The Anti-Inflation Defense Production Act

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Executive Summary

Since its inception, the Defense Production Act of 1950 (DPA) has been, in part, a set of tools available to stabilize the economy and combat inflation. The DPA's origins trace back to emergency economic stabilization authorities—most notably price controls—deployed during World War II to effectively reduce inflation. When postwar inflation surged between 1946-1949, President Truman asked Congress for a suite of anti-inflation authorities that were ultimately enacted as the DPA. Thus, the impetus for the DPA predates the military mobilization for the Korean War.

President Truman deployed price controls under the DPA in 1951 to successfully hold down inflation. Two decades later, President Nixon relied on legislation amending the DPA to set price ceilings in the early 1970s. While effective at first, Nixon's price controls were poorly designed and merely postponed inflation.

While price controls are no longer part of the DPA, the law still gives the President several authorities that can and have been invoked to address rising prices, including tools to expand productive capacity, allocate and prioritize scarce resources, collect information to intervene against inflation and profiteering, prohibit price-gouging, and facilitate private-sector agreements to lower costs.

This paper proposes a number of reforms to expand the DPA's power as an anti-inflation law, including:

- Adding a targeted price stabilization authority to regulate prices of critical, economically-significant goods subject to abnormal market conditions.
- Strengthening the DPA's existing price-gouging ban.
- Re-empowering consumers and small businesses to serve as "profiteering watchdogs," as they did during World War II.
- Reinstating strategic credit controls to suppress inflationary pressures in targeted sectors.

Such tools would strengthen the DPA's insight that economic stability is national security. They would better position the United States to respond to the kind of supply-driven inflation it has seen across sectors in recent years—including in ocean shipping, eggs, meat, and oil—and will likely experience more of in the near future.

Introduction

During and after the COVID-19 pandemic, the United States experienced its worst bout of inflation in decades, as supply-chain disruptions wrought shipment delays and rising prices around the globe. The annualized Consumer Price Index (CPI) exceeded 9 percent in June 2022, the highest rate in forty years.[1]

This inflationary episode was predominantly triggered by supply-side shocks stemming from both pandemic-related production slowdowns and transportation bottlenecks, as well as energy shocks following Russia's invasion of Ukraine.[2] While unexpected in 2022, this type of supply-driven inflation will likely recur over the coming years and decades due to increasingly extreme and frequent weather events, health epidemics, geopolitical conflict, and other disruptive events.[3]

Policymakers will therefore need effective and adaptable tools to address inflation. While many have traditionally looked to the Federal Reserve (Fed) to respond to inflation, the Fed has limited tools at its disposal, especially when it comes to

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[1] *See* Irina Ivanova, *Inflation hit 9.1% in June, highest rate in more than 40 years*, CBS NEWS (Jul. 13, 2022), https://www.cbsnews.com/news/inflation-june-cpi-report-hit-new-high-40-years-9-1-percent/.

[2] *See* Ben S. Bernanke & Olivier Blanchard, *What Caused the U.S. Pandemic-Era Inflation?*, BROOKINGS INST. (June 13, 2023), https://www.brookings.edu/articles/what-caused-the-u-s-pandemic-era-inflation; *see also, e.g.,* Skanda Amarnath, *The Global Dimension of Inflation: Exposing The Achilles' Heel of Stabilization Policy*, EMPLOY AM. (Nov. 26, 2024), https://www.employamerica.org/blog/the-global-dimension-of-inflation-exposing-the-achilles-heel-of-stabilization-policy/; Mike Konczal, *Supply-Side Expansion Has Driven the Decline in Inflation*, ROOSEVELT INST. (Sept. 8, 2023), https://rooseveltinstitute.org/publications/supply-side-expansion-has-driven-the-decline-in-inflation/; Zheng Liu & Thuy Lan Nguyen, *Global Supply Chain Pressures and U.S. Inflation*, FED. RSRV. BANK OF SAN FRANCISCO (June 20, 2023), https://www.frbsf.org/research-and-insights/publications/economic-letter/2023/06/global-supply-chain-pressures-and-us-inflation.

[3] *See* Ana Swanson & Keith Bradsher, *Climate Change Could Worsen Supply Chain Turmoil*, N.Y. TIMES (Sept. 8, 2022), https://www.nytimes.com/2022/09/08/business/economy/climate-change-supply-chain.html; COUNCIL OF ECON. ADVISERS, ECONOMIC REPORT OF THE PRESIDENT 209 (2022), https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/04/ERP-2022.pdf ("As [supply-chain] networks become more connected, and climate change worsens, the frequency and size of supply-chain-related disasters rises.").

supply-driven inflation. Moreover, this Fed-centric anti-inflation strategy is a relatively recent paradigm, tracing back to the "Volcker shock" in the early 1980s.[4]

In earlier eras, policymakers embraced other tactics to slow price growth, and several of those tools have historically been contained in the Defense Production Act of 1950 (DPA).[5] The DPA is one of the federal government's most powerful and adaptable industrial policy tools, and has been recently invoked by both President Trump and President Biden to produce COVID-19 vaccines, ventilators, energy security infrastructure, and more.[6] While the DPA sometimes gets narrowly cast as primarily a national security law,[7] many of its legal authorities were originally conceived as *economic* interventions to mount a robust response to inflation. Even before the onset of the Korean War, President Truman and his advisers asked Congress to enact the very authorities that ultimately wound up in the DPA to combat rising prices. After the war's outbreak, the law's architects saw maintaining domestic economic stability as essential to preserving the national defense.

The law as enacted in 1950 included price control authorities similar to those effectively deployed during World War II. While Congress has since repealed the DPA's standby price control authority, the law to this day includes a number of authorities that can and have been invoked to address rising prices, including to expand productive capacity, allocate scarce resources, collect information that could be used to monitor price levels, prohibit price-gouging for scarce materials, and facilitate private-sector agreements to lower costs.

This paper begins by recounting the DPA's history as an anti-inflation law. Specifically, the DPA was an attempt by the Truman administration to formalize the kinds of economic stabilization policies deployed on an ad hoc basis during World War II in order to give the government tools to respond to price pressures generally. It then analyzes current provisions of the DPA to assess how they have

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[4] *See* Dylan Matthews, *How the Fed ended the last great American inflation — and how much it hurt*, VOX (Jul. 13, 2022), https://www.vox.com/future-perfect/2022/7/13/23188455/inflation-paul-volcker-shock-recession-1970s.

[5] 50 U.S.C. § 4501 *et seq*.

[6] *See* Joel Dodge, *How to Fix the Defense Production Act Committee*, JUST SEC. (Nov. 5, 2024), https://www.justsecurity.org/104588/fix-defense-production-act-committee/.

[7] *See, e.g.*, *Mission Critical: Restoring National Security as the Focus of Defense Production Act Reauthorization: Hearing Before the H. Subcomm. on Nat'l Sec., Illicit Fin., & Int'l Fin. Insts. of the H. Comm. on Fin. Servs.*, 118th Cong. (2024), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409167.

been used to combat inflation in the past, and how they could be used to do so again in the future. Finally, it proposes a set of reforms to strengthen the DPA's ability to fight inflation, including:

- Adding a targeted price stabilization authority to regulate prices of certain critical, economically-significant goods subject to abnormal market conditions.
- Strengthening the DPA's existing ban on price-gouging.
- Re-empowering consumers and small businesses to serve as "profiteering watchdogs," as they did during World War II.
- Reinstating strategic credit controls to suppress inflationary pressures in targeted sectors.

