Federal Poverty Level that they can purchase individual health insurance on the health insurance exchanges. The section specifies that only QHPs may be promoted, explicitly saying that short-term limited duration and association health plans cannot be discussed with potential enrollees. The section appropriates \$75 million for states from 2022 to 2024 and \$50 million for Navigators from 2022 to 2024 to notify individuals. There is very little data to suggest that the Navigator program has been a cost-effective way to enroll individuals or address disparities. In 2017, Navigators received a total of \$62.5 million in grants and enrolled 81,426

individuals. That is fewer than one percent of total enrollees that year and at a cost of over \$750 per enrollee.

Section 30602. Temporary Expansion of Health Insurance Premium Tax Credits for Certain Low-Income Populations.

This section allows any taxpayer that makes under 138 percent of the Federal Poverty Level qualify for Advanced Premium Tax Credits from 2022 to 2024, including those that are offered qualified small employer health reimbursement arrangements. It also states that for those under 200 percent of the Federal Poverty Level, if the credit is too generous, no more than \$300 can be recaptured. Lastly, this section makes the Federal government vulnerable to fraud by allowing those under 138 percent who are not required to file a return not to reconcile tax credits. Republicans are concerned that, for the first time, the “firewall” between the Affordable Care Act and the employer market is being removed. Under the Affordable Care Act, subsidies were not to be made available to those with offers of employer-sponsored coverage, to preserve the incentive that employers offer coverage. This section undoes that precedent, which could lead to employers dropping their employees’ current plans.

Section 30603. Establishing A Health Insurance Affordability Fund

This section establishes a reinsurance program administered by the Center for Medicare and Medicaid Services beginning in 2023 for \$10 billion/year to be granted to states. Payments can be used by states to lower copays, coinsurance, and deductibles of QHP enrollees, except for those with grandfathered plans, transitional plans, student health plans, and excepted benefit plans. To receive the funds, a state must submit an application, which is then automatically approved by the Secretary for 5 years. Given the other proposals in this reckless tax and spending spree, the Federal government is setting up a bureaucracy and handing out these grants only to save itself money in the form of less taxpayer money going out the door in the form of premium tax credits. Further, reinsurance plans have been implemented by Republican and Democrat led states without this Federal funding. If Democrats abandon plans to subsidize permanent ever-increasing individual market premiums with taxpayer dollars, Republicans stand ready to work with them.

Subtitle G: Budget Reconciliation Legislative Recommendations Relating to Medicaid

Section 30701. Closing the Medicaid Coverage Gap.

Medicaid was established in 1965 as a state option to provide states with Federal funds to support low-income children, seniors, and people with disabilities, so long as the state met certain requirements, such as putting forth a corresponding match to the Federal funds. This option was enticing to the states, and by the end of 1966 when the program went into effect, there were about four million beneficiaries enrolled in the program. Five years later, the program had grown to an estimated 16 million beneficiaries as more states took on the option.³⁰ By 1982 when Arizona became the fiftieth state in the country to establish a Medicaid program,³¹ there were nearly 20 million beneficiaries enrolled in the program.³²

The adoption of Medicaid was gradual, but each state took the option in stride and made the program work for its respective constituents. By 1991, the *New York Times* wrote “Late Starter in Medicaid, Arizona Shows the Way,” highlighting the radical innovation that the fiftieth state to adopt Medicaid was undertaking to reform and improve care for its Medicaid beneficiaries by offering care through managed care organizations.³³ Twenty years after the publishing of this story, over two-thirds of all Medicaid beneficiaries, and in most states as high as 75 percent of all Medicaid beneficiaries, are covered by managed care organizations.³⁴

The ability of a state like Arizona to develop new means of delivering care that would later become a cornerstone of the way care is provided across the nation today is not an accident. In fact, it is central to the way that Medicaid is designed to work. Section 1115 of the Social Security Act authorizes state demonstration programs,³⁵ section 1915(c) allows for states to provide home and community-based services as an alternative for institutional, long-term care,³⁶ and provisions in Federal regulations like 42 C.F.R. § 438.3(e)(2) establish the ability for managed care organizations to offer alternative benefits “in lieu of” services or settings otherwise covered under Medicaid so that managed care organizations can offer any array of services, including but not limited to addressing social determinants of health and supporting access to care in inpatient residential facilities for mental health and behavioral health.³⁷

Of late though, Democrats have sought to suppress state flexibilities in Medicaid. In 2010, the Affordable Care Act established coercive means to force a dramatic expansion of Medicaid to

³⁰ Klemm, John D., Ph.D., Medicaid Spending: A Brief History, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/HealthCareFinancingReview/downloads/00fallpg105.pdf>

³¹ Eckholm, Eric, Late Starter in Medicaid, Arizona Shows the Way, available at <https://www.nytimes.com/1991/08/07/us/late-starter-in-medicaid-arizona-shows-the-way.html>

³² Klemm, John D., Ph.D., Medicaid Spending: A Brief History, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/HealthCareFinancingReview/downloads/00fallpg105.pdf>

³³ Eckholm, Eric, Late Starter in Medicaid, Arizona Shows the Way, available at <https://www.nytimes.com/1991/08/07/us/late-starter-in-medicaid-arizona-shows-the-way.html>

³⁴ <https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid-managed-care/>

³⁵ 42 USC 1315(a)

³⁶ 42 USC 1396n(c)

³⁷ 42 C.F.R. § 438.3(e)(2)

cover all individuals below 138 percent of the Federal Poverty Level, the largest coverage expansion under the program in its history, by requiring states to cover this population and threatening to withhold all Federal Medicaid funds for a state if they failed to do so.³⁸ In 2012 though, the Supreme Court found in *NFIB v. Sebelius* that “permitting the Federal Government to force the States to implement a Federal program would threaten the political accountability key to our Federal system” and that these coercive actions were unconstitutional, thus returning the adoption of Medicaid uptake to a state option.³⁹

With Subtitle G, the Democrats are once again on a mission to usurp the rights of states in designing their Medicaid programs by proposing to establish a “Federal Medicaid program” that would require the Secretary of Health and Human Services to offer a new version of Medicaid in the twelve states that have thus far declined to take on the Affordable Care Act’s now-optional Medicaid expansion. This program is unprecedented and would establish for the first time in Medicaid’s history that coverage, benefit designs, and payment rates for Medicaid populations would be completely determined by the Federal Government, without the input or financial contributions of a state.

For the other thirty-eight states and the District of Columbia, the Democrats propose a potentially unconstitutional maintenance of effort penalty that would levy one of largest, if not the largest ever, penalty on any single state to discourage the current expansion states from abiding by the optionality of Medicaid expansion. The maintenance of effort under this section would subject a state that declines to continue Medicaid expansion to a penalty equal to roughly the amount that the state spends on its Medicaid population prior to un-expansion and would apply that penalty in perpetuity. In most states, Medicaid is the largest or second largest item in a state’s budget, and by forcing states to commit to this budget item forever, the Federal government will be telling states that they are no longer autonomous or in control of their own budgets.

Finally, it should be noted that Republicans are disturbed that the proposed Federal Medicaid program would open the door to Federal funding in Medicaid for elective abortions. The Hyde Amendment, notably missing from this legislation, prevents Federal funds from being used to fund and cover abortions, except in the cases where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape or incest. Since 1976, Hyde, and similar policies governing other Federal programs, have been supported and renewed annually on a bipartisan basis, multiple times, for decades. The lack of application of Hyde to this new program would end this bipartisan policy.

