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How Repeal of #NeverNeeded Regulations Can Help Responses to the COVID-19 Crisis

Reforms to Enable an Effective Response, Improve Resilience, and Reboot the Economy

By CEI Staff*

A number of factors are combining to stress the American economy in the spring of 2020—the global and domestic effects of the COVID-19 pandemic, an oil price war between Saudi Arabia and Russia that is already harming the American oil and gas sector, and a possible global correction in stock markets that many believe is overdue. Taken together, these factors constitute the greatest threat to the U.S. economy since the 2008 financial crisis.

However, the urgency of addressing the COVID-19 pandemic makes normal “stimulus” policies to jumpstart the economy potentially counterproductive. Such policies attempt to stimulate more economic transactions between people. However, if the disease is spread by people interacting with each other, increased person-to-person economic interaction is not necessarily desirable from a public health perspective. Therefore, any policy response to the economic impact of the COVID-19 crisis will need to be more carefully considered than during previous economic crises. In fact, much of the federal stimulus spending after the 2008 financial crisis was ill-targeted or even wasted.

To date, the initial COVID-19 relief bills have focused on the immediate problem of ensuring businesses and households stay afloat in the face of mandatory closures and a precipitous drop in demand. Any further legislation should include provisions to ensure that the nation is able to meet the demands of the crisis and then return to full capacity without unnecessary barriers.

We have already seen that many regulations have proven to hinder or delay appropriate policy responses. Other regulations are or were making things worse than they otherwise would be. In many cases, it is now clear that these regulations were never needed, or that whatever justification they once had has been superseded.

With all that in mind, recent events indicate certain principles that should be incorporated into policy responses to the crisis going forward. Future bills and executive actions should:

- Remove regulatory barriers that prevent an effective response to the crisis;
- Remove regulatory barriers that reduce resilience to changed economic behavior;
- Suspend or repeal policies that make the crisis worse than it would otherwise be; and

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- Put in place reforms that will allow the economy to reboot quickly.

To that end, the Competitive Enterprise Institute offers the following policy proposals for consideration.

REMOVE REGULATORY BARRIERS THAT PREVENT AN EFFECTIVE RESPONSE

Accelerate the Approval of New Medicines

Reform the Food and Drug Administration's (FDA) approval process, so medicines and vaccines that have completed a successful Phase II clinical trial can be conditionally approved for use by patients who give their informed consent. Under the Food, Drug and Cosmetic Act, the FDA has implemented a three-phase testing regime that subjects new medicines to a progressively more stringent and time-consuming set of clinical trials.

Phase I trials test these products for acute safety in a relatively small number of healthy subjects. Phase II trials involve slightly more subjects, who are actual patients, and begin to analyze safety at therapeutic doses and provide early indications of effectiveness. Phase III trials involve large numbers of patients, and testing examines both safety and efficacy. Phase III trials are considered the gold standard of clinical testing, but they are time-consuming and expensive, which significantly delays the introduction of medicines for patients who need them.

Conditional approval following a single Phase II trial can provide access to promising medicines for patients who are willing to try medicines still in development in consultation with their doctors.

Do Not Require Premarket Approval for Laboratory-Developed Diagnostic Tests

Under the Food, Drug and Cosmetic Act, diagnostic tests are considered medical devices and therefore subject to the FDA's premarket review requirements. Under normal circumstances, the FDA has used its enforcement discretion to waive the premarket review requirement for tests developed and used exclusively within a single laboratory, known as "laboratory developed tests" (LDTs).

However, when the Secretary of Health and Human Services declares an official public health emergency, the agency does require premarket approval for LDTs, though it will grant an expedited Emergency Use Authorization for LDTs that meet the necessary criteria. (For more, see Gregory Conko, "Regulation, Confusion, and the Irony of Emergency COVID-19 Testing," *OpenMarket*, March 16, 2020). The FDA should permanently waive the premarket approval requirement for LDTs, and Congress should write the exemption into the statute.

