

TO: Republican Members, Committee on Energy and Commerce  
CC: Speaker Boehner, Majority Leader Cantor, Majority Whip McCarthy, Conference Chairman Hensarling, and Policy Committee Chairman Price  
FROM: Fred Upton, Chairman, Committee on Energy and Commerce  
DATE: April 4, 2011  
RE: First Quarter Report

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In the three months since we accepted the voters' charge to lead the U.S. House of Representatives, Republicans on the Energy and Commerce Committee have led the way in transforming the People's House into a listening, can-do Congress. We fulfilled our pledge to run the House differently, with more openness and accountability. And we are tackling the most vexing problems confronting America: unemployment, a still-struggling economy, an assault on individual freedom never seen before, and spiraling annual deficits and long-term debt.

It is my privilege to serve as your Chairman during this historic changeover, and I am mindful each day that our work will only be successful with the contributions and leadership each of you brings to the table. I report to you today, in the spirit of openness and accountability that brought us here, on our progress.

## **Introduction**

Our work in the first quarter of 2011 is a record of which we can all be proud, and *we are just getting started*. In the opening months of the 112<sup>th</sup> Congress, we have convened 30 hearings on a wide range of topics. We began with a focus on job creation by examining barriers created by the federal government that keep innovators and entrepreneurs on the economic sideline, and our emphasis on jobs has been unwavering ever since. Now, we must begin to tear those barriers down. We examined the costs and consequences of a health care law imposed on the American people through illegitimate means. Now, we must continue without fear in our effort to defund and dismantle this law so that we can replace it with meaningful, pro-patient reforms that make health care more affordable. We launched the American Energy Initiative together with our leadership and other committees – an effort that will continue the entire 112<sup>th</sup> Congress – to address gasoline prices, expand American energy production to lower costs and create more jobs, and promote an “all of the above” strategy to increase all forms of American energy. Now, we must continue our pursuit of secure, affordable energy now and into the future.

I hope this document will set a benchmark, encourage a competition of ideas about our future, and help define the role of the Energy and Commerce Committee in building a better America. I encourage you to share news of our progress, and your role in achieving it, with your constituents, our colleagues, and anyone interested in our better solutions.

## **Health**

Unquestionably, the health care legislation signed into law last year helped propel Republicans into the majority in the House. Here is why, as we have discovered over the last three

months as a result of 11 separate hearings under the leadership of Health Subcommittee Chairman Joe Pitts and in conjunction with the Oversight and Investigations team (whose work is discussed in greater detail later in this memo):

- It flagrantly violates the U.S. Constitution;
- It deprives Americans of choices about their quality of life;
- It destroys jobs now and will prevent job growth in perpetuity;
- It resulted from a corrupt, illegitimate process; and
- It costs more than any nation could ever afford.

In short, it is a ticking time bomb that must be repealed and replaced with commonsense reforms. To date, we have conducted hearings and launched investigations into several elements of this disastrous law:

- The law's broken promises, particularly the pledges that it would create jobs, bring down health care costs, and allow individuals who like their health care plans to keep them;
- Heavy-handed Medicaid mandates on the states, widely panned by our nation's governors, which our analysis shows will impose at least \$118 billion in added costs for the states on top of the \$627 billion in extra federal costs;
- The true cost of the law, which has been masked with accounting gimmicks, double counting, and unsustainable policy shifts; and
- A series of unaccountable federal slush funds, unfettered bureaucratic spending schemes, and unsustainable new programs.

Moving forward, we will continue to conduct aggressive oversight to expose the flaws inherent in this law. We will continue proposing immediate changes demanded by the American people, as we did by voting to prohibit taxpayer funding of abortion. And, we will continue reaching out to job creators, medical innovators, and the American people to determine the right course forward. Very soon, the committee will begin crafting solutions to replace this unsupported and unsustainable law with commonsense reforms of the American health care system. Our purpose is to replace the health care law with reforms we can afford – taking sensible steps such as medical liability reform, which can bring down costs while maintaining the quality and freedom the American people demand.