This section, if signed into law, would mark the beginning of the end of Medicaid as we know it and will discourage states from taking risks or innovating in the delivery of care again. Without state flexibilities in Medicaid, there may never be another Arizona experimenting with the usage of managed care organizations or any of the other multitude of innovative reforms that have flourished in the program over the past half century. The harm that these provisions would have

³⁸ 42 USC 1396c

³⁹ *NFIB v. Sebelius* available at <https://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>

on the Medicaid program and the populations it was designed to serve was received bipartisan recognition when a Committee Democrat joined Republicans in opposing this harmful Subtitle.

Section 30711. Definitions; Section 30712. HCBS Improvement Planning Grants; Section 30713. HCBS Improvement Program; Section 30714. Funding for Technical Assistance and Other Administrative Requirements Related to Medicaid HCBS; Section 30715. Funding for HCBS Quality Measurement and Improvement.

Sections 30711 through 30713 propose establishing a “Home and Community-Based Improvement Program” that would provide a 7 percent increase to a state’s Federal Medical Assistance Percentage (FMAP) if the state meets the outlined requirements in the proposed bill. The goals of the bill are noble in their intention; it seeks to apply the 7 percent FMAP increase to reducing barriers to care, increasing wages for workers in the home and community-based services (HCBS) field, and seeks to expand the number of individuals eligible under Medicaid for HCBS. HCBS care is indispensable for seniors and people with disability who need the assistance of long-term care to live meaningful and independent lives, and any Medicaid beneficiary that needs access to these services should have this access without having to be subjected to waiting lists or any other form of rationing of care for such services. Republicans want to address these goals and have worked over the years with Democrats on a bipartisan basis to do so.

Unfortunately, the requirements that condition the enhanced Federal funding for states are stringent, numerous, and expensive. States want to receive these enhanced funds, and they want to eliminate waitlists for care and invest in their HCBS workforce. Requiring a state to meet even one of these conditions would require significant investment from states, hence the need for such types of funding in the first place, but adding nearly a dozen additional requirements on to the states will create a tiered system across the country, separating the states that already have the infrastructure and wealth to meet these requirements even without the funding provided in the proposed bill and those without such resources who will never be able to meet the proposed conditions for funding.

The irony of such a situation is that states with lower levels of available HCBS are in greater need of support for their HCBS workforce, and could benefit the most from section’s proposed funding, but these are the states that will never get this money. HCBS is not uniformly delivered across the country. While over 50 percent of all long-term care delivered through Medicaid is HCBS on a national level, that rate varies significantly by state. States like Washington and Maryland deliver over 60 percent of their respective Medicaid long-term care as HCBS, but other states like Florida and New Jersey deliver less than 43 percent of their respective Medicaid long-term care as HCBS.⁴⁰ States will likely consider a number of factors in debating whether to take up the state option established under these sections. However, the associated requirements and lack of flexibility to increase access to HCBS fails to acknowledge the different circumstance states are facing. Each state has a different long-term care landscape that may not readily meet all of the requirements under these proposed sections. Ultimately, this means that

⁴⁰ Centers for Medicare and Medicaid Services, Long-Term Services and Supports Expenditures on Home & Community-Based Services, *available at* <https://www.medicare.gov/state-overviews/scorecard/ltss-expenditures-on-hcbs/index.html>

states that are already succeeding in delivering HCBS will get even more resources and move further into the future, while the other states will fall farther behind.

This is not a hypothetical situation, and it is not the first time that Democrats have designed a program that failed to entice states to expand access to HCBS, which states realized would be financially infeasible to implement. In the Affordable Care Act, Democrats established “Community First Choice” (CFC) under section 1915(k) of the Social Security Act as a means of providing additional supports for beneficiaries who, but for receiving such HCBS care, would need institutional services.⁴¹ Again, a well-meaning goal to pursue, but as of today, only four states have taken up this state option. States declined to take on the option under 1915(k) for a multitude of reasons, but the economic concerns associated with taking up such an option informed much of the final decision for states.

An example of early state interest in CFC and ultimately the decision to decline to take on CFC can be seen in decisions by the state of Colorado in 2013, who conducted a CFC Feasibility Study to determine whether the cost-effectiveness of pursuing such a model would be of value to the state. The result of the study found that implementing section 1915(k) in Colorado would cost the state between \$46.7 million to \$79.2 million, with costs under the option likely to be driven to unsustainable levels from the required expansion of benefits that CFC requires and limited means under the program to manage the costs and potential growth that would inevitably accompany the adoption of the program.⁴²

If the Democrats believe in the stated goals of these sections and believe that there needs to be a more equitable landscape that supports beneficiaries that need access to HCBS, then they should reflect upon their past failures at expanding HCBS and look towards more feasible means of achieving these shared-goals and work with Republicans to find common ground.

At the markup, Republicans offered an amendment to increase flexibility to make sure that the additional resources are available to all states. Unfortunately, Committee Democrats rejected that amendment.

Section 30721. Permanent Extension of Medicaid Protections Against Spousal Impoverishment for Recipients of Home and Community-Based Services; Section 30722. Permanent Extension of money Follows the Person Rebalancing Demonstration.

The proposed sections are disappointing when viewed in the context of the proposed sections in Part 2, because extension of the protections against spousal impoverishment for recipients of home and community-based services and the Money Follows the Person program have been bipartisan efforts in the past. Republicans believe in access to HCBS and have worked with Democrats for years to make sure that the services offered under these provisions could be

⁴¹ 42 U.S.C. 1396n(k)

⁴² Beauregard, Lisa Kalmon, To Adopt or Not to Adopt: Factors Impacting States’ Pursuit and Implementation of ACA’s Home and Community-Based Services Programs, *available at* <https://www.proquest.com/docview/2240088643?pq-origsite=gscholar&fromopenview=true>

maintained for those that need them, with the most recent extension of both programs occurring less than a year ago in the Consolidated Appropriations Act of 2021.⁴³

What is perplexing about this extension of these programs is the bipartisan recognition in the Consolidated Appropriations Act of 2021 that the extension of these programs was meant to be temporary in nature so that Congress could determine what potential reforms and alternatives may be needed for the futures of the programs. The Consolidated Appropriations Act established a new set of best practices reporting for the Secretary of Health and Human Services in the Money Follows the Person program⁴⁴ and required Medicaid and CHIP Payment And Access Commission (MACPAC) to provide recommendations to Congress on ways to ensure that the definitions in the Money Follows the Person are consistent with the “HCBS settings rule” (as defined in 441.301(c)(4) of title 42 of the Code of Federal Register). Less than one year ago and on a bipartisan basis, Congress acknowledged that work on these programs was not yet complete and that more information was needed before making the programs permanent. It is irresponsible for Democrats to make these programs permanent through this partisan Reconciliation process without the any input from the Secretary of Health and Human Services and MACPAC.

Section 30723. Extending Continuous Medicaid Coverage for Pregnant and Postpartum Women.

This proposed section is another example of bipartisanship being usurped for partisan goals. Extending postpartum coverage in Medicaid is not only something that Republicans agree with but also ones that Committee Republicans led on in the last Congress. The Helping MOMS Act of 2020 passed the Committee and the House, allowing states the option of extending Medicaid coverage for 12 months postpartum.⁴⁵ Republicans stood at the ready to continue this work this year after failing to get the Senate to agree to the measures at the end of the last Congress, but Democrats took the proposal and moved forward with a weaker, and time-limited version of Helping MOMS Act’s coverage extension in the American Rescue Plan.⁴⁶

With this section, Democrats are ignoring the bipartisan agreement that was established in 2020 and the watered-down version that was passed in the American Rescue Plan by proposing to require all states to offer 12 months of postpartum coverage. This mandate on state Medicaid programs is discouraging, not only because it upends a bipartisan deal, but because it continues a theme that has been made clear by this Subtitle that Democrats think that Washington D.C. knows better on how states should run (or as is the case in section 30701, not run) their respective Medicaid programs.