I. The DPA's Anti-Inflation Origins

Given its title, the Defense Production Act is sometimes construed as principally a law designed to address military and defense needs. Indeed, while the DPA gained renewed prominence as a flexible and powerful lever to expand production of vital public health materials and other critical resources during and after the COVID-19 pandemic, its authorities have long been the primary domain of defense officials.[8] That understanding, however, is incomplete, and misrepresents the DPA's fundamental roots as a set of authorities intended to intervene more broadly in the economy to hold down prices. In other words, the DPA was originally designed, in part, as a set of anti-inflation tools.

A. The Office of Price Administration and Anti-Inflation Policy During World War II

The DPA's origins trace back to emergency economic stabilization authorities deployed during World War II. To stabilize the wartime economy, the Roosevelt administration deployed price controls—a policy intervention that had been embraced throughout American history, from early colonial America to the Revolutionary War to World War I.[9] After declaring in 1940 that the United States

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[8] *See* Joel Dodge, *Revitalizing the Defense Production Act Committee*, VAND. POL'Y ACCELERATOR 1 (Nov. 2024), https://cdn.vanderbilt.edu/vu-URL/wp-content/uploads/sites/412/2024/11/01215220/VPA-Revitalizing-DPAC-Nov.-2024-final-text.pdf.

[9] *See* HUGH ROCKOFF, DRASTIC MEASURES: A HISTORY OF WAGE AND PRICE CONTROLS IN THE UNITED STATES 14, 43 (1984).

would support the allies as an "arsenal of democracy," President Roosevelt assured the public in a fireside chat, "This emergency demands that the consumers of America be protected so that our general cost of living can be maintained at a reasonable level."[10] Beyond insulating consumers, aggressive action against inflation was needed to protect the military, which was placing orders for hundreds of millions of articles of increasingly-expensive clothing that could compete with private demand, accelerating price levels.[11]

In 1940, the President, by executive order, crafted informal and voluntary "selective price controls" carried out by White House economists Leon Henderson and John Kenneth Galbraith.[12] In 1942, Congress formalized price controls with the passage of the Emergency Price Control Act of 1942 (EPCA), turning this price-setting operation into a new agency, the Office of Price Administration (OPA), and giving the OPA administrator wide discretion to set any prices he deemed "generally fair and equitable" over nearly every good in the economy.[13]

OPA enjoyed broad public support: Polls conducted in 1941 and 1942 found supermajority levels of public approval for government price regulation.[14] This was in part because individual citizens played a critical and novel role in enforcing price controls: OPA relied in part on consumers—especially housewives—to spot and challenge violations of price controls while shopping and wielding government-issued price lists. Shoppers who spotted price violations could report retailers to OPA and sue for damages equal to at least three times the overcharge.[15] OPA issued consumer-facing pamphlets (such as "What You Can Do To Make Price Control Work," "Of the People, By the People, For the People, Price Control," and

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10 MEG JACOBS, POCKETBOOK POLITICS: ECONOMIC CITIZENSHIP IN TWENTIETH-CENTURY AMERICA 182 (2007) (hereinafter "JACOBS, POCKETBOOK POLITICS").

11 *Id.*

12 Andrew H. Bartels, *The Office of Price Administration and the Legacy of the New Deal, 1939-1946*, 5 PUB. HISTORIAN 5, 8-9 (Summer 1983). Roosevelt also authorized the Federal Reserve to pursue credit regulations via Executive Order. No. 8843, 6 Fed. Reg. 4035 (Aug. 9, 1941).

13 Emergency Price Control Act of 1942, Pub. L. No. 421, ch. 26, 56 Stat. 23, § 2(a). Congress explicitly exempted wages, fees for professional services, insurance rates, public utility rates, and rates charged by the media, and also allowed agricultural prices greater latitude to increase. *See id*. §§ 3(a), 302(c).

14 ROCKOFF, *supra* note 9, at 92.

15 JACOBS, POCKETBOOK POLITICS, *supra* note 10, at 202.

"How You Can Tell Top Legal Prices—The Wartime Consumer's Bill of Rights") to enlist citizen volunteers in helping enforce price controls.[16]

President Roosevelt declared OPA's uniquely citizen-reliant model for fighting inflation to be "as American as baseball."[17] Ultimately, more than 5,000 local chapters were created to be, according to OPA, the "'front-line forces' in the fight against inflation," conducting neighborhood price checks to either educate or report merchants out of line with government-prescribed prices.[18] All told, OPA amassed a large bureaucracy of more than 250,000 paid and volunteer staff, including twice as many economists as the entire Treasury Department.[19]

The Roosevelt administration continually iterated to make price regulation more effective. In 1942, OPA pivoted from selective controls (with administered prices for individual goods) to a blanket general price-freeze, imposing the so-called "General Max" (for General Maximum Price Regulation) that set ceilings based on previous prices and overall firm profits.[20] Yet with few sophisticated tools to monitor and regulate the economy, OPA struggled to control inflation.[21] Worse, Congress had limited OPA's ability to regulate the prices of many agricultural commodities, leading to further price increases for meat, eggs, and butter.[22] In October 1942, under pressure from the White House, Congress ended this "agricultural privilege" and brought most food products under OPA's ambit.[23] Ultimately, in April 1943, President Roosevelt issued an order requiring sellers to "hold the line" by adhering to the same profit margins as they had before the controls took effect.[24] This

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[16] *Id.*

[17] *Id.* at 207.

[18] *Id.* at 203-04.

[19] *Id.* at 179.

[20] Meg Jacobs, *"How About Some Meat?": The Office of Price Administration, Consumption Politics, and State Building from the Bottom Up, 1941-1946*, 84 J. AM. HIST. 910, 916 (1997) (hereinafter Jacobs, *"How About Some Meat?"*).

[21] *Id.* at 917.

[22] *Id.*; *see also* Andrew Elrod, *Full Employment without Inflation: Lessons from the Emergency Price Control Act of 1942*, LPE PROJ. (May 4, 2022), https://lpeproject.org/blog/full-employment-without-inflation-lessons-from-the-emergency-price-control-act-of-1942/.

[23] Jacobs, *"How About Some Meat?," supra* note 20, at 917.

[24] Meg Jacobs & Isabella M. Weber, *The way to fight inflation without rising interest rates and a recession*, WASH. POST. (Aug. 9, 2022), https://www.washingtonpost.com/made-by-history/2022/08/09/way-fight-inflation-without-rising-interest-rates-recession/.

structure allowed firms to pass costs on to consumers, while earning the same profit levels (in pre-tax dollars) as they had from 1936 to 1939.[25]

Roosevelt's "hold the line" order effectively held down inflation. During the rest of the war, the CPI rose by only 2 percent.[26] Prices were low and stable, the economy boomed, and the greatest income gains went to the lowest earners.[27]

B. Postwar Inflation Leads to the Enactment of the DPA

After the war ended in 1945, President Truman wound down price controls in advance of the upcoming scheduled expiration of the EPCA.[28] However, along with pent-up demand and consumer spending after the war, the fast relaxation of price controls triggered significant postwar inflation. Truman quickly reversed course and implored Congress to extend price control authority beyond 1946. The President's request was endorsed by fifty-four prominent economists in a letter to the *New York Times*—including future Federal Reserve chair Arthur Burns, Irving Fisher, Paul Samuelson, John M. Clark, and Alvin Hansen—who backed an extension of price controls in light of ongoing supply chain bottlenecks and inflationary pressure in stocks, land, and housing.[29]

Truman and Congress fell into a stalemate, and price controls lapsed after the EPCA expired on July 1.[30] Inflation accelerated further: The CPI leapt a record 5.5 percent in a single month, and the cost of meat doubled by September.[31] Voters punished Truman's Democratic Party in the 1946 midterm elections, giving Republicans control of both houses of Congress, which effectively ended any prospect of new price controls. Inflation continued to climb throughout 1947, particularly for meat and other foodstuffs.[32]

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[25] ROCKOFF, *supra* note 9, at 97.