Repeal All State Certificate of Need Laws

Thirty-six states and the District of Columbia have so-called certificate of need laws that require hospitals, clinics, doctors' offices, and other health care facilities to seek prior authorization from a state regulator before expanding their facilities, adding major new equipment (such as MRI machines), and, in some cases, before offering certain new services. These laws are protectionist measures designed to safeguard the investments made by incumbent providers and facilities. As such, they restrict access and raise prices for health services. They should be repealed.

Relax Medical Licensing Rules that Prevent Health Care Professionals from Performing Services They Are Trained to Provide

State laws very often forbid physicians and other health care professionals licensed in one state from providing services in another state. Among other things, this has made it more difficult for doctors, nurses, and other practitioners from states with low incidence of COVID-19 from going to epidemic hot spots like New York and California to assist in the treatment of patients.

Licensing laws also inhibit telemedicine because physicians in one state cannot diagnose or prescribe treatment to patients located in another state. Even within states, licensing and scope of practice laws often prevent physicians' assistants and nurse practitioners from providing the health services they are trained to perform, and instead require licensed physicians to perform those services.

States should voluntarily suspend these licensing requirements for the duration of the emergency and work toward establishing a system of mutual recognition.

Finally, mutual recognition should be extended to all occupational licenses, allowing professionals such as cosmetologists and hair stylists more freedom to relocate around the country as the economy recovers. Furthermore, states should thoroughly review such arrangements with a skeptical eye as to whether they were ever needed in the first place.

Lift Other Barriers to Telemedicine

As noted, occupational licensing reform would help enable wider adoption of telemedicine. However, other policies also present problems for telemedicine, including various requirements for in-person consultation such as are generally required for Medicaid reimbursement—which are not among those that have been waived.

For example, states like Oregon continue to require telemedicine providers to have an in-state facility in order to apply to provide services to residents. Until the Centers for Medicare and Medicaid Services waived the requirement in March, health professionals and hospitals could only be reimbursed for certain services, including types of checkups, various

diagnostic services, and appointments with new patients, if they were provided in person at an established health facility. And patient privacy rules generally forbid health professionals from using certain technologies, such as Skype, Zoom, Facetime, and many other common video chat applications in telemedicine appointments, though the Department of Health and Human Services is currently using its enforcement discretion to allow their use. All these regulations should not only be suspended to allow for more consultations and less exposure to infection for medical professionals, they should be reformed or withdrawn entirely to enable broader use of telemedicine.

Expedite Medical Plant Sterilization

Several medical supply sterilization plants have shut down during the past year because of unwarranted fearmongering about ethylene oxide (EtO), a gas used to sterilize medical equipment and for which there is no viable alternative. EtO became an issue after the U.S. Environmental Protection Agency's (EPA) Integrated Risk Information System (IRIS) program released a faulty analysis that vastly overstated the risks associated with EtO and set a safe "reference dose" that is 19,000 times lower than the amount produced naturally inside the human body.

In addition, the EPA's National Air Toxics Assessment used to suggest there may be serious cancer risks in communities around the nation. That set off health scares in several states, which led Illinois, Michigan, and Georgia to shut down medical sterilization facilities despite actual risks being very low.

In 2019, the Food and Drug Administration warned that such closures could medical equipment shortages, which are already a reality. Fortunately, two facilities have been allowed to open—at least temporarily. While these openings may be temporary, hopefully reason will prevail. State lawmakers should recognize the critically important benefits these plants provide and the very low risks from EtO, remove prohibitions on the operation of these critical facilities.