Section 30724. Providing for 1 Year of Continuous Eligibility for Children Under the Medicaid Program.

⁴³ P.L. 116-260

⁴⁴ Section 6071(i) of the Deficit Reduction Act of 2005 (42 U.S.C. 1396a note).

⁴⁵ Helping MOMS Act of 2020

⁴⁶ P.L 117-2

Children deserve access to health care. Republicans agree on this and want to work with Democrats on improving access to pediatric care.

However, the reliance on Medicaid continues to disadvantage children, especially if an alternative form of private insurance exists for the child. In 2016, MACPAC found that children with Medicaid and CHIP had increased difficulty in accessing specialist care compared to children with private insurance.⁴⁷ In June of this year, MACPAC followed up this research by once again finding that beneficiaries with Medicaid coverage are disproportionately likely not to be able to find a provider that accepts their coverage compared to individuals with private coverage, stating “pediatricians accepted new Medicaid patients significantly less (84.7 percent) than privately insurance patients (97.6 percent).”⁴⁸

The proposed section establishes 12 months of continuous coverage for children in Medicaid, continuing a theme of this Subtitle of well-intentioned policies that will ultimately sell beneficiaries short. Upon reviewing the data put forth by the nonpartisan MACPAC, it is clear that more should be done to help children access the care that they need, as opposed to just relying on coverage that fails to meet the needs of its beneficiaries. Moving children off of Medicaid and onto private insurance should be the goal, and thus this section misses the mark on how to meaningfully improve access to care for children.

Section 30725. Allowing for Medical Assistance Under Medicaid for Inmates during 30-Day Period Preceding Release.

The proposed section is likely to be unworkable for many localities. According to National Conference of State Legislatures, the average length of stay in jail in 2017 was 26 days.⁴⁹ As written, it is unclear how a state should go about providing coverage under this section for an individual that is expected to remain in jail for less than 30 days, since the proposed section would require coverage to begin 30 days before release.

Many states, however, offer an alternative means of supporting the incarcerated by suspending Medicaid coverage during incarceration, as opposed to terminating coverage.⁵⁰ This allows for coverage to resume as soon as the individual is released, without requiring states to manage new enrollments in the program. This section should be reconsidered so that eligible individuals can actually get and maintain their coverage following incarceration.

⁴⁷ MACPAC, Medicaid Access in Brief: Children’s Difficulties in Obtaining Medical Care, *available at* <https://www.macpac.gov/wp-content/uploads/2016/06/Childrens-Difficulties-in-Obtaining-Medical-Care.pdf>

⁴⁸ MACPAC, Physician Acceptance of New Medicaid Patients: Findings from the National Electronic Health Records Survey, *available at* <https://www.macpac.gov/wp-content/uploads/2021/06/Physician-Acceptance-of-New-Medicaid-Patients-Findings-from-the-National-Electronic-Health-Records-Survey.pdf>

⁴⁹ National Conference on State Legislatures, Criminal Justice Budgeting: Shortening Length of Stay, *available at* <https://www.ncsl.org/research/civil-and-criminal-justice/criminal-justice-budgeting-shortening-length-of-stay.aspx>

⁵⁰ Kaiser Family Foundation, States Reporting Corrections-Related Medicaid Enrollment Policies In Place For Jails Or Prisons, *available at* <https://www.kff.org/medicaid/state-indicator/states-reporting-corrections-related-medicaid-enrollment-policies-in-place-for-prisons-or-jails/?currentTimeframe=0&sortModel=%7B%22collId%22:%22Location%22,%22sort%22:%22asc%22%7D>

Section 30726. Extension of Certain Provisions.

It is unclear why Democrats insist on extending a program that has low uptake. Currently, only seven states utilize Express Lane Eligibility.⁵¹ Republicans believe that if the program is working for these seven states, there is no need to disrupt their utilization of the program. But if only seven states want to take advantage of this program, Democrats should review and consider reforming the program. If Democrats are interested in finding ways to reform Medicaid in a manner that works for all states, Republicans stand ready to work.

⁵¹ Centers for Medicare and Medicaid Services, Express Lane Eligibility for Medicaid and CHIP Coverage, *available at* <https://www.medicaid.gov/medicaid/enrollment-strategies/express-lane-eligibility-medicaid-and-chip-coverage/index.html>

Subtitle H: Budget Reconciliation Legislative Recommendations Relating to CHIP

Section 30801. Permanent Extension of Children’s Health Insurance Program; Section 30802. Permanent Extensions of other Programs and Demonstration Projects.

As noted in the discussion on section 30724, Republicans believe that the best coverage options for children is private insurance and thus believe that Democrats goals are misguided in this section.

Because private insurance is not an option for all children, Republican support reauthorizing CHIP and extending its funding. However, CHIP is not only not up for reauthorization right now, and its funding does not expire until 2027. Congress has six years to build upon the bipartisan success that was made in 2018 to support access to care for children, and Republicans believe that simply punting on the opportunity to work together in favor of just extending funding misses important opportunities to support children.

Similarly, Republicans believe that there are missed opportunities to use the next six years to work on and build upon the policies in section 30802. It is disappointing that Democrats are ignoring opportunities for bipartisanship. The only thing that was bipartisan about this Subtitle was the opposition it received when a Committee Democrat joined Republicans in opposing it during the markup.

Section 30803. State Option to Increase Children’s Eligibility for Medicaid and CHIP.

The section flies in the face of what a safety net program should be. As written, the proposed section would lift eligibility for CHIP to children of any income level. Republicans believe that limited resources should be focused towards the most vulnerable, but as written, the proposed section would make CHIP eligible to the children of the wealthiest Americans. Our most vulnerable deserve better than this.

Section 30804. Extending Continuous CHIP Coverage for Pregnant and Postpartum Women.

As noted in the discussion on section 30723, Republicans do not believe that this is right approach to solving a problem that has bipartisan solutions that Committee Democrats supported just last year. Republicans urge Democrats to reverse course and to continue the bipartisan work that was started last year.

Section 30805. Providing for 1 Year of Continuous Eligibility for Children Under the Children’s Health Insurance Program.

Consistent with section 30724, Republicans believe that continuous coverage in CHIP is not the solution to supporting access to care for children and believe that supporting means to expand access to private coverage for children would be a more advantageous means of supporting children that could actually deliver more substantive results.

Subtitle I: Budget Reconciliation Legislative Recommendations Relating to Medicare

We continue to oppose initiatives that dramatically expand the scope of Medicare - and disguise their true financial impact through the use of budgetary gimmicks - at a time when the program is on the brink of insolvency. The August 31, 2021, Medicare Trustees Report once again estimates that the Hospital Insurance (HI) Trust Fund, which covers Medicare Part A expenses, will become insolvent by 2026.⁵² Notably, the HI Trust Fund has not met the Medicare Trustees' formal test for financial adequacy since 2003 while the growth of HI expenditures has averaged 7.6 percent annually over the last 5 years.⁵³ Furthermore, this sobering financial assessment of the Medicare program may underestimate the immediacy of the financial trouble as it assumes 100 percent repayment of the \$106 billion in Medicare loans provided to more than 22,000 Part A providers and more than 28,000 Part B suppliers.⁵⁴ The estimate also assumes no financial impact of the new Alzheimer's drug Aduhelm (or similar treatments in the pipeline), which is going through the Medicare coverage determination process and has an initial estimated list price greater than \$50,000 while more than 4 million Medicare beneficiaries are understood to have Alzheimer's or a related disease today.⁵⁵

Overall Medicare expenditures totaled \$926 billion in 2020, and the Congressional Budget Office (CBO) preliminarily estimates this legislation would cost the Medicare program approximately \$289 billion over a 10-year period.⁵⁶ Notably, this estimate only captures 4 years of the new dental benefits, which are not even fully phased-in during the scoring window. In 2032, the "full" dental benefit for non-routine services requires beneficiaries to pay 50 percent coinsurance while the government pays the other half. Prior to that, beneficiaries would pay 90 percent coinsurance for services starting in 2028 until the benefit phases-in over four years.