[26] JACOBS, POCKETBOOK POLITICS, *supra note 10*, at 199.

[27] Jacobs & Weber, *supra* note 24.

[28] *See* Isabella Weber, *Pragmatic Prices*, PHENOMENAL WORLD (Aug. 5, 2022), https://www.phenomenalworld.org/analysis/pragmatic-prices/.

[29] C.E. Ayres & E.L. Bogart et al., *Price Control Recommended*, N.Y. TIMES, Apr. 9, 1946, at 23 (available at https://timesmachine.nytimes.com/timesmachine/1946/04/09/93087670.html?pageNumber=23).

[30] *See* Andrew Elrod, *The Specter of Inflation*, BOSTON REV. (Aug. 19, 2021), https://www.bostonreview.net/articles/the-specter-of-inflation/.

[31] JACOBS, POCKETBOOK POLITICS, *supra* note 10, at 226.

[32] *Id.* at 230.

In this inflationary environment, Truman campaigned for re-election in part as a referendum on the need for renewed price controls. He emphasized the plight of consumers and railed against a "Do Nothing" Congress that refused to tackle high prices.[33] While campaigning in June 1948, Truman said, "We should have a stand-by price control law to be put into effect when necessary—and it is necessary right now."[34]

Defying expectations, Truman won both re-election and Democratic control of Congress. In his 1949 State of the Union address, Truman told Congress: "At the present time, our prosperity is threatened by inflationary pressures at a number of critical points in our economy. And the Government must be in a position to take effective action at these danger spots."[35] He then asked Congress to enact several new authorities to combat inflation, including standby price controls; consumer credit controls; authority to direct priorities and allocations for key materials facing shortages; and investments in productive capacity for critically short supplies (particularly steel).[36] Democrats in Congress subsequently introduced legislation to give the President these powers. Originally known as the Economic Stabilization Act (later retitled the Economic Expansion Act), the bill was drafted by Truman economic adviser Leon Keyserling.[37] Notably, the bill was written and proposed well *before* conflict in Korea brought national security imperatives to the fore.

The outbreak of the Korean War in June 1950 heightened inflationary worries and created political urgency for Congress to enact Truman's price-stabilization agenda. Weeks after American troops arrived in response to North Korea's invasion of South Korea, Truman issued a special message to Congress where he reiterated his call

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[33] Elrod, *supra* note 30.

[34] JACOBS, POCKETBOOK POLITICS, *supra note 10*, at 240.

[35] President Harry S. Truman, Annual Message to the Congress on the State of the Union, 1 PUB. PAPERS 2, 3 (Jan. 5, 1949) (transcript available at The American Presidency Project, https://www.presidency.ucsb.edu/documents/annual-message-the-congress-the-state-the-union-21).

[36] *Id.*

[37] JACOBS, POCKETBOOK POLITICS, *supra* note 10, at 242. Described at the time as "the president's anti-inflation bill," the Economic Stabilization Act would have granted the president authority to establish price ceilings; make loans for the expansion of industrial facilities to increase production or otherwise direct such expansion (including, if needed, to build and operate industrial facilities itself); and set priorities and allocations for the usage of scarce materials. *See* Charles Hurd, *Truman Bill Asks Curbs on Inflation, Power to Produce*, N.Y. TIMES, Feb. 16, 1949, at 1, 3 (available at https://timesmachine.nytimes.com/timesmachine/1949/02/16/84548890.html?pageNumber=1)

for the economic authorities that he had asked for in 1949. He told Congress that these powers were now also needed for defense mobilization purposes, writing, "[W]e must take action to insure that the increased national defense needs will be met, and that in the process we do not bring on an inflation, with its resulting hardship for every family."[38] Keyserling then helped re-draft his 1949 legislation, retitling it the "Defense Production Act of 1950."[39]

The DPA included Truman's requested anti-inflation tools (price controls, credit controls, priorities and allocations, and productive capacity investments), as well as other authorities to stabilize prices and mobilize for war.[40] Congress explicitly intended for the DPA to help counter inflationary pressure and address supply constraints. The Senate Banking Committee's report on the DPA stated that "Congress would be remiss in its duty if it did not provide the President with adequate authority to meet these potentially serious inflationary pressures."[41] The Committee highlighted Title III of the DPA, which gave the President authority to make investments in productive capacity, as an effort to "attack [...] various types of bottlenecks" that "act as effective limits on the supply of specific essential commodities."[42]

The Committee credited testimony from financier and presidential adviser Bernard Baruch, who testified in support of granting the President standby price control

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[38] Special Message to the Congress Reporting on the Situation in Korea, 1 PUB. PAPERS 527, 534 (Jul. 19, 1950) (available at https://www.trumanlibrary.gov/library/public-papers/193/special-message-congress-reporting-situation-korea).

[39] JACOBS, POCKETBOOK POLITICS, *supra note 10*, at 246; *see also* Andrew Elrod, Stabilization Politics in the Twentieth-Century United States: Corporatism, Democracy, and Economic Planning, 1945-1980 at 312 (Sept. 2021) (Ph.D dissertation, University of California Santa Barbara) (available at https://escholarship.org/content/qt4184v0c8/qt4184v0c8_noSplash_20c0ab80e125d12be991b802393a0fc1.pdf) (Truman adviser Bertram Gross stating that the DPA was derived from the Economic Stabilization Act and Economic Expansion Act). Opponents of the DPA attacked the bill's lineage from the Economic Stabilization Act: Republican congressman Roy O. Woodruff bemoaned that "[t]he same authors of that blueprint for an American socialism have drafted the present [] bill, now called the Defense Production bill. The wording of the two is much the same." Woodruff saw the DPA as "an effort to sneak over what these do-gooders were unable to do last year." 96 CONG. REC. APP'X at A5561 (Aug. 1, 1950).

[40] *See* Defense Production Act of 1950, Pub. L. No. 50-773, ch. 932, 64 Stat. 798 (1950).

[41] S. REP. NO. 81-2250, at 5 (1950).