Waive Fuel Efficiency Rules for Auto Manufacturers Making Medical Devices

President Trump's invocation of the Defense Production Act directing General Motors to produce ventilators, while dubious in method, highlights the need for manufacturing facilities to be repurposed toward making medical equipment. The Department of Transportation (DOT) should temporarily reduce corporate average fuel efficiency (CAFE) standards to a bare minimum to increase the ability of other automakers to similarly shift their production of ventilators and other medical equipment. The CAFE program, by regulating fuel efficiency across an automaker's entire fleet, forces manufacturers to produce smaller cars to make up for emissions from more profitable larger vehicles, such as SUVs. The DOT should issue an emergency proposal to do so, effective immediately.

Ensure Commercial Access to Spectrum

The Federal Communications Commission's (FCC) grant of Special Temporary Authority to AT&T and Verizon to use spectrum to help meet American's wireless broadband needs during the COVID-19 crisis suggests that there is a need to move more spectrum into private hands. That would mean fewer spectrum bands sitting idle, designated for government agency use. Regulatory underbrush at the FCC has put American on a spectrum diet and that is suboptimal even in the best of times, but is even more harmful in a crisis. The FCC should push more spectrum into commercial use with property rights-based arrangements as quickly as possible.

Allow Online Sales and Delivery of Legal but Prohibited Items

Some states have regulations forbidding delivery of alcohol, others of tobacco products, and there are many other prohibitions of online sales. As it is necessary to encourage people to stay at home, all such restrictions should be lifted.

REMOVE REGULATORY BARRIERS THAT REDUCE RESILIENCE

Refocus CDC and FDA Efforts

The Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration may well have taken their eye off the ball by focusing too much of their budget and efforts on public health issues such as the risks association with flavored vaping products. This focus may also have diverted the medical community into doing research surrounding issues of interest to federal grant makers, including the National Institutes of Health, rather than on emerging infectious disease threats. Congress should refocus these health agencies towards protecting the nation against genuine threats like infectious diseases.

Ensure Access to Capital through Increased Small Dollar Lending and FinTech

Financial regulators should rescind the 2013 guidance on bank small-dollar lending and waive or preempt state regulations on interest rates and licensing. This could create a robust and accessible lending market for distressed households. Waiving licensing regulations would be particularly important for FinTech innovators who may have ideas for quickly helping households through troubled times.

Reduce Employee Classification Barriers

Flexibility in work arrangements are vital if the economy is to keep running even at its current emergency levels. With stay-at-home orders in place, millions depend on on-

demand delivery services to keep their households running. Many businesses that run such services operate on an independent contractor business model, which allows them to scale up or down quickly. Laws that attempt to turn independent contractors into employees hinder this process and cause these businesses to hire fewer people.

States should suspend regulations like those associated with California's AB5 law, which reclassifies a wide array of contractors as employees, and legislators should repeal the laws altogether. Federal legislators should resist the temptation to introduce a federal version of these laws, as was proposed in the recent Protecting the Right to Organize Act (H.R. 2474).

Employee classification problems have also arisen in the recent early "stimulus" bills. Under the new paid sick leave laws, people are defined as employee under the "economic realities" test of the Fair Labor Standards Act, which implies that anyone who gets a large proportion of his or her income from one company is employed by that company. By contrast, the relevant tax credits use a common law test, which relies on a series of conditions to determine the economic relationship and allows greater latitude for independent contracting. This could lead to companies that use a contracting business model being deemed employers for the purpose of paid sick leave, resulting in the same problems as state laws like AB5.

To complicate matters further, different federal statutes and regulations have different definitions of what constitutes an employee or contractor. The various definitions of "employee" in federal law need to be standardized under the common law test. This will provide maximum flexibility for companies and workers during the crisis and subsequent recovery.

Reform Accounting Guidance to Allow Stockpiling of Medical Devices

As hospitals are scrambling for medical supplies, from masks to ventilators, an obscure Securities and Exchange Commission (SEC) rule may be frustrating production efforts, as it has in past health crises. During the H1N1 influenza epidemic of 2004-2005, an SEC guidance document from the Clinton administration, issued in 1999, hindered production of badly needed flu vaccines and became a strong factor in widespread shortages. It did so by not allowing firms to book revenues from a customer's purchases for a stockpile until the product was actually used on a patient. This is counter to the purpose of a stockpile, in which excess products are stored, many of which may never be used.