## **Energy and Power**

For the last two years, Washington's approach to energy policy has consisted of placing costly new constraints on domestic energy supplies and attempting to pick winners and losers among alternative energy sources and technologies. In contrast, Republicans have taken an "all of the above" approach to America's growing energy needs. Whether for transportation fuel or the electricity that powers our homes and businesses, Republicans recognize that expanded domestic energy production means lower prices, more American jobs, and greater energy security. The recent events in the Middle East only underscore what all of us have really known for decades: locking away domestic resources and failing to fully partner with our North American allies has left America increasingly vulnerable to oil price spikes and supply disruptions. We must do better, and it begins with Republicans' American Energy Initiative.

To identify a better path forward, Energy and Power Subcommittee Chairman Ed Whitfield began by shining a spotlight on flaws in our current energy strategy. American energy policy has long lacked the cohesive, decisive action necessary to make America energy independent, but the recent actions of the Obama administration – which we have explored in the first three months of this year – have only served to further expose our long-term energy vulnerabilities:

- The EPA’s global warming regulatory regime threatens to increase both the price of gas at the pump and our monthly utility bills, and these costs will come with no meaningful environmental benefit;
- The administration has limited new onshore and offshore energy leases, and even companies holding existing leases are being hit with unprecedented permitting delays and other regulatory roadblocks;
- Greater development of Alaskan energy supplies continues to face permitting delays; and
- Partnerships with strong, neighboring allies like Canada have run into bureaucratic hurdles that are keeping hundreds of thousands of barrels per day offline and out of reach.

Our committee has acted, to be followed by the full House this week, to block the Obama administration’s costly and irrational drive to regulate greenhouse gases. The Energy Tax Prevention Act (H.R. 910) will stop the EPA in its tracks and restore the agency – and the Clean Air Act – to their intended purposes.

H.R. 910 is the first legislative rung in the much broader American Energy Initiative, which seeks to remove all the unnecessary roadblocks to affordable domestic energy supplies. Over the course of the 112<sup>th</sup> Congress, the committee will begin to reshape how America deals with energy issues. We are conducting a hearing series on the American Energy Initiative to identify barriers to American energy production and explore what steps can be taken to increase domestic energy production. Increased domestic energy sources will bring down prices, create good-paying American jobs, and make our nation more secure and energy independent. Transforming America’s energy future will require a thorough review of current policies and agencies to determine what works and what is holding us back.

### **Communications and Technology**

One of the biggest sources of my optimism about America’s future is the communications industry. Every day, we are making advancements that make our world safer and more connected. Technologies we could not have dreamed of a decade ago have become commonplace and the possibilities for the future seem limitless. Just consider the current state of communications advancement.

The FCC’s 2010 National Broadband Plan reports that approximately 95 percent of the country has access to broadband and two-thirds subscribe. The number of users has skyrocketed from 8 million to 200 million in approximately 10 years. That’s a 2,500 percent increase for an annual growth rate of close to 40 percent. This success translates into real investment and real jobs. According to the U.S. Census, the communications sector’s 2009 U.S investment was close to \$90

billion. The Bureau of Labor Statistics reports that in 2009 the communications sector directly employed approximately 1.3 million people in America.

In this environment, our charge is not to insert government into a thriving marketplace, but rather to adhere to that basic principle that we first do no harm. To that end, Communications and Technology Subcommittee Chairman Greg Walden outlined an agenda that ensures the government is protecting our communications resources from harm or misuse – whether that harm comes from government intervention or simply a poor allocation of resources:

- H.J. Res. 37, the resolution of disapproval overturning the FCC’s harmful and unnecessary net neutrality rules, will receive a vote in the House this week;
- We continue our commitment to oversight and the elimination of waste, fraud, and abuse by carefully scrutinizing the billions that went to broadband in the 2009 stimulus package and exploring how taxpayers can recapture unused funds;
- The subcommittee has scheduled a comprehensive hearing to examine the issues surrounding spectrum allocation and how to most efficiently and effectively harness this valuable resource to promote public safety, innovation, and job creation; and
- Recognizing inherent conflicts for an agency that acts as a regulator and enforcer while granting approval or denial of transactions, we will reassess FCC process to ensure the commission acts as an expert agency without undue political or ideological influence.