[42] *Id.* at 16-17.

authority.[43] Baruch believed that an act of Congress granting preemptive (or "standby") power to regulate prices would be more effective at limiting inflation than post-hoc legislation: "The knowledge that the Government had this power might have prevented these price rises. […] To wait until prices have run out of hand before legislation is sought means that action will not be taken until too late, until after additional inflation has taken place." Withholding price control authority until after inflation had already accelerated, Baruch said, was akin to "deliberately refus[ing] to lock the stable door until the horse is stolen. […] The right time to stop inflation is always now."[44] The Committee agreed "strongly that a system of controls must be available both as a restraint and as a ready weapon for combating inflation if prices continue to rise."[45]

After passing both houses of Congress, Truman signed the DPA into law in September 1950. He commemorated the new law with a national address, saying that the country needed to "carry out the defense program [for Korean War mobilization] without letting inflation weaken and endanger our free economy. […] The new Defense Production Act provides the Government with certain powers to stabilize prices and wages."[46] Truman made a point to condemn corporate profiteering, saying: "I have been told about companies that have increased the prices of all their products—all the way across the board—without corresponding increases in costs. That is just plain profiteering, and should not be tolerated."[47]

The text of the newly-enacted DPA reflected the anti-inflation imperative from Truman and Congress. Title IV granted the President wage and price stabilization authority, declaring it "the intent of Congress … to prevent inflation[;] … to stabilize the cost of living for workers and other consumers[;] … to eliminate and prevent profiteering[;] [and] to protect consumers, wage earners, investors, and persons with relatively fixed or limited incomes from undue impairment of their living

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[43] *Id*. at 21-22.

[44] *Id.* at 21.

[45] *Id.*

[46] Radio and Television Address to the American People Following the Signing of the Defense Production Act, 1 PUB. PAPERS 626, 628-629 (Sept. 9, 1950) (available at https://www.presidency.ucsb.edu/documents/radio-and-television-address-the-american-people-following-the-signing-the-defense).

[47] *Id.*

standards[.]"[48] Congress deemed such anti-inflation action "necessary … to promote the national defense."[49]

Title IV authorized the President to encourage and promote voluntary action by business, agriculture, labor and consumers to restrain prices.[50] If voluntary action fell short, the President could then regulate price ceilings upon determining: (a) that the price of a particular good or service has risen or threatens to rise unreasonably above the prevailing price as of June 1950; (b) the price increase will materially affect the cost of living or the national defense; (c) a price ceiling is necessary to advance the purposes of the DPA; (d) a price ceiling is practicable and feasible; and (e) the price ceiling will be generally fair and equitable (the same standard that governed the EPCA).[51] The law further required that any industry made subject to a price ceiling must also be subject to wage stabilization.[52] Congress explicitly exempted several industries from wage or price stabilization, including property and housing, professional services, insurance, and media.[53] Like the EPCA before it, the DPA directed lawsuits challenging price ceilings to a specialized Emergency Court of Appeals, which was comprised of three or more district or circuit judges selected by the Chief Justice of the U.S. Supreme Court.[54] After exhausting an administrative complaint system provided under the Act, regulated businesses could file suit in the Emergency Court, with a direct appeal to the U.S. Supreme Court.[55] The Act also limited the circumstances where the Emergency Court could issue a stay or temporary injunction.[56]

Title VI of the DPA allowed the President to authorize the Federal Reserve to impose consumer and real estate credit controls.[57] The DPA reinstated consumer credit

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48 Defense Production Act of 1950 § 401.

49 *Id.*

50 *Id.* § 402(a). Cross-industry voluntary pricing agreements facilitated under the DPA were explicitly exempt from antitrust enforcement. *See id.* § 708(a).

51 *Id.* § 402(b)(1)-(2).

52 *Id.* § 402(b)(3).

53 *Id.* § 402(e).

54 *Id.* § 408; *Emergency Court of Appeals, 1942-1962*, Federal Judicial Center, https://www.fjc.gov/history/courts/emergency-court-appeals-1942-1962.

55 Defense Production Act of 1950, § 408.

56 *Id.* § 408(e).

57 *Id*. § 601; *see also* Benjamin Dinovelli, Note, *The Federal Reserve's Forgotten Credit Mandate*, 138 HARV. L. REV. (forthcoming 2025) (manuscript at 11).

controls that the government had used during World War II, and added new credit controls for real estate. Under these controls, the government could set maximum loan values, minimum down payments, maximum maturities, and similar rules to tighten credit.[58] In devising credit regulations, the government was permitted to "classify persons and transactions and … apply different requirements thereto."[59] In that spirit, the Truman administration had used credit controls specifically to tighten credit for high-priced housing.[60] As administered by the Federal Reserve, credit controls eventually required a one-third down payment for a new or used car with a maximum loan duration of fifteen months, and fifteen percent down for home appliances, with full repayment within eighteen months.[61]

In October 1950, China intervened in the Korean War, igniting American domestic "panic-buying and hoarding" and "stok[ing] the flames of inflation" upon fears of impending World War III.[62] Truman soon after began deploying the DPA's price control authority, creating the Office of Price Stabilization in January 1951, which was charged with administering price ceilings for most consumer goods.[63]

Truman's intervention to stabilize prices worked. White House economists found that controls led to "relative stability of prices during most of 1951."[64] Before price controls, consumer prices rose 8 percent after the Korean War began. After price controls, the CPI rose only 2.1 percent per year, with the largest increases occurring among goods and services exempted from regulation by law.[65]

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58 Defense Production Act of 1950 § 602(a).

59 *Id.*

60 *See* Radio and Television Address to the American People Following the Signing of the Defense Production Act, 1 PUB. PAPERS 626, 628-629 (Sept. 9, 1950) (available at https://www.presidency.ucsb.edu/documents/radio-and-television-address-the-american-people-following-the-signing-the-defense).

61 John M. Berry, *How Would Controls On Credit Work? How Credit Controls Might Work*, WASH. POST (Mar. 8, 1980), https://www.washingtonpost.com/archive/business/1980/03/09/how-would-controls-on-credit-work-how-credit-controls-might-work/2bb3a613-90ed-4d2a-81f9-7229f672d584/.

62 Paul G. Pierpaoli, Jr., *Truman's Other War: The Battle for the American Homefront*, 1950-1953, 14 OAH MAG. OF HIST. 15, 16-17 (2000).

63 *Id.*

64 The White House, Economic Report of the President, H. Doc. No. 82-303 at 23 (1952) (available at https://www.presidency.ucsb.edu/sites/default/files/books/presidential-documents-archive-guidebook/the-economic-report-of-the-president-truman-1947-obama-2017/1952.pdf).

65 *Id.* at 28; ROCKOFF, *supra* note 9, at 185.

This intervention, however, was short lived. The DPA was due to expire in June 1951, and Truman faced a more challenging legislative environment after Republicans gained seats in the 1950 midterm elections.[66] Driven by opposition to controls by meatpackers, cattle ranchers, and other business interests, Congress allowed the DPA to lapse for nearly two months, and meat prices quickly reached new highs.[67] Congress then reauthorized the DPA in July 1951, but significantly curtailed the President's price control authority. Price controls now included several additional sectoral specific exceptions, a price floor that limited the President's regulatory discretion, and protections for wholesalers' and retailers' profit margins.[68] Congress then repealed the DPA's price control authority entirely in 1953.[69]

C. Nixon's Price Controls

The DPA became a vehicle for price control authority again nearly two decades later. In 1970, with inflationary pressures again rising across the economy, Congress added "Cost of Living Stabilization" under the Economic Stabilization Act of 1970 to legislation extending and amending the DPA. This broadly granted the President authority to "issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries."[70]

Democrats in control of Congress expected that this authority would go unused by President Nixon, whose previous experience as an Office of Price Administration attorney had disillusioned him to price controls.[71] Indeed, Nixon resisted deploying

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[66] DOUGLAS I. BELL, "A LITTLE-KNOWN BILL OF GREAT NATIONAL SIGNIFICANCE": THE USES AND EVOLUTION OF THE DEFENSE PRODUCTION ACT, 1950-2020, U.S. ARMY HERITAGE & EDU. CTR. 11 (2020), https://ahec.armywarcollege.edu/documents/Defense_Production_Act_1950-2020.pdf.