After CEI drew attention to the problem, the SEC exempted flu vaccine from the rule. The vaccine shortage abated shortly after the exemption and has not been a problem since.

However, the order, issued out of urgency at the time, only exempted flu vaccines. That means that the underlying rule, updated in 2017, could now hinder production of drugs and devices like ventilators and masks. The SEC should extend this exemption to all medical and emergency supplies.

REPEAL OR SUSPEND POLICIES THAT MAKE THE CRISIS WORSE

Repeal or at a Minimum Suspend the Jones Act

The Jones Act, passed in 1920 supposedly to help maintain the American merchant marine, has led to a drastic shortage of marine shipment services. It requires that ships traveling between U.S. ports be largely American-made and American-staffed. The result is that many commercial shipments travel by road when they could go by ship or barge.

In addition, Hawaii, Alaska, and territories like Puerto Rico see their costs inflated, which has meant that they regularly obtain Jones Act suspensions during disasters, with Hurricane Maria being the latest example.

The Secretaries of Defense and Commerce have it in their power to suspend the Act, so they should do so for the entire United States until the economy is back to normal. Congress should repeal the Act at its earliest opportunity.

End Plastic Bag Bans

Over the past several years, states and localities have banned single-use plastic bags, and some have even imposed taxes on paper bags, with the goal of pushing people to use reusable bags of various materials. Not only do reusable bags provide no environmental benefit, studies show they can harbor dangerous pathogens.

The COVID-19 crisis has forced people to acknowledge the risks and states and localities are temporarily suspending the bans and rolling back regulations. New York state's ban, which was supposed to take effect in March, has been delayed until at least May. Environmental activists continue to push bans, however. Hopefully, lawmakers will ignore such calls and permanently lift these bans because COVID-19 is not the only pathogen they can carry.

Lift All Trade Tariffs

The COVID-19 crisis has made the maintenance and resiliency of supply chains especially urgent. Trade tariffs stress global supply chains and therefore need to be lifted. The administration's tariff policy is aimed at changing the way in which American businesses source their materials and labor. It is bad policy, as anyone who made it through Econ 101 will recognize.

The imposition of tariffs has placed supply chains under stress for months as businesses relocate their activities. In the meantime, they are faced with the second stress of the effects of the virus in supplier countries. An immediate temporary lifting of the tariffs will reduce the effects of that second stress and help many firms to not go under. This would be

preferable to exemptions for firms under severe strain, a process that has been difficult, bureaucratic, and prone to political influence.

Finally, to ensure continued resiliency of supply chains and the markets they serve, Congress should assert its trade authority to keep the U.S. market open and free from the uncertainty of executive ad hoc tariff imposition.

Lift Regulations that Make Energy More Expensive

Low-income households, which are more likely to suffer from unemployment and other stresses during the COVID-19 crisis, spend much more of their household budget on energy costs than more affluent ones. Therefore, regulations that increase the cost of energy have a particularly harsh effect on the most vulnerable. Federal and state regulations that increase the cost of energy for households should be rescinded or, at minimum, suspended. The following three recommendations provide more detail.

Lift federal, state, and local regulatory obstacles to energy infrastructure projects.

Political impediments to energy infrastructure jobs artificially raise energy prices, which harms all consumers—residential, commercial, and industrial—and the overall competitiveness of the U.S. economy. In addition, energy infrastructure construction projects boost private investment, job creation, and local economic development. A 2011 U.S. Chamber of Commerce study found that approval and construction would generate \$577 billion in direct investment, \$1.1 trillion in additional GDP from indirect and induced effects, including \$352 billion in employment earnings. The study also estimated that 1.9 million jobs would be required for each year of construction, and that operation of the projects would generate \$99 billion in direct annual output, further boosting GDP by \$145 billion and supporting 791,000 jobs per year of operation.