In the coming months, the Communications and Technology Subcommittee will remain at the forefront of emerging telecommunications policy, leading the charge for an efficient, competitive marketplace that spurs innovation, creates jobs, welcomes investment, and benefits consumers.

### **Commerce, Manufacturing, and Trade**

We intend to restore meaning to the phrase Made in America through the work of the Commerce, Manufacturing, and Trade Subcommittee. Under the leadership of the subcommittee Chair, Mary Bono Mack, the subcommittee is examining job creation in today’s economic and regulatory climate:

- The national unemployment rate stands at 8.8 percent; the manufacturing sector has been particularly hard hit with jobs declining from 13.4 million in 2008 to 11.5 million in 2010;
- Over the same period, the US GDP grew from approximately \$14.4 trillion to nearly \$14.7 trillion. Adjusted for inflation, real GDP growth totaled only \$105 billion. Even this growth can be attributed in large part to the growth of federal government expenditures *for goods and services*, which, when adjusted for inflation, grew by nearly \$121 billion dollars from 2008 to 2010; and
- Key issues requiring congressional consideration include trade partnerships; regulatory reform; enhancement and enforcement of intellectual property rights globally; energy policy; workforce education, training, and retraining; tax policy; legal reform; education reform; infrastructure modernization; and immigration policy.

The subcommittee is aggressively examining domestic and international trade matters, consumer protection, and impediments to job creation:

- Our review of consumer product safety laws and regulations has revealed significant unintended consequences in current law that unfairly burden small businesses and even charities and libraries, and that provide consumers with inaccurate information;
- U.S. laws and regulations are hampering investment and pushing jobs overseas; and
- The administration's failure to finalize and submit trade agreements is punishing U.S. manufacturers by leaving protective tariffs in place and markets for our goods untapped.

We have already begun an effort to reform the flawed Consumer Product Safety law enacted in 2007. Its many unintended consequences pose a continuing threat to American jobs and must be addressed in the near term. At the same time, the Commerce, Manufacturing, and Trade Subcommittee will take the lead for our team on privacy matters. No committee in Congress has provided greater leadership in this area, from the historic protections afforded under the Health Information Privacy law and Gramm-Leach-Bliley to our continuing oversight over the last decade. We will carefully review current laws and circumstances to determine what, if any, next steps are needed to protect individual privacy.

### **Environment and the Economy**

A strong economy and a strong environment go hand in hand, but for too long Washington has pursued environmental laws and regulations without considering their economic consequences. The result: policies that destroy jobs, raise energy costs, and harm America's global competitiveness, but often deliver disappointing environmental results. To put us on the path toward sensible policies that promote, rather than hinder, both economic and environmental progress, the committee has begun an honest and fair assessment of our environmental future. The early results have been troubling:

- The Environmental Protection Agency has refused to perform cost/benefit analysis or consider the job creation consequences for significant regulations that will affect major cross-sections of our economy;
- Many rules have perverse consequences, such as reporting requirements that discourage manufacturers from recycling byproducts because of the massive paperwork burden that would ensue; and
- Many rules are unwarranted federal intrusions into areas well managed at the state or local level.

In tandem with our work to make sense out of climate change regulation, Environment and the Economy Subcommittee Chairman John Shimkus, along with Chairman Whitfield, have held four hearings with EPA Administrator Lisa Jackson or one of her top deputies. In those hearings, we have revealed the shibboleth of Obama environmentalism: it promotes neither the greater environmental good nor the American economy.

The Environment and the Economy Subcommittee was established for the 112<sup>th</sup> Congress with a clear purpose: linking, as has never before been done, our economic and environmental

interests to promote job creation and environmental safety. The subcommittee's agenda includes top priorities for protecting these interests:

- Monitoring the unprecedented natural disaster that struck Japan and assessing what lessons can be learned to maintain our unwavering commitment to safe nuclear facilities in the U.S.;
- Examining the Obama administration's efforts to undermine the law and decades of investment and development in the Yucca Mountain nuclear repository;
- Preserving and promoting jobs in the coal ash recycling industry through legislation; and
- Extending the Chemical Facilities Anti-Terrorism Standards at the Department of Homeland Security to provide industry with regulatory certainty and ensure that chemical facilities throughout the U.S. have the information and technical guidance they need to safeguard their facilities from terrorists and comply with safety standards.