[67] JACOBS, POCKETBOOK POLITICS, *supra note 10*, at 247.

[68] An Act to amend and extend the Defense Production Act of 1950 and the Housing and Rent Act of 1947, as amended, Pub. L. No. 82-96, 65 Stat. 131, ch. 275, tit. I, § 104, 134-137.

[69] JARED T. BROWN & MOSHE SCHWARTZ, CONG. RSCH. SERV., R43767, THE DEFENSE PRODUCTION ACT OF 1950: HISTORY, AUTHORITIES, AND CONSIDERATIONS FOR CONGRESS 2 n.8 (2018), https://crsreports.congress.gov/product/pdf/R/R43767/7.

[70] An Act To amend the Defense Production Act of 1950 Pub. L. No. 91-379, 84 Stat. 799, tit. II, § 202 (1970). During the prior year, Congress also reauthorized credit controls via the Credit Control Act of 1969, Pub. L. No. 91-151, 83 Stat. 376 (1969).

[71] *The Economy: The Law Nixon Used*, Time (Aug. 30, 1971), https://time.com/archive/6843764/the-economy-the-law-nixon-used/; Jacobs, *"How About Some Meat?," supra* note 20, at 910.

price controls, even as polling in early 1971 found that more than 60 percent of the country favored them.[72] However, in August 1971, with consumer prices continuing to escalate, Nixon acquiesced and announced a ninety-day freeze on prices and wages across the entire economy ("Phase I").[73] Averse to a large bureaucracy on the scale of OPA, Nixon instead established a lean Cost of Living Council (headed by future Secretary of Defense Donald Rumsfeld) to develop guidelines for price increases after the end of the ninety-day freeze ("Phase II").[74] Price control operations were run by the Office of Emergency Preparedness, a small agency originally created to handle potential nuclear attacks.[75] With relatively limited agency enforcement, Nixon relied heavily on voluntary compliance with the price freeze, which enjoyed broad popular support.[76]

When setting price ceilings under Phase II, the Nixon administration faced a critical question of whether to allow firms to only pass through dollar-for-dollar cost increases, or to add their customary percentage mark-ups.[77] Dollar-for-dollar cost pass-through would allow firms to maintain the same *dollar* level of profits per item sold, while customary mark-ups would allow firms to maintain the same *percentage* profit margins. The former would more strongly clamp down on inflation, while the latter would tolerate profit increases. The administration opted for the latter formula, which would allow firms to maintain real (inflation-adjusted) profit levels, but set a profit margin limitation at the level achieved during a firm's best two of three fiscal years before August 1971.[78]

Nixon's price controls were effective in the short term. After exceeding 6 percent in 1970, inflation fell below 3 percent by the middle of 1972.[79] With consumer prices stabilized, Nixon won reelection in a landslide in November. Declaring mission

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[72] ROCKOFF, *supra* note 9, at 201.

[73] *Id.* at 203.

[74] *Id.* at 204-05.

[75] *Id.*

[76] *Id.* at 205.

[77] *Id.* at 208-10.

[78] *Id.* at 210; Marvin H. Kosters & J. Dawson Ahalt, *Controls and Inflation: An Overview*, *in* ANALYSIS OF INFLATION: 1965–1974 121, 132 (Joel Popkin ed. 1977) (available at https://www.nber.org/system/files/chapters/c0992/c0992.pdf).

[79] Ben Casselman & Jeanna Smialek, *Price Controls Set Off Heated Debate as History Gets a Second Look*, N.Y. TIMES (Jan. 13, 2022), https://www.nytimes.com/2022/01/13/business/economy/inflation-price-controls.html.

accomplished, Nixon began unwinding price controls in January 1973 by switching to a voluntary system of self-administered controls and lifting the profit margin limitation ("Phase III").[80] Consumer prices soon began rising again—the price of meat rose at a 30 percent annual rate between January and March.[81]

Nixon changed course, reimposing price ceilings on meat in March 1973, and reinstated a general sixty-day price freeze in June.[82] Yet the administration had decided to phase out nearly all price controls, announcing a final "Phase IV" of price regulation in August 1973. The administration moved to remove controls from economically unimportant markets. While officials tried to negotiate decontrol terms with significant industries like automotives—such as continued price restraint or investment spending commitments—their leverage was undermined by the broad knowledge that the administration was already retreating from price controls.[83]

In April 1974, the administration ended price controls, except for petroleum prices.[84] Congress repealed the DPA's Cost of Living Stabilization authority in May 1974.[85] Inflation again hit double digits by the end of the year, driven by supply shocks from the Arab oil embargo and rising food prices stemming from crop failures.[86]

Ultimately, Nixon's price controls merely postponed inflation, and suffered from design flaws. His deployment of price controls was half-hearted, and lacked the robust enforcement bureaucracy that made OPA a success. Moreover, Nixon's abrupt termination of price controls after winning re-election brought on "catch-up" inflation as sellers raced to raise prices. An effective removal of price controls required a gradual and strategic wind down, but any deliberate off-ramp or decontrol negotiation in 1973 was rendered implausible by the administration's

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80 ROCKOFF, *supra* note 9, at 211.

81 *Id.*

82 *Id.*

83 *Id.* at 212.

84 *Id.*; *see also* An Act To extend and amend the Economic Stabilization Act of 1970, Pub. L. No. 93–28, 87 Stat. 27 (1973).

85 An Act To amend the Defense Production Act of 1950 and to establish a National Commission on Supplies and Shortages Act of 1974, Pub. L. No. 93-426, 88 Stat. 1166, § 2(a) (1974).

86 ROCKOFF, *supra* note 9, at 214.

transparent haste to abandon controls—sellers knew they could simply wait out Phase IV and raise prices later.

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Price controls steadily receded from the conventional economic wisdom after the 1970s.[87] After Nixon's resignation, many congressional Democrats advocated for reinstating price controls to address chronic inflation.[88] However, President Gerald Ford foreswore price controls as part of his "Whip Inflation Now" campaign.[89]

Jimmy Carter won the presidency in 1976 after promising to reenact standby price controls. But on the advice of economists, he reversed himself and renounced controls during the transition period out of fear that businesses were preemptively raising prices in anticipation of incoming price caps.[90] In a 1978 televised address on rising inflation, President Carter rejected "a complicated scheme of Federal government wage and price controls on our entire free economic system" as an "extreme proposal[] [that] would not work."[91]

To deal with inflation, Carter instead relied upon fiscal austerity, deregulation, and moral suasion to cool the economy, while lifting the remaining price controls on oil.[92] Carter did briefly authorize the Federal Reserve to implement credit controls in 1980 (pursuant to the Credit Control Act of 1969, which regranted the President the power to impose credit controls after the authority to do so under the DPA was

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[87] Casselman & Smialek, *supra* note 79.