In addition to imperiling the finances of the Medicare program and jeopardizing the availability of benefits for current and future beneficiaries alike, these benefits are duplicative of benefits available to seniors today through the Medicare Advantage (MA) program. Privately administered MA plans already offer supplemental vision, hearing, and dental coverage. For plan year 2021, approximately 98 percent of plans offer vision coverage, 94 percent of plans offer hearing coverage, and 91 percent of plans offer dental coverage.⁵⁷

These privately administered plans have consistently offered low-cost, high quality coverage for seniors. The Trump Administration announced that average 2021 premiums declined approximately 34 percent from 2017 while plan choice, benefits, and enrollment have continued

⁵² The Board of Medicare Trustees, The 2021 Annual Report of the Board of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, available at [2021 Medicare Trustees Report \(cms.gov\)](https://www.cms.gov/medicare/annual-report)

⁵³ Id.

⁵⁴ Centers for Medicare & Medicaid Services, CMS Announces New Repayment Terms for Medicare Loans made to Providers during COVID-19, available at [CMS Announces New Repayment Terms for Medicare Loans made to Providers during COVID-19 | CMS](https://www.cms.gov/medicare/coverage/determination-process/covid-19-repayment)

⁵⁵ The Board of Medicare Trustees, The 2021 Annual Report of the Board of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, available at [2021 Medicare Trustees Report \(cms.gov\)](https://www.cms.gov/medicare/annual-report)

⁵⁶ Preliminary and informal estimate from CBO, September 2021

⁵⁷ Avalere, MA Enrollees Can Access COVID-19 Supplemental Benefits in 2021, available at [MA Enrollees Can Access COVID-19 Supplemental Benefits in 2021 | Avalere Health](https://www.avalere.com/insights/ma-enrollees-can-access-covid-19-supplemental-benefits-in-2021)

to increase.⁵⁸ Thanks to the Trump Administration’s additional flexibilities and support for the MA program, average monthly premiums are the lowest they’ve been in 14 years for more than 26 million Medicare beneficiaries estimated in MA plans for 2021.⁵⁹ Seniors have benefitted from increased choice with about 2,100 more MA plans in 2021 than in 2017 for a total of about 4,800 plans nationwide.⁶⁰

Furthermore, MA beneficiaries report a 98 percent satisfaction rate with their coverage and the MA program serves a proportionally greater percentage of racial and ethnic minorities than traditional Medicare (nearly 34 percent and 16 percent, respectively).⁶¹ More than half of MA beneficiaries live below 200 percent of the Federal Poverty Level compared to about 39 percent of fee-for-service beneficiaries.⁶² Additionally, MA beneficiaries on average face a 40 percent lower rate of cost burden than fee-for-service beneficiaries.⁶³

Instead of creating an expensive new set of benefits and rigidly imposing them on a sclerotic and inefficient fee-for-service program, Republicans stand ready to build off what is already working in the MA program – a program that *already* provides these dental, hearing and vision benefits to a more racially diverse, lower-income, and women-represented population today. We can apply the lessons of MA to tailor benefits to those who need them most as it turns out that the unmet needs for dental care is more contingent upon income than age.⁶⁴ A third of working-age adults with incomes below the Medicaid threshold cited financial barriers as a reason for not obtaining needed dental care, while only 6 percent of seniors with incomes above that threshold did so.⁶⁵

Furthermore, a number of implementation questions remain for a range of health care providers who would be expected to serve patients under a new set of dental, hearing, and vision benefits. Dentists and other providers may be wary of a maze of Medicare regulations and payment policies they might be subjected to and how this could impact patient access to their dentists and other providers.⁶⁶ Before implementing a set of new benefit mandates with a wide range of operational issues, Republicans insist on assessing the policies’ impact on providers and

⁵⁸ Centers for Medicare & Medicaid Services, Trump Administration Announces Historically Low Medicare Advantage Premiums and New Payment Model to Make Insulin Affordable Again for Seniors, available at [Trump Administration Announces Historically Low Medicare Advantage Premiums and New Payment Model to Make Insulin Affordable Again for Seniors | CMS](#)

⁵⁹ Centers for Medicare & Medicaid Services, Trump Administration Announces Historically Low Medicare Advantage Premiums and New Payment Model to Make Insulin Affordable Again for Seniors, available at [Trump Administration Announces Historically Low Medicare Advantage Premiums and New Payment Model to Make Insulin Affordable Again for Seniors | CMS](#)

⁶⁰ Id.

⁶¹ Better Medicare Alliance, State of Medicare Advantage May 2021, available at [BMA-State-of-MA-Report-2021.pdf \(bettermedicarealliance.org\)](#)

⁶² Id.

⁶³ Id.

⁶⁴ Chris Pope, Filling the Wrong Gap, available at [Don’t Expand Medicare to Cover Dental Benefits | City Journal \(city-journal.org\)](#)

⁶⁵ Health Policy Institute & American Dental Association, Main Barriers to Getting Needed Dental Care All Relate to Affordability, available at [HPIBrief_0419_1.pdf \(ada.org\)](#)

⁶⁶ American Dental Association, FAQ on the ADA’s Medicare Benefit Proposal, available at [Frequently asked questions about efforts to include a dental benefit in the Medicare program. \(ada.org\)](#)

incorporating provider feedback into making these benefits more accessible for patients without overburdening health care providers.

It is also notable that the reintroduction of the underlying H.R. 3 legislation in the 117th Congress removed these expansive new Medicare benefits (however, they were included in the prior H.R. 3 language in the 116th Congress), so these important questions were not given an opportunity for public discussion at any Committee hearings this Congress prior to the markup. We remain hopeful that future consideration of these provisions will include public discussion with affected providers, patients, as well as scholars and stakeholders who can speak to the financing of the Medicare program and how these expansive and duplicative set of new benefits would impact benefits for seniors now and in the future. As this Subtitle received bipartisan opposition from multiple Committee Democrats and all Committee Republicans, we hope the Majority will abandon this partisan exercise and work towards a real solution that does not jeopardize the already tenuous solvency of Medicare.

Subtitle J: Budget Reconciliation Legislative Recommendations Relating to Public Health

Strengthening public health infrastructure, reducing rates of maternal mortality, and investing in pandemic preparedness continue to be important issues to Americans. Republicans have shown a continued commitment to these initiatives. However, as with the American Rescue Plan Act of 2021, Republicans lament the fact that Democrats are again irresponsibly spending billions of dollars and abdicating their oversight responsibility of important public health programs. This Subtitle totals over \$61 billion in mandatory funds, despite the fact that the partisan American Rescue Plan Act already provided generous funding for many of these same programs and initiatives.

Republicans are disturbed that Subtitle J opens the door to Federal funding for elective abortions. The Hyde Amendment, notably missing from this legislation, prevents Federal funds from being used to fund abortions and coverage for abortions, except in the cases where the life of the mother would be endangered if the fetus were carried to term, or in the case of rape or incest. Since 1976, Hyde, and similar policies governing other Federal programs, have been supported and renewed annually on a bipartisan basis, multiple times, for decades. Because there are no Hyde Amendment protections, many provisions in Subtitle J could support elective abortions.