Moving forward, we will continue scrutinizing these laws and regulations to promote a sensible approach in which environmental interests are aligned with, rather than running counter to, our broader economic prosperity.

### **Oversight and Investigations**

Sound policymaking begins with effective oversight. Under the leadership of Oversight and Investigations Subcommittee Chairman Cliff Stearns, and with a strong team anchored by the Vice Chairs of our five other subcommittees, we have conducted hearings and launched investigations into the critical issues we confront as stewards of the taxpayers' dollars and defenders of the U.S. Constitution:

- The Obama administration's regulatory policies and their consequences for job creation;
- The circumstances under which the health care law was written and the status of its implementation, including—
  - Secret negotiations among the White House and various special interests as the law was written;
  - Multi-billion dollar slush funds created under the law, including the early retiree and high-risk insurance pool programs, which the administration has used to dole out billions of taxpayer dollars to large corporation and unions; and
  - The administration's widespread use of waivers to exempt corporations, unions, and states from the law's harsh mandates.
- Drug safety and the actions of the FDA to protect U.S. patients;
- Widespread waste, fraud, and abuse in the Medicare program;
- Whether the billions in taxpayer dollars allocated to the Department of Energy and the Environmental Protection Agency in the 2009 stimulus law have achieved their job-creation goals; and
- The Obama administration's decision to abandon the nuclear repository at Yucca Mountain and leave spent nuclear materials at sites across the country with no long-term storage alternative.

In the coming months, we will pursue these investigations and follow the facts – and the dollars – wherever they may lead. We will root out waste, fraud, and abuse in federal programs and

identify strategies to more efficiently and effectively invest our nation's scarce resources. We will hold the administration to its promises of transparency and its pledge to consider the costs and consequences of its regulatory policies – particularly the cost-benefit analysis on what federal rules mean for job creation and economic growth. Already, a number of areas have emerged for additional scrutiny:

- The FDA's regulatory regime and approval process, which inhibits economic growth and entrepreneurialism;
- Nuclear plant safety, security, and the U.S. government's response to the Japanese nuclear crisis;
- EPA's vast regulatory agenda and its consequences for job creation and energy security;
- Waste, fraud, and abuse in the FCC Universal Service Fund;
- Cyber security as it pertains to both government agencies and private industry;
- Potential waste, fraud, and abuse in stimulus spending on "green energy";
- Supply chain integrity with regard to telecommunications components;
- Competitive contracting issues relating to the management of DOE sites;
- Potential waste, fraud, and abuse in stimulus spending in relation to the National Institutes of Health (NIH); and
- Administration of the BP compensation fund.

We are continuing the Energy and Commerce Committee's proud oversight tradition, which combines far-reaching investigations with the legislative expertise and authority to act on and eliminate any waste, fraud, and abuse of taxpayer dollars that our efforts uncover.

## **Conclusion**

Our committee has firmly established, in just three months, an unequivocal commitment to the priorities of the American people: job creation, energy security, and health care reform. We have unveiled for all to see that power concentrated in Washington threatens business investment and economic prosperity. We have acted quickly and conscientiously on the most urgent legislative items in our jurisdiction. And we have accomplished this through a fair, open, and transparent process.

Our agenda is a jobs agenda. When we see a health care law that drags down our economy, drives up government spending, and burdens job creators, we have a duty to conduct strong oversight and work to repeal it. When we see regulations run amok, threatening to drive U.S. jobs overseas and make energy cost more, we have a duty to change course and stop the reckless bureaucratic rulemaking. And when a federal power grab threatens the innovation and investments that have driven entire industries to spring up from nothing, we have a duty to overrule the unelected bureaucrats and protect the Internet from government regulation.

In April and beyond, we will continue to tackle these and all issues in the Energy and Commerce Committee's jurisdiction. We will remain squarely focused on the priorities we set forth in January: creating jobs, cutting wasteful spending, and reducing the size and scope of government in order to expand individual liberty. In short, we are hard at work getting America working again.