[88] *See generally* MEG JACOBS, PANIC AT THE PUMP: THE ENERGY CRISIS AND THE TRANSFORMATION OF AMERICAN POLITICS IN THE 1970S (2017) (hereinafter "JACOBS, PANIC AT THE PUMP").

[89] Address to a Joint Session of the Congress on the Economy, 1 PUB. PAPERS 228, 229 (Oct. 8, 1974) (available at https://www.fordlibrarymuseum.gov/the-fords/gerald-r-ford/key-speeches-and-writings-gerald-r-ford).

[90] Tom Wicker, *Signaling A 'Go-Slow' Approach*, N.Y. TIMES, Dec. 7, 1946, at 41 (available at https://www.nytimes.com/1976/12/07/archives/signaling-a-goslow-approach.html); Eileen Shanahan, *Carter Won't Ask Power of Congress for Price Controls*, N.Y. TIMES, Dec. 4, 1976, at 1 (available at https://www.nytimes.com/1976/12/04/archives/carter-wont-ask-power-of-congress-for-price-controls-fears.html).

[91] Anti-Inflation Program, 2 PUB. PAPERS 1839, 1840 (Oct. 24, 1978) (available at https://www.pbs.org/wgbh/americanexperience/features/carter-anti-inflation/).

[92] Martin Solchin, *Carter to End Price Control on U.S. Oil and Urge Congress to Tax Any 'Windfall Profits,'* N.Y. TIMES, Apr. 6, 1979, at A-1 (available at https://www.nytimes.com/1979/04/06/archives/carter-to-end-price-control-on-us-oil-and-urge-congress-to-tax-any.html).

taken away in 1953). However, the Fed's poor implementation unexpectedly harmed the economy and ultimately led Congress to repeal the Act.[93]

Carter's refusal to take more aggressive action against prices left him politically weakened, drawing a primary challenge in 1979 from Senator Edward Kennedy, who made price controls the centerpiece of his campaign.[94] Yet when Carter's inflation adviser, Barry Bosworth, publicly floated the possibility of price controls if inflation worsened in 1980, the White House rebuked him, and Bosworth resigned.[95] After Carter overwhelmingly lost the general election, his chief domestic policy adviser admitted that rejecting price controls had been a mistake.[96]

Ultimately, upon failure of Congress and the President to reduce inflation, Federal Reserve chair Paul Volcker pursued extremely restrictive monetary policy, raising interest rates up to almost 20 percent, causing 10 percent unemployment in the process. The theory was that high interest rates would slow down economic activity, reducing demand for goods and services, and thus inflation. While many academics still debate whether Volcker's restrictive monetary policy was the

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[93] Dinovelli, *supra* note 57, at 19-21; *see also* Stacey L. Schreft, *Credit Controls: 1980*, FED. RSRV. BANK OF RICHMOND ECON. REV. 25, 46–48 (Nov./Dec. 1990).

[94] Art Pine & Kathy Sawyer, *Kennedy Introduces Bill On Wage-Price Controls*, WASH. POST (Apr. 4, 1980), https://www.washingtonpost.com/archive/business/1980/04/04/kennedy-introduces-bill-on-wage-price-controls/22c4af8f-f231-4b0c-b527-7515d3bf4dca/. Kennedy's proposal included a mechanism to deter the kind of preemptive price increases that had led Carter to disavow price controls: "To minimize the risk that businesses might raise prices in anticipation of controls, the bill would authorize the administration to make the restraints retroactive if it wished." *Id.* Instead of austerity, Kennedy's broader anti-inflation plan included cutting defense spending and combating monopoly pricing in food, housing, healthcare, and energy. JACOBS, PANIC AT THE PUMP, *supra* note 88, at 258.

[95] John M. Berry, *Bosworth to Leave Post On Wage-Price Council*, WASH. POST (Jun. 16, 1979), https://www.washingtonpost.com/archive/business/1979/06/16/bosworth-to-leave-post-on-wage-price-council/cab51f77-eb35-4f2b-8bd6-29bfb715f85f/.

[96] Jeff Faux, *Biden: Don't Repeat Jimmy Carter's Catastrophic Mistake on Inflation*, AM. PROSPECT (Nov. 23, 2021), https://prospect.org/economy/biden-dont-repeat-jimmy-carters-catastrophic-mistake-on-inflation/.

required antidote,[97] the public and political leaders gave Volcker credit for "slay[ing] the inflationary dragon."[98]

Meanwhile, in 1982, Congress passed legislation that would have re-established standby authority for the President to regulate oil prices. However, President Reagan vetoed the bill, stating that there was no "magic federal plan" to alleviate supply interruptions.[99]

Thus, restrictive monetary policy has become the federal government's near-exclusive remedy for inflation ever since. And because inflation has largely subsided for decades, the need to explore alternative tools like price regulation has largely faded into dormancy,[100] only reemerging in commentary and proposed legislation recently as inflation surged again in 2021.[101]

II. The Current Anti-Inflation DPA

Even though the political system has broadly opted to let the Fed control inflation in recent decades, the DPA's current authorities nevertheless continue to grant the Executive tools to fight inflation:

Priorities and Allocations. Title I allows the President to assert priority for contracts for critical goods, and to direct allocations of scarce resources to high-priority

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97 *See, e.g.*, Alan S. Blinder, *The Anatomy of Double-Digit Inflation in the 1970s*, *in* INFLATION: CAUSES AND EFFECTS 261, 275 (Robert E. Hall ed. 1982) ("Many people continue to this day to give credit to the recession for breaking the back of the double-digit inflation whereas, in fact, it was the waning of special factors that did the trick."); Tim Barker, *Other People's Blood*, N+1 (Spring 2019), https://www.nplusonemag.com/issue-34/reviews/other-peoples-blood-2 (quoting Kenneth Arrow, Paul Samuelson, and Joseph Stiglitz).

98 *See* Dinovelli, *supra* note 57, at 18; Binyamin Appelbaum & Robert D. Hershey Jr., *Paul A. Volcker, Fed Chairman Who Waged War on Inflation, Is Dead at 92*, N.Y. TIMES (Dec. 13, 2019), https://www.nytimes.com/2019/12/09/business/paul-a-volcker-dead.html.

99 *See* JACOBS, PANIC AT THE PUMP, *supra* note 88, at 278-79.

100 Since 1992, the DPA has explicitly disclaimed authority to impose wage or price controls "without the prior authorization of such action by a joint resolution of Congress." 50 U.S.C. § 4514(a).