Lastly, Republicans are disappointed that the Democrats, in their haste to pass a partisan package, did not assess the true budgetary needs of these agencies and authorized funding duplicative of the American Rescue Plan Act and other initiatives. The exorbitant funding levels could lead to waste, a concern that is shared by at least one of our Democratic colleagues, who joined all Committee Republicans in opposing this Subtitle.

Part 1. Health Care Infrastructure and Workforce.

In general, Republicans are supportive of providing targeted allocations toward health care infrastructure and workforce improvements. The health care workforce was already dwindling, and the COVID-19 has only made the problem worse. Subtitle J provides \$7 billion in grants to public health departments. The state of the nation's public health infrastructure and workforce are a result of decades of neglect by state and local governments. Support for the building of the nation's health workforce and infrastructure is laudable and but should be accomplished by discretionary appropriations after a thoughtful review by Congress of the actual needs. The American Rescue Plan Act infused \$7.6 billion in mandatory funding to establish and expand a public health infrastructure,⁶⁷ so the additional \$7 billion is unnecessary.

Subtitle J authorizes \$10 billion in mandatory money for a slush fund for hospital infrastructure modernization and capital improvements. The Coronavirus Aid, Relief, and Economic Security (CARES) Act⁶⁸ established the Provider Relief Fund (PRF) and appropriated \$100 billion to “to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus.” The Paycheck Protection Program and Health Care Enhancement (PPPHCE) Act⁶⁹ added an additional \$75 billion to the

⁶⁷ Public Law No: 117-2, The American Rescue Plan Act, 2021. Sec. 2501 (a).

⁶⁸ Public Law No: 116-136, The Coronavirus Aid, Relief, and Economic Security (CARES) Act.

⁶⁹ Public Law No: 116-139, The Paycheck Protection Program and Health Care Enhancement (PPPHCEA) Act

PRF. The money that hospitals received through the PRF could be used for capital projects if they are used to respond to COVID-19. According to a Kaiser Health News analysis of Internal Revenue Service filings, nonprofit hospital systems held more than \$283 billion in stocks, hedge funds, private equity, venture funds and other investment assets in 2019.⁷⁰ Though their tax-exempt status requires charitable efforts, nonprofit health systems rarely put humanitarian goals first when selecting investments, even when sitting on portfolios worth hundreds of millions of dollars or more. This is especially true regarding the amount of surplus cash spent by hospitals on lavish building projects. Thus, an additional \$10 billion in funding for capital improvements is duplicative and wasteful. A better use of taxpayer dollars would be to direct funding toward Federally-owned and operated hospital infrastructure projects, such as improving the health facilities of the Indian Health Service (IHS). Disparities in the health status of American Indians and Alaska Natives (AI/ANs) are impacted by access to quality health care services. The average age of IHS health care facilities is greater than 37 years, compared to nine to ten years in the private sector.⁷¹ Health care services are constrained by the limited capacities of existing IHS and Tribal health care facilities, as there is a significant need for expansion, renovation, or replacement of many of these buildings. Sadly, it is unlikely that any IHS facility will receive funding from this \$10 billion slush fund.

Subtitle J also provides \$10 billion for community health center capital projects. Community Health Centers are essential to providing affordable health care to underserved populations. In 2020, Community Health Centers have received \$2 billion in funding to respond to the COVID-19 pandemic through the Coronavirus Preparedness and Response Supplemental Appropriations Act,⁷² the CARES Act,⁷³ and the PPPHCE Act.⁷⁴ The CARES Act also included an extension of the Community Health Center Fund at the current funding level of \$4 billion annually, on top of the \$2 billion in COVID-19 relief. Republicans supported the COVID-19 relief initiatives. In addition, the American Rescue Plan Act included \$7.6 billion for Community Health Centers,⁷⁵ which is still being distributed.

The bill also provides \$500 million to create a pilot program to award grants to qualified Teaching Health Centers (THCs) and behavioral health care centers to support the improvement, renovation, or modernization of infrastructure at such centers. This is in addition to \$6 billion for the Teaching Health Center Graduate Medical Education (THCGME) program. Republicans are concerned about the long-term health of critically important public health programs. In 2019, Committee Republicans supported the longest reauthorization of the THCGME program at record funding of \$126 million per year for fiscal years 2020 through 2023 in the Consolidated

⁷⁰ Jordan Rau, *Mission and Money Clash in Nonprofit Hospitals' Venture Capital Ambitions*, KAISER HEALTH NEWS, August 24, 2021, <https://khn.org/news/article/mission-and-money-clash-in-nonprofit-hospitals-venture-capital-ambitions/>

⁷¹ H. Comm. On Natural Resources Hearing, "Examining Federal Facilities in Indian Country" (June 17, 2021), available at <https://www.hhs.gov/about/agencies/asl/testimony/2021/06/17/examining-federal-facilities-indian-country.html>.

⁷² Public Law No: 116-123, The Coronavirus Preparedness and Response Supplemental Appropriations Act. Title III.

⁷³ Public Law No: 116-136, The Coronavirus Aid, Relief, and Economic Security (CARES) Act. Sec. 3831.

⁷⁴ Public Law No: 116-139, The Paycheck Protection Program and Health Care Enhancement (PPPHCEA) Act. Title I.

⁷⁵ Public Law No: 117-2, The American Rescue Plan Act, 2021. Sec. 2601.

Appropriations Act, 2021.⁷⁶ Additionally, the American Rescue Plan included \$330 million in funding for THCGME programs,⁷⁷ which is still being distributed. These are unsustainable funding levels, placing this program on an incredibly dangerous fiscal cliff.

Part 2. Pandemic Preparedness.

Subtitle J provides billions for the renovation, expansion, and modernization of state and local public health laboratories, money for surveillance and public health data modernization, and money for research and development of medical countermeasures to address public health emergencies. Congress has already provided funding for these very same initiatives through annual appropriations bills, in addition to emergency supplemental funding provided through the Coronavirus Preparedness and Response Supplemental Appropriations Act; CARES Act; and the PPPHCE Act.⁷⁸ Providing even more money for these same purposes, with no strings attached, and without any hearings or Congressional oversight to understand better the needs, is fiscally irresponsible.

The bill also provides unnecessary funding for the Centers for Disease Control and Prevention (CDC) to strengthen and improve vaccine confidence, vaccination rates, and routine vaccine programs. Since the beginning of the pandemic, the CDC has been given about \$7 billion in immunization awards.⁷⁹ It is very unlikely that the CDC has spent all the money it was allocated through the American Rescue Plan. The purpose of providing this additional funding is unclear. Despite the pledge to follow the science, the CDC's missteps under the Biden Administration throughout the past year, from political interference of teachers' unions, to incomplete information, to confusing and mixed messaging, has resulted in a loss of public trust in the CDC and ultimately undermined vaccine confidence. Americans are far more likely to trust their health care providers and other community leaders on the safety and efficacy of vaccines than Federal bureaucrats.⁸⁰

Part 3. Innovation.

The bill provides \$3 billion to establish the Advanced Research Projects Agency for Health (ARPA-H). ARPA-H was included in President Biden's budget (requested \$6.5 billion) and according to the National Institutes of Health (NIH), it would be tasked with building high-risk, high-reward platforms to drive biomedical breakthroughs. Committee Republicans are concerned about how this would be implemented. For example, the 21st Century Cures Act authorized the NIH Cures Acceleration Network⁸¹ to advance the development of high-need cures and reduce barriers to research and development as well as clinical trials. If the Acceleration Network, which was similar in concept to ARPA-H, cannot meet the goals of

⁷⁶ Public Law No: 116-260, The Consolidated Appropriations Act, 2021.

⁷⁷ Public Law No: 117-2, The American Rescue Plan Act, 2021.Sec. 2604.

⁷⁸ CDC's COVID-19 Supplemental Funding.