Repeal State Energy Mandates. The politically mandated production quota schemes called renewable electricity standards (RES) force consumers to rely on more expensive and less reliable electricity than private firms would build in a competitive marketplace. Affordable, reliable electricity directly benefits residential, commercial, and industrial ratepayers while helping U.S. firms compete globally.

Some states with aggressive RES programs—Texas, Oregon, and Washington—have low electricity prices, but that is because those states have abundant supplies of affordable, reliable power from sources other than wind and solar power—natural gas in Texas and hydropower in Oregon and Washington. Other states with aggressive RES programs—California, Vermont, Connecticut, New Hampshire, Massachusetts, and New York—have electricity rates substantially higher than the national average, while states with no renewable electricity mandates or goals have rates below the national average.

Removing political constraints that inflate energy prices will help families pay their bills and businesses survive and create jobs in these perilous times. Ultimately, states should repeal RES programs, allowing wind and solar to compete for investment on their own merits.

During the current crisis and the ensuing economic recovery, states should allow utilities to generate or purchase power from the most affordable sources.

Do Not Renew or Expand Tax Subsidies for Any Type of Energy Production or Use. Tax subsidies like the wind production tax credit (PTC) and solar investment tax credit (ITC) enrich special interests at taxpayers' expense, divert capital from self-sustaining energy projects to politically mandated projects, and divert talent and resources from innovation to cronyism and lobbying.

Wind and solar power are no longer “infant” industries and their advocates repeatedly claim renewable generation is fully competitive with fossil generation. The wind PTC was originally established by the Energy Policy Act of 1992 and set to expire 1999. The ITC was originally established by the Energy Policy Act of 2005 and set to expire in 2007. However, lawmakers have repeatedly renewed these subsidies.

The wind and solar power industries have already received targeted relief. On December 20, 2019, President Trump signed the Taxpayer Certainty and Disaster Tax Relief Act, which grants a PTC of 60 percent for construction of wind facilities starting in 2020. In 2015 Congress extended the ITC at 30 percent of the cost of a residential or commercial solar system, with a progressively declining rate until reaching 10 percent from 2022 onwards.

Congress should not renew these subsidies or expand them to other technologies. At most, Congress should extend the applicability of the current credits by the same number of months it postpones income tax payments.

Suspend Internet Sales Taxes

The 2018 *South Dakota v. Wayfair* Supreme Court decision reversed decades of precedent by allowing states to collect sales taxes on online purchases from businesses located outside their borders. This was a blow to the federalist principle of tax competition, but it also has proven to be a practical nightmare for many small- and medium-sized businesses selling online. Compliance costs have proven burdensome. Figuring out tax obligations in 10,000 distinct taxing jurisdictions—each with its own rates, definitions, and exemptions—has proved expensive.

Suspension of these state-level taxes for the duration of the coronavirus health crisis would lift the compliance burden from already strained companies and encourage Americans to opt for the safer option of buying online, rather than visiting a retailer in person. Now is the time to focus on lightening the load for small businesses and ensuring the physical safety of citizens, not filling the coffers of revenue-hungry states. Federal lawmakers should consider preemption if states prove unwilling to take the necessary action.

REFORMS TO ALLOW THE ECONOMY TO REBOOT

A Regulatory Reform Title in Any Phase IV Relief Bill

Over the past several decades, the American economy has become progressively weighed down by an accumulated mass of rules that have clogged its arteries. To ensure a healthy recovery, any Phase IV Relief Bill should include a title containing various measures to help clear these blockages and ensure the same situation does not arise again. These include:

- A Regulatory Reform Commission designed along the lines of the successful Base Realignment and Closure commission to recommend regulatory changes to Congress subject to an up-or-down vote;
- A congressional repeal committee that can only repeal old legislation, not enact new legislation;
- The Reform from the Executive in Need of Scrutiny Act (better known by its acronym, REINS Act), which would require Congress to vote on all new major rules, defined as those with estimated annual costs of \$100 million or more;
- Automatic sunsets for new regulations
- A provision that makes permanent Trump Executive Order 13771, which specified a “one-in, two-out” guideline for issuing new regulations;
- A requirement for comprehensive and rigorous cost-benefit analysis for all new rules, with more uniform standards for agencies to follow;
- A requirement for stronger retrospective review—once a rule has been in place for five years, it should be reviewed with rigorous cost-benefit analysis and terminated if benefits do not significantly exceed costs; and
- Reform of the Administrative Procedure Act to allow speedier removal of regulations.

End or Preempt Shale Fracking Bans and Natural Gas Pipeline Restrictions

In many areas of the country, shale fracking and natural gas pipelines have helped lower energy costs, including for low-income households. In some New England states, pipeline projects that have been canceled would probably have helped reduce winter energy costs, which are usually higher in that region. States that have instituted fracking bans have proved less resilient to unemployment and have denied income streams to hard-pressed farmers. With international supply chains for oil and gas under stress as the world returns to normal, domestic energy production and distribution will be very important. Shale and pipeline bans should be overturned at the state level or preempted at the federal level.

Encourage New Resource Production and Manufacturing

With global supply chains probably disrupted for many years by the crisis and international policy reactions to it, it is vital for America to be able to extract resources and reboot

manufacturing that would otherwise move overseas. Several rules will need to be amended to allow this to happen rapidly:

- Expedite completion of the proposed National Environmental Policy Act (NEPA) rule changes to expedite permitting for infrastructure projects.
- Congress should pass more fundamental reforms to NEPA that would require the environmental impact statement process to be expedited to allow infrastructure projects to move forward.
- The Waters of the United States (WOTUS) replacement rule is final but will be in litigation for several years. To mitigate the problems associated with the original WOTUS rule, Congress should enact a new definition of jurisdictional wetlands that is constitutional and legal and does not assert federal claims of jurisdiction as far as they can be extended, but instead draws a bright legal line between what is regulated and what is not.
- Reduce Endangered Species Act critical habitat designations that threaten economic activity in entire regions and for major industries.

Limit Litigation over Infrastructure Projects

Congress can limit the extent of litigation allowed for almost anything. This power could be applied widely and retroactively to free up private infrastructure projects stalled by litigation that could put many thousands of Americans back to work. For example, when Congress passed legislation to authorize building of the Trans-Alaska Pipeline in 1973, it deemed as sufficient the work that had been done on an environmental impact statement—because Congress recognized that NEPA of 1970 was already being used to delay projects to death—and required that any lawsuits had to be filed within 60 days and in one district court in Alaska.

Repeal or at Minimum Reform the Davis-Bacon Act

The 1931 Davis-Bacon Act bars contractors and subcontractors from paying their workers below the “local prevailing wage,” as determined by the Department of Labor (DOL), when working on federally funded or assisted construction contracts worth over \$2,000. This dramatically increases the cost of federal infrastructure projects and reduces job opportunities. It is likely that such projects will form part of an eventual stimulus package.

Legislation to repeal the Davis-Bacon would be ideal but is unlikely at this time. Therefore, the Department of Labor can help reduce the expansive regulatory regime that has been created. Davis-Bacon is expensive to administer. Worse, DOL’s Wage and Hour Division (WHD) uses unscientific and unrepresentative data to estimate prevailing wages, so it has yet to come up with a way to issue prevailing wage determinations that are close to the market rate.

Changing the methodology for prevailing wages is within the DOL’s authority and would make infrastructure projects more cost effective and provide more opportunities for people to get back to work. An expeditious way to improve wage determinations and make them more accurate would be to use Bureau of Labor Statistics (BLS) data rather than the Wage and Hour survey data. The BLS already collects payroll data from employers all over the country, which is far more accurate. And by using BLS data, the WHD would no longer need to conduct or analyze survey data, which would result in cost savings.