101 *See* Isabella Weber, *Could strategic price controls help fight inflation?*, GUARDIAN (Dec. 29, 2021), https://www.theguardian.com/business/commentisfree/2021/dec/29/inflation-price-controls-time-we-use-it; *see also* Emergency Price Stabilization Act of 2022, H.R. 8658, 117th Cong. (2022) (available at https://web.archive.org/web/20240605192707/https://bowman.house.gov/imo/media/doc/Emergency%20Price%20Stabilization%20Act-FINAL.pdf).

uses.[102] During supply shocks, these authorities can be used to ensure that inputs first go toward critical uses or important consumer goods. President Biden used such authority to alleviate a baby formula shortage in May 2022.[103]

Price-Gouging Ban. Title I of the DPA also prohibits price-gouging by making it illegal for anyone to hoard "scarce materials" (as defined by the President) for personal use or to sell at above-market prices.[104] This allows the President to ensure that firms and individuals cannot sit on critical products or other items experiencing unusual supply constraints for their own use or gain. The Trump and Biden administrations enforced this provision to prosecute retailers who were overcharging for critical products like KN-95 masks and other personal protective equipment during the COVID-19 pandemic.[105]

Expanding Productive Capacity and Supply. Title III of the DPA allows the President to take steps to increase the domestic productive capacity and supply of critical goods.[106] This flexible authority can be used to respond to supply-driven inflation by promoting increased production of goods facing bottlenecks or other cost increases, whether through government production or private production.[107] President Biden used this authority to, among other things, invest in domestic production of essential medicines to reduce shortages in November 2023.[108]

Information Gathering. Title VII of the DPA allows the President to obtain information from industry and firms, including through testimony or by inspecting their books,

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102 *See* 50 U.S.C. § 4511.

103 Press Release, The White House, President Biden Announces First Two Infant Formula Defense Production Act Authorizations (May 22, 2022) (available at https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2022/05/22/president-biden-announces-first-two-infant-formula-defense-production-act-authorizations/).

104 50 U.S.C. § 4512.

105 Combating Price Gouging & Hoarding, U.S. DEP'T OF JUSTICE (Mar. 23, 2022), https://www.justice.gov/coronavirus/combatingpricegouginghoarding.

106 *See* 50 U.S.C. § 4531 *et seq*.

107 *See id.* § 4533(a)(1).

108 Press Release, The White House, FACT SHEET: President Biden Announces New Actions to Strengthen America's Supply Chains, Lower Costs for Families, and Secure Key Sectors (Nov. 27, 2023) (available at https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2023/11/27/fact-sheet-president-biden-announces-new-actions-to-strengthen-americas-supply-chains-lower-costs-for-families-and-secure-key-sectors/).

records, and properties.[109] This can be used to gather information on supply chains and costs, as well as to monitor pricing decisions (such as to determine whether rising prices are justified by input costs). Such information gathering could be useful in several ways: First, it could support informal executive branch pressure on firms that are unduly increasing prices, such as through recommended pricing guidelines or bully-pulpit "jawboning" to name and shame price hikers.[110] Second, it could be used to conduct audits of firms suspected of price-gouging or profiteering.[111] And third, it could be used to support the exercise of other DPA authorities, such as allocations, productive capacity expansions, or (as proposed below) targeted price stabilization. President Biden considered invoking this authority to gather data from semiconductor firms on supply chains and inventories.[112] He also invoked this authority to gather safety data from artificial intelligence developers.[113]

Voluntary Agreements. Title VII of the DPA also allows the President to facilitate voluntary cooperation among private firms.[114] The President may pursue such voluntary agreements "[u]pon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs[.]"[115] Voluntary agreements across industry under the DPA are exempt from antitrust laws.[116] The President therefore could determine that inflationary pressure for critical or economically-significant goods poses a threat to the national defense, and pursue voluntary agreements with industry to limit prices and profits. Such agreements

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[109] 50 U.S.C. § 4555(a).

[110] *The Economy: Rising Clamor for the Jawbone*, TIME (Apr. 13, 1970), https://time.com/archive/6838137/the-economy-rising-clamor-for-the-jawbone/.

[111] Congress has considered mandating audits of firms suspected of profiteering during past inflationary episodes, including the 1970s energy crises. *See* JACOBS, PANIC AT THE PUMP, *supra* note 88, at 62 (Congress considered legislation in 1973 to "order a full public audit of oil companies to make sure they were not holding back on supply or profiting at the consumer's expense").

[112] *See* Jenny Leonard, *White House Weighs Invoking Defense Law to Get Chip Data*, Bloomberg (Sept. 23, 2021), https://www.bloomberg.com/news/articles/2021-09-23/white-house-weighs-invoking-defense-law-to-get-chip-supply-data; *see also* HENRY FARRELL & ABRAHAM NEWMAN, UNDERGROUND EMPIRE: HOW AMERICA WEAPONIZED THE WORLD ECONOMY 167-68 (2023).

[113] Exec. Order No. 14,110, 88 Fed. Reg. 75191 (Oct. 30, 2023) (available at https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/).

[114] 50 U.S.C. § 4558(c)(1).

[115] *Id.*

[116] *Id.* § 4558(j).

could be particularly effective in concentrated industries. For example, in 2022, the Mexican government negotiated an agreement with dominant food and grocery firms to create a price-capped "basics basket" of 24 food staples and other consumer essentials; in 2024, it even negotiated a *reduced* price for that basket of goods.[117]

III. Strengthening the Anti-Inflation DPA

Congress could build upon the DPA's current anti-inflation authorities to better meet today's challenges. Specifically, it could amend the DPA to: (1) add a new targeted price stabilization authority; (2) strengthen the law's existing price-gouging ban; (3) re-empower consumers and small businesses as "profiteering watchdogs"; and (4) add a new strategic credit controls authority.

Targeted Price Stabilization. Congress could amend the DPA to create a modernized and targeted authority for the President to intervene against inflation by directly stabilizing prices of ubiquitous critical products. Such authority would authorize the President to temporarily regulate the prices of economically-significant goods or services experiencing sharp price increases due to economic shocks. This would be particularly useful when deployed against upstream sectors and basic goods experiencing inflation or bottlenecks that could reverberate across the broader economy, such as energy, critical production inputs, commercial transportation, and consumer essentials.[118]

Targeted price stabilization could take the following structure:

> *First*, the President makes a declaration of "abnormal market conditions" (AMC) — such as supply chain disruptions, public health emergencies, natural disasters, terrorist attacks, geopolitical conflict, extreme industry consolidation, and other similar circumstances deviating from a well-functioning market, either across the entire economy or a particular sector.

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[117] *See* Isabella M. Weber, *The Governments That Survived Inflation*, FOREIGN AFFS. (Jan. 15, 2025), https://www.foreignaffairs.com/mexico/governments-survived-inflation; *Sheinbaum, business sector agree to lower basic food prices*, MEXICO NEWS DAILY (Nov. 13, 2024), https://mexiconewsdaily.com/news/mexico-lower-food-prices/.

[118] *See* Isabella Weber & Jesus Lara Jauregui et al., *Inflation in times of overlapping emergencies: Systemically significant prices from an input–output perspective*, 33 INDUS. & CORP. CHANGE 297, 310 (Apr. 2024) (available at https://academic.oup.com/icc/article/33/2/297/7603347).

> *Second*, the President makes a finding that certain critical, economically-significant goods are experiencing price escalations due to the AMC (designated goods). Such designated goods are then subject to targeted price stabilization and must be sold at cost plus a reduced percentage of typical profit margins (as determined by the Executive Branch) until the President declares the AMC has ended.
>
> *Third*, within 180 days of the termination of an AMC, firms may not impose unreasonable or "catch-up" price increases on formerly designated goods. Such increases will trigger new price stabilization.

Targeted price stabilization would serve several functions. First, it would shield consumers from shocks by applying an "inflation brake" to keep a market disruption from spreading to affect downstream prices. Such a temporary intervention is familiar in other contexts, like a quarantine to prevent illness from spreading across a wider population, or a forced stock market trading pause following unusual market activity.