⁷⁹ COVID-19 Vaccination Program Operational Guidance. <https://www.cdc.gov/vaccines/covid-19/covid19-vaccination-guidance.html>.

⁸⁰ Hamel, Kirzinger, Munana, Brodie. KFF COVID-19 Vaccine Monitor: December 2020. <https://www.kff.org/coronavirus-covid-19/report/kff-covid-19-vaccine-monitor-december-2020/>.

⁸¹ NIH, National Center for Advancing Translational Sciences, Cures Acceleration Network. <https://ncats.nih.gov/funding/review/can>.

ARPA-H and does not have the independence and the authority that it needs to conduct bold research and develop technologies that could transform the marketplace, then NIH may not be the best place to house such an entity. Housing ARPA-H within the NIH also raises questions related to how ARPA-H would prioritize research projects and interact with the other NIH Institutes.

Part 4. Maternal Mortality.

This section provides about \$1 billion in funding to address maternal social determinants of health, diversify the maternal health workforce, and research emerging threats to mothers and babies. Republicans support addressing social determinants of health. Effectively addressing social determinants of health for all Americans will improve outcomes related to maternal social determinants of health, ultimately reducing maternal morbidity and mortality. However, rather than instituting more government programs, Congress should be supporting states, local communities, and health providers to engage with the private sector and come up with innovative solutions to address the issue. In July, the Committee advanced bipartisan legislation related to maternal health. Those bills would ensure pregnant and postpartum women are educated on immunization programs and authorize grant funding to identify best practices to improve maternal health quality and outcomes and eliminate preventable maternal mortality and morbidity. During the same markup in July, the Committee also advanced bills to help address social determinants of health. However, since July, Democrats have done nothing to get these important bipartisan initiatives enacted into law.

Part 5. Other Public Health Investments.

Part 5 directs billions in mandatory funding for various mental health, trauma, and substance use disorder programs, in addition to providing supplemental funding for HIV Health Care Services Programs. Committee Republicans also support additional funding for the prevention and treatment of mental health and substance use disorders. The COVID-19 pandemic and resulting economic downturn have significantly impacted the mental health and wellbeing of all Americans, especially where state and local officials chose to institute lengthy lockdowns and keep businesses and schools closed. Emergency funding for mental health and substance use disorders was already provided for in the American Rescue Plan Act, and no effort was made by the Democrats to account for the amount of time it will take for Federal agencies and states to spend the new resources. Democrats, in their irresponsible haste to pass partisan Reconciliation legislation, did not assess the true budgetary needs of the agencies.

The bill also provides \$2.86 billion to establish a World Trade Center Health Program Supplemental Fund and to remain available through fiscal year 2031. Republicans understand that enrollment in the program is increasing, along with the healthcare costs of enrollees. However, Republicans are disappointed that Democrats again embraced a partisan process instead of working in a bipartisan manner to address projected shortfalls. It is also not clear to Republicans why the required 10 percent match by New York City was struck in this proposal.

Subtitle K: Budget Reconciliation Legislative Recommendations Relating to Next Generation 9-1-1

Section 31101. Deployment of Next-Generation 9-1-1.

This section funds a next-generation 9-1-1 (NG 9-1-1) program through a partisan Reconciliation process. The authorizing language lacks several safeguards and improvements that could have received bipartisan support. For example, this language lacks direction to the Assistant Secretary of the National Telecommunications and Information Administration (NTIA) for the scope of their duties, which could include information sharing and technical assistance. This language lacks language that would have increased transparency for the program, including requirements for regular reporting on key details of the program and on progress made. Additionally, this legislation lacks measures to penalize entities that knowingly submit false information, which would help ensure taxpayers funds are being spent effectively. This section could have been vastly improved if Democrats had worked with Republicans through regular order. Instead, they put politics before progress and turned a bipartisan issue – supporting public safety – into a partisan issue by rushing it through with minimal debate.

Section 31102. Establishment of Next-Generation 9-1-1 Cybersecurity Center.

This section spends \$80 million dollars for an NG9-1-1 cybersecurity center, the purpose of which is not defined nor clear. This vague language provides nearly unlimited authority to the Assistant Secretary of NTIA to determine the scope of the center. This provision also moves away from the longstanding, bipartisan policy of a federated, State-based approach to securing our 9-1-1 networks from cybersecurity risks, which is a unified position of public safety groups, as agreed to by the Federal Communications Commission’s Task Force on Optimal Public Safety Answering Point Architecture. Yet, rather than building on a bipartisan record of improving our cybersecurity, Democrats chose to advance legislation that blurs the roles and responsibilities between States and the Federal government in administering a nation-wide 9-1-1 system.

Section 31103. Public Safety Next Generation 9-1-1 Advisory Board.

This section wastes \$10 million dollars to create a public safety advisory board to advise the Assistant Secretary’s administration of a \$10 billion dollar government program. To make the grants available for the program, the Assistant Secretary already has ample authority and precedent for seeking public input and comment from all affected stakeholders, including the public safety community. Indeed, under the Federal Advisory Committee Act, NTIA already has the authority to establish such an advisory board. Moreover, it is unclear why the establishment of an advisory board would require \$10 million in appropriated funds. It appears this provision is just a reckless tax and spending spree by Democrats that will add to job-crushing inflation.

Telecommunications policy traditionally has been an area of bipartisanship at the Committee. So it is telling that Democrats have not held a single Communications and Technology Subcommittee markup this Congress and had to include what should have been bipartisan policies in an extreme partisan process.

This gargantuan spending is bad for America and so is the lack of Democratic leadership.

Finally, this Subtitle received bipartisan opposition during the markup, with a Committee Democrat voting against it.

Subtitle L: Budget Reconciliation Legislative Recommendations Relating to Wireless Connectivity

Section 31201. Spectrum Auctions and Innovation.

This section provides the Secretary of Commerce with \$50 million from the Spectrum Relocation Fund to invest in the appropriate analyses to repurpose Federal spectrum for commercial use. It also requires the Federal Communications Commission (FCC) to auction 200 MHz of spectrum in the 3.1 to 3.45 GHz band and extends FCC spectrum auction authority for 7 years to auction this band.

Spectrum resources are becoming scarce as the demand for spectrum continues to rise. Americans increasingly rely on connected devices in their daily lives while at the same time the demand for spectrum by Federal agencies remains. Spectrum policy has historically been bipartisan, and it is more important than ever before that we get this policy right. Rushing spectrum policy in a partisan Reconciliation process is irresponsible. Democrats are jeopardizing American innovation and economic security.

We also note that the auction of this spectrum will result in net income to the Treasury. While the Democrats may argue that this auction will offset some of the costs in Democrats' Build More Inflation Act, the Senate amendment to H.R. 3684, the Senate infrastructure bill, is also using this auction as an offset for the spending in that legislation. This clear duplication of offsets was raised by a Committee Democrat during the markup.

Given the gargantuan spending in the Democrats' Build More Inflation Act, it is clear that the Democrats believe the Federal government can sustain infinite spending without consequence. So it is no surprise that Democrats believe they can auction the same spectrum twice to pay for their socialist agenda. It is an interesting idea, but we do not think it will work out well for Americans.

Telecommunications policy traditionally has been an area of bipartisanship at the Committee. So it is telling that Democrats have not held a single Communications and Technology Subcommittee markup this Congress and had to include what should have been bipartisan policies in an extreme partisan process.

This gargantuan spending is bad for America and so is the lack of Democratic leadership.

Finally, this Subtitle received bipartisan opposition during the markup, with a Committee Democrat voting against it.

Subtitle M: Budget Reconciliation Legislative Recommendations Relating to Distance Learning

Section 31301. Additional Support for Remote Learning.