Remove Barriers to Investment and Raising Capital

Entrepreneurs need capital to refocus production efforts and to start up new ventures. But if ordinary people wish to fund these efforts through investing in these businesses, they face numerous barriers from Securities and Exchange Commission rules and securities laws. A small distillery making hand sanitizer has to face the same red tape as a Fortune 500 company in terms of compliance with laws like Sarbanes-Oxley and Dodd-Frank.

Expanding the crowdfunding deregulation in the 2012 JOBS Act by raising the threshold for exemption from securities laws—except for anti-fraud laws—to \$10 million in \$10,000 increments would let ordinary investors help fund these efforts. Opening up the accredited investor exemption to more categories of non-wealthy investors would have a similar effect.

Repeal Intrusive “Know Your Customer” Rules

As Congress and President Trump tried to deliver relief for small business via the CARES Act (S. 3548), banks both big and small are burdened by a law that deputizes them to spy on their customers. The Bank Secrecy Act and implementing “Know Your Customer” rules force banks to do extensive background checks on entrepreneurs at a time they desperately need financial relief. Now is the time to repeal or greatly relax this law that puts a costly burden on financial institutions and raises serious civil liberties concerns.

End Antitrust Investigation of Successful Tech Companies

Despite the ability of established tech platforms to act swiftly to provide critical services to keep people connected and of upstart platforms, such as Zoom, to grow and compete, all signs indicate that the Department of Justice and the Federal Trade Commission are pressing ahead with antitrust investigations into Google (Alphabet), Facebook, Apple, and Amazon. Such open-ended investigations and their potentially severe consequences cast a shadow of destructive uncertainty over a sector that has proven critical.

Another dark cloud looming on the horizon for this sector are the growing calls by some lawmakers to water down Section 230 of the Communications Decency Act, the critical intermediary liability protection that forms the backbone of the entire user-driven Internet economy. Specifically, Section 230 protects online platforms, such as social networks, from

liability over content uploaded to those platforms by third-party users. Tech companies will be well positioned to make major investments following the crisis, spurring critical economic growth, but will likely refrain from doing so in many cases given the ongoing investigations and attempts to undermine Section 230 protections.

Allow the Development of Private Tech Infrastructure

A major area of growth and investment after the crisis will likely involve products and services to allow more of our economy to move permanently online. As a result, the digital divide—the gap between those Americans with reliable high-speed Internet access and those without—will only grow wider. The knee-jerk response to this will be to spend on subsidized or government-owned broadband networks. Such a response will be a drain on needed private-sector investment.

Private networks struggle with, and often choose not to compete against, subsidized or government-owned networks, which always can afford to undercut competition—ultimately leaving consumers without options if and when service suffers. The correct solution is to clear away state and local regulations that impede the ability of private providers to deploy infrastructure to underserved areas. This includes reform of local rights-of-way access and pole attachment rates and historical and environmental reviews, along with federal preemption of the growing patchwork of state “net neutrality” laws.

Repeal the REAL ID Act

Starting in October of this year, air travelers were to be required to have REAL ID Act-compliant driver’s licenses in order to fly domestically. The REAL ID Act, enacted in the wake of the terrorist attacks of September 11, 2001, is a perfect example of “flash policy”—hasty, poorly thought-out responses to crises that prove either ineffective or counterproductive.

The domestic flight requirement never had a reasonable security justification; the information on a person’s driver’s license has nothing to do with his or her physical ability to take down a plane. Now, with the hit airlines and travel-related industries are taking from the COVID-19 epidemic, this upcoming travel restriction makes even less sense. In March, implementation of the REAL ID domestic flight requirement was delayed by a year because of the COVID-19 crisis, but that is not enough. The REAL ID Act should not just be delayed; it should be repealed.