Second, the "cost plus a reduced profit" design would in essence temporarily impose the type of pricing structure on critical goods in malfunctioning markets that is common in other distinctive sectors, such as utilities or military contracting. The *reduced* profit would give sellers more skin in the game to ensure they bear some of the cost of inflation: Sellers will be less agnostic toward inflation if they cannot fully protect their profit margins, and will have a greater incentive to secure their supply chains in advance.[119]

Third, tethering price stabilization to a presidential declaration of abnormal market conditions gives the executive flexibility over both when to begin price stabilization actions and when to lift them. Conservative termination of an AMC declaration can mitigate the "rockets and feathers" problem, whereby sellers rapidly raise their prices when input costs increase but lower them slowly when input costs decline.[120] If input costs fall during the course of a declared AMC, the price stabilization formula ensures that the cost declines are passed through to the consumer. This also gives the government leverage to negotiate terms of release from price

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[119] *See* Isabella Weber, *The Lesson of This Election: We Must Stop Inflation Before It Starts*, N.Y. TIMES (Nov. 12, 2024), https://www.nytimes.com/2024/11/12/opinion/election-inflation-cost-shock.html.
[120] *See* Andrew Van Dam, *Why gasoline prices remain high even as crude oil prices fall*, WASH. POST (Apr. 11, 2022), https://www.washingtonpost.com/business/2022/04/11/gasoline-prices-crude-prices/.

stabilization with industries and firms to ensure ongoing price stability and supply chain improvements.

Fourth, targeted price stabilization will be particularly effective in circumstances where an accelerating price signal will not or cannot bring additional short-term supply onto the market. If prices are rising because supply has been constrained by a natural disaster or disruptions along trade routes, for example, such "price signals" will not meaningfully incentivize more sellers to bring more supply on to the market.[121] In other unaffected markets, the prospect of price stabilization authority may act as a "big stick" to deter sellers from hiking prices in the first place.

Fifth, targeted price stabilization buys time during a shock for officials to deploy other authorities to bring more supply on to the market, such as through stockpile releases or interventions to boost productive capacity (including under Title III of the DPA). As those complementary supply-side interventions come online, price stabilization insulates consumers and the larger economy from short-term harm.

Strategic deployment and effective administration of targeted price stabilization will be critical. While targeted price stabilization would not require a bureaucracy on the scale of the OPA, it would require adequate staffing and state capacity, likely including a new White House office. Modern technology now provides the sophisticated tools that OPA lacked to administer price regulations, as advanced algorithms, artificial intelligence, and data collection can be used to gather and analyze firm pricing decisions, margins, and profit levels. Effective price stabilization would need to be informed by (1) ongoing periodic assessments identifying critical and economically-significant goods, services, and sectors, and (2) regular monitoring of their price dynamics.

By design, *targeted* price stabilization would be narrow in scope, intended for precision intervention against only those goods that have disproportionate impact

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[121] As economist Isabella Weber has explained:

> "Putting a lid on price is not gonna unblock the Port of L.A. It's not going to end the war in Ukraine. But at the same time, an exploding price is not going to unblock the port of L.A. […] You can prevent prices from shooting up at a time when the price explosion will not have a supply reaction, because there's an actual, physical barrier, or because you have issued political sanctions, or because the Suez is blocked by a big ship."

Lee Harris, *Bowman Proposes Bill to Recommend Price Controls*, AM. PROSPECT (Aug. 4, 2022), https://prospect.org/economy/bowman-proposes-bill-to-recommend-price-controls/.

for consumers and the broader economy. Far-reaching economy-wide price controls should generally be a last resort reserved for wartime or similarly catastrophic disaster scenarios, and may be accompanied by government-mandated rationing as during World War II. Congress could also create guardrails and institutional mechanisms to override presidential actions imposing price regulations where a threshold number of legislators object.

Strengthened Price-Gouging Ban. As discussed above, Title I of the DPA prohibits certain forms of price-gouging by outlawing hoarding of scarce materials for personal use or resale at excess prices.[122] While the current law gives the President wide latitude to designate "scarce materials" subject to the price-gouging ban, Congress could broaden the ban in three ways:

First, it could prohibit hoarding any goods subject to the new targeted price stabilization authority proposed above. For instance, a strengthened price-gouging ban could provide:

> *During a declared abnormal market condition (AMC), no person shall (a) hoard for personal use any good designated by the President as a critical, economically-significant good subject to such AMC, or (b) sell or offer to sell such a good at prices in excess of those specified under targeted price stabilization (e.g., cost plus a reduced profit).*

Second, Congress could expand this section beyond just illicit hoarding to also encompass general profiteering behavior. Such an expansion would prohibit any person or firm from selling or offering to sell scarce materials (as designated by the President) at unfairly excessive prices.[123]

Third, Congress could add stricter penalties for violating the DPA's price-gouging ban. Penalties are currently capped at a $10,000 fine or one year in prison.[124] Many price-gouging schemes could easily eclipse $10,000 in revenue, rendering the current fine an economically ineffective cost of doing business. For stronger deterrent effect, the maximum fine should be increased to the greater of $20,000 or 300 percent of all revenue generated while in violation of the DPA.

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[122] 50 U.S.C. § 4512.

[123] Congress may consider establishing a brightline rule for a presumptively excessive price: for example, a price increase of 10 percent or more relative to the price on the effective date of the President's designation of such good as a "scarce material."

[124] 50 U.S.C. § 4513.

Profiteering Watchdogs. Congress could empower consumers and small businesses to report and seek damages from violations of the DPA's targeted price stabilization regulations and price-gouging ban. This program would be modeled on the OPA program during World War II that similarly deputized shoppers to monitor for illegal profiteering. Where profiteering watchdogs in the 1940s wielded physical government-issued lists of legal prices, today's watchdogs could have the high-tech option of a government-created smartphone app to quickly scan and report price violations. Consumers and businesses that help identify violators could either bring their own lawsuits or receive a portion of the damages recouped through government enforcement.

Such a program would make the law more effective by expanding enforcement capacity while simultaneously limiting the need for significant numbers of official paid staff. Moreover, direct consumer participation would likely create a stronger constituency for the anti-inflation DPA, enhancing the law's political durability.[125]

Strategic Credit Controls. Congress could also reinstate the DPA's authority to regulate particular forms of credit to slow inflation. This would be a more precise tool than the Federal Reserve's monetary policy adjustments: Where general interest rate changes affect borrowing across the entire economy, strategic credit controls can do so for only certain targeted sectors (e.g., consumer credit or real estate). Such controls tend to be most useful to limit demand for goods with large upfront costs where individuals and firms normally need to borrow to consume, rather than to alleviate unexpected supply-side blockages. However, strategic controls could be useful for supply-driven inflation in some circumstances, such as to discourage low-priority sectors from dominating scarce materials. For instance, in the event of a lumber shortage, credit controls could apply to construction of new luxury housing, but not middle-tier or "starter" housing. Such strategic credit controls could complement deployment of the DPA's priorities and allocations authorities under Title I.

Credit regulation could also be used to partially counteract general high interest rate policy by the Fed, which increases borrowing costs and reduces beneficial investment in sectors like new housing construction and energy. "Inverse" credit

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[125] *See* JACOBS, POCKETBOOK POLITICS