This section wastes \$4 billion dollars in taxpayer funding for purposes that Congress has already funded just 7 months ago. It provides funding for schools and libraries to buy and distribute Wi-Fi hotspots, modems, routers, and other devices for students to use for off-premise schoolwork. It also eliminates the requirement for this funding to be tied to the COVID-19 pandemic, which was the original rationale the Democrats used for creating a \$7.17 billion fund for this purpose, \$2 billion of which remains unspent. In addition, Congress appropriated a cumulative \$110 billion in 2020 to the Department of Education to respond to the coronavirus pandemic, and much of that money can be used for similar purposes. It is irresponsible for Congress to appropriate more money to this program before the existing money is spent and Congress can determine where, if any, gaps remain.

This program is also inconsistent with President Biden's goal to reopen schools because it encourages the continuation of remote learning. Similarly, it conflicts with the Administration's Centers for Disease Control and Prevention guidance, which states that it is safe for schools to reopen with appropriate measures in place and that they should do so as quickly as possible. This program is a handout to the teacher's unions and for the Democrats to show their support for the longstanding radical policies endorsed by the unions. This does not help our children.

During the Committee markup of this provision, Rep. Latta and Rep. Walberg offered amendments to provide long-term solutions to close the digital divide and incentivize schools to re-open for in-person learning. To provide a permanent solution to close the digital divide, Rep. Latta offered an amendment to redirect this funding to rural broadband deployment in unserved areas. Because Democrats are making this program permanent for the purposes of providing connectivity, these funds should be redirected into existing programs to provide permanent solutions to close the digital divide. Rep. Walberg offered an amendment to strike the Subtitle, given the duplicative nature of these funds with at least half a dozen other Federal broadband subsidy programs. Both proposals were unanimously opposed by the Democrats.

This is just another instance of wasteful spending that will contribute to the job-crushing inflation created by gargantuan Democratic spending. The only way to close the so-called "homework gap" is to invest in permanent broadband infrastructure that closes the digital divide between urban and rural America once and for all. In order to recover from this pandemic and ensure our students are not left behind, we need to focus on policies that reopen schools and the economy as quickly as possible. We are disappointed the Majority rejected bipartisanship and again embraced a partisan process that will waste billions of dollars on temporary, unreliable options such as hotspots, with no oversight and no accountability.

Telecommunications policy traditionally has been an area of bipartisanship at the Committee. So it is telling that Democrats have not held a single Communications and Technology

Subcommittee markup this Congress and had to include what should have been bipartisan policies in an extreme partisan process.

This gargantuan spending is bad for America and so is the lack of Democratic leadership.

Finally, there is bipartisan agreement that this Subtitle is wasteful, with a Committee Democrat joining Republicans in opposing it during the markup.

Subtitle N: Budget Reconciliation Legislative Recommendations Relating to Manufacturing Supply Chain

Section 31401. Critical Manufacturing Supply Chain Resilience.

Subtitle N is another disaster in the Democrats' Build More Inflation Act. Instead of working with Republicans to protect the U.S. supply chain and U.S. industry from the many threats they face, especially from international adversaries like China, the Democrats' monstrous bill would spend \$10 billion for the Department of Commerce (DOC) to "support the resilience, diversity, security, and strength of critical manufacturing supply chains." While a commendable purpose, the language lacks important guardrails and ignores constructive improvements which would have received bipartisan support. At a minimum, Democrats should have narrowed the overbroad list of eligible entities who can receive financing to avoid creating a DOC slush fund for personal, partisan projects that have nothing to do with supply chains.

This program will be a gargantuan waste of taxpayer money, and it could not come at a worse time. Inflation is already a worry for many Americans. Inflation for used cars is up 31.9 percent, gasoline 42.7 percent, and food 3.7 percent.⁸² At a time when billions of taxpayer funds from previous COVID-19 relief packages remain unexpended, market analysis portends a trend for even more inflation when market transactions return to more traditional levels.⁸³ Instead of continuing to throw money at the issue, the Committee should be working to craft bipartisan legislation to address supply chain insecurities and focus on the China threat.

American competition with the Chinese Communist Party (CCP) is a major challenge. Like the Biden Administration, this bill does not rise to that challenge. We need to know what access China has to the U.S. marketplace and how that may compromise Americans' jobs and safety. Moreover, there are important questions that must be addressed on permitting, access to critical materials, and regulatory and tax structures that allow for innovation and entrepreneurship. This Subtitle does nothing to address these questions.

The COVID-19 pandemic that originated in China revealed significant vulnerabilities in our supply chains. From semiconductors to active pharmaceutical agents to the most basic household items, we are dependent on international supply chains. There is bipartisan concern regarding the security and safety of our supply chains. This Committee should be working through regular order to construct bipartisan legislation, not rushing through a partisan Reconciliation package limited to throwing money at the problem and ceding decision-making authority to unelected officials, which at least one Committee Democrat agreed with when he voted with Republicans against this Subtitle.

⁸² <https://www.bls.gov/news.release/cpi.nr0.htm>

⁸³ <https://fred.stlouisfed.org/series/M2V>

Subtitle O: Budget Reconciliation Legislative Recommendations Relating to FTC Privacy Enforcement

Section 31501. Federal Trade Commission Funding for a Privacy Bureau and Related Expenses.

We hate to repeat ourselves, but Subtitle O is another disaster in the Democrats' Build More Inflation Act.

Before we discuss how flawed the drafting is, we note that Committee Democrats voted against a number of vital concerns the Federal Trade Commission (FTC) could focus on with its additional funding. This included child online protections, terrorist-sponsored content from the Taliban, and limits on health-related information shared with China. All were voted down.

These votes represent a reversal of the public facing rhetoric from Committee Democrats during hearings and markups this past year. Democratic members on the Committee enthusiastically expressed the need for increased protections for our children, especially from Big Tech. For instance, earlier this year, we had a hearing in this Committee with the CEOs of Facebook, Google, and Twitter, where there was clear bipartisan interest in addressing the negative impact that social media has on our kids.

One of our Democratic colleagues told the CEOs, "you know that the brain and social development of our kids is still evolving at a young age," and went on to appeal to Republicans on the Committee to join her and "hold the corporate executives accountable and give parents the tools that they need to take care and protect their kids."⁸⁴

Another of our Democratic colleagues took it a step further and correctly acknowledged that these tech companies have not been responsible stewards of their platforms, saying:

Google and Facebook are not only doing a poor job of keeping our children under 13 off of YouTube and Instagram...but [they] are actively onboarding our children onto [their] ecosystems with apps like YouTube Kids, Facebook Messenger Kids, and now we are hearing Instagram for Kids. These applications introduce our children to social media far too early and include manipulative design features intended to keep them hooked... please expect my office and many others to follow up, given what we know about

⁸⁴ See House Committee on Energy and Commerce hearing transcript from the Subcommittee on Consumer Protection and Commerce and Subcommittee on Communications and Technology joint hearing entitled, "Disinformation Nation: Social Media's Role in Promoting Extremism and Misinformation at <https://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-Transcript-20210325.pdf>

Instagram's impact on teen mental health. We are all very concerned about our younger children.⁸⁵

That member went on to conclude that “[t]his Committee is ready to legislate to protect our children from your ambition.”⁸⁶

Even the Chairman of the Committee said that “Facebook, Google, and Twitter have created business models that exploit the human brain’s preference for divisive content to get Americans hooked on their platform, at the expense of the public interest.”⁸⁷

Based on these comments, Republicans offered an amendment to require the FTC to use a portion of the \$1 billion to hire child psychologists to inform their work related to unfair and deceptive acts or practices relating to the mental health impact of social media on adolescents. This amendment would have gone after practices perpetrated by social media platforms that deceive Americans into thinking there are no adverse effects of using their platforms – especially at a young age. Committee Democrats defeated this amendment.

As to the establishment of a privacy bureau, while we have shown our commitment to establishing a national privacy framework with a privacy bureau, we are curious how the establishment of a brand-new Federal entity in this bill can possibly satisfy the Byrd Rule in section 310 of the Budget Act. As subsection (b) states, the purpose of this section is “to create and operate a bureau, including by hiring and retaining technologists, user experience designers, and other experts” After all, on May 28, 2021, in the Federal Trade Commission’s (FTC) Budget Request for Fiscal Year 2022, the then acting-Chairwoman Rebecca Kelly Slaughter wrote:

To maintain its high level of performance in FY 2022, the FTC is requesting \$389,800,000 and 1,250 FTEs, which is an overall increase of \$38,800,000 and 110 FTEs compared to the FTC’s FY 2021 enacted appropriation. This submission assumes \$13 million

⁸⁵ [1] See House Committee on Energy and Commerce hearing transcript from the Subcommittee on Consumer Protection and Commerce and Subcommittee on Communications and Technology joint hearing entitled, “Disinformation Nation: Social Media’s Role in Promoting Extremism and Misinformation at <https://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-Transcript-20210325.pdf>

⁸⁶ [1] See House Committee on Energy and Commerce hearing transcript from the Subcommittee on Consumer Protection and Commerce and Subcommittee on Communications and Technology joint hearing entitled, “Disinformation Nation: Social Media’s Role in Promoting Extremism and Misinformation at <https://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-Transcript-20210325.pdf>

⁸⁷ [1] See House Committee on Energy and Commerce hearing transcript from the Subcommittee on Consumer Protection and Commerce and Subcommittee on Communications and Technology joint hearing entitled, “Disinformation Nation: Social Media’s Role in Promoting Extremism and Misinformation at <https://docs.house.gov/meetings/IF/IF16/20210325/111407/HHRG-117-IF16-Transcript-20210325.pdf>

in offsetting collections from Do Not Call fees and \$136 million from Hart Scott Rodino (HSR) filing fees under the current fee structure.

The bureau created by this section would have a budget that **2.5 times** larger than the FTC's current budget. Given the broad policy authority and hiring authority, the massive budget is certainly incidental to the to the non-budgetary components of the provision – establishing a new Federal entity. The only thing missing is a building to house the new bureau.

As to giving the FTC a war chest to intimidate businesses of every size, in every sector, at any time – all to implement the Democrats' socialist scheme -- it is a terrible idea, perhaps this is why the Democrats only shared the final text with Republicans just one day (a Sunday) before the markup began.

While the title of this section invokes a bipartisan staff draft concept from the last Congress, there have been no hearings this Congress on privacy, no legislative history on the funding amount, and no guarantees that funding will be dedicated to privacy. Without direction from Congress, the FTC has broad authority to implement this section.

Moreover, the legislation's real ambition lies behind two very consequential words – “related matters.” One can only imagine that this is intended to establish a fluctuating regulatory environment that will unnecessarily stress American businesses. As counsel for Committee Democrats noted at the markup, “related matters is not defined in the legislation.” So these funds are not bound to a privacy bureau.

Enacting a Federal privacy law has been a Republican priority for several years. During the last Congress, Republicans worked with Democrats to develop a bipartisan staff draft establishing a bureau of privacy at the FTC, as this legislation purports to do. However, that bipartisan staff draft was far different than what Democrats delivered here. We agreed to establish this bureau, but only in tandem with a national privacy law to enforce. In failing to narrowly define its authority, the Democrats are unleashing this bureau with broad authority on the economy. We predict this will not end well for businesses, entrepreneurs, investor, and workers.

During the markup of the Democrats' Build More Inflation Act, Republicans offered an amendment to target these funds to the creation of a Bureau of Privacy at the FTC and the hiring of 250 additional employees to enforce a national privacy standard established by Congress. The amendment would have also created an office of small business to ensure parties can seek help as they need to understand and learn how to comply with a national law. Every Committee Democrat voted against the amendment.

As the new chair of the FTC continues to remove regulatory guardrails that have guided prior administrations of both parties, it appears Democrats in Congress and at the FTC have businesses large and small in their sights. If one were to picture this as a game in a virtual world, the attack on businesses commences by allowing a single player without any other team members to grab a “loot box,” and then conquer level after level to unlock the grand socialism prize at the end of the app. Unfortunately, this is all happening in the real world, and this “loot box” for the FTC

chair is a \$1 billion, and the American people are the losers. Americans will be hurt the most by the inevitable inflation. Whether buying produce at the grocery store, a new car for a growing family, or an insurance plan to protect loved ones, prices will increase, scarcity will grow, and jobs and savings accounts will disappear. We are disappointed that the Democrats are completely abdicating their legislative responsibilities to an “independent agency” and pursuing a partisan process to enact their socialist agenda.

Finally, this Subtitle (like every other Subtitle) received bipartisan opposition during the markup, with a Committee Democrat voting against it.

Subtitle P: Budget Reconciliation Legislative Recommendations Relating to Department of Commerce Inspector General

Section 31601. Funding for the Office of the Inspector General of the Department of Commerce.

This section directs \$10 million to the Inspector General (IG) of the Department of Commerce (DOC) to oversee the DOC provisions in the Democrats' Build More Inflation Act. Perhaps, instead of writing a gargantuan bill and spending \$3.5 trillion, Democrats could have given some thought to including some minimal constraints on the use of the money given to DOC. Since that was not an option, we apparently should be thankful that the Democrats saw fit to include a few dollars to watch for waste, fraud, and abuse.

Unfortunately, this funding for the IG is limited to DOC funding in the Democrats' Build More Inflation Act. While we are confident the IG's hands will be full just overseeing this spending, there are other areas at the DOC that are worth of attention.

According to media reports,⁸⁸ recent actions by the DOC will have a serious impact on American manufacturing and should be reviewed by the IG. These reports suggest an easing of economic sanctions via the approval of licensing applications for Huawei Technologies Company to purchase semiconductor technology for its growing automotive interests. This will overly burden U.S. manufacturers who are already struggling to fill their own vehicle orders because of a semiconductor chip shortage.

We also note the Democrats' failure to support an autonomous vehicle (AV) framework for next generation automotive development is simply not rationale behavior. Three years after the House overwhelmingly passed AV legislation, it is a shame that the Democrats handed the keys for AV development to China. This failure will be borne on American autoworkers and manufacturers as they have their future determined by a hostile nation.

One final reminder: this Subtitle, like every other Subtitle, had bipartisan opposition with a Committee Democrat joining every Committee Republican in opposition.

⁸⁸ <https://www.reuters.com/business/autos-transportation/exclusive-us-approves-licenses-huawei-buy-auto-chips-sources-2021-08-25/>



Cathy McMorris Rodgers
Ranking Member
Energy and Commerce Committee



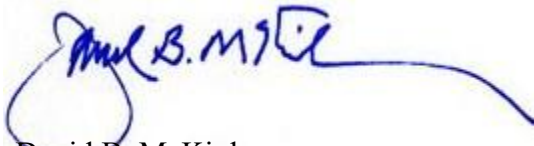
Fred Upton
Ranking Member
Subcommittee on Energy
Energy and Commerce Committee



Robert E. Latta
Ranking Member
Subcommittee on Communications
and Technology
Energy and Commerce Committee



Brett Guthrie
Ranking Member
Subcommittee on Health
Energy and Commerce Committee



David B. McKinley
Ranking Member
Subcommittee on Environment
and Climate Change
Energy and Commerce Committee



Gus M. Bilirakis
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Energy and Commerce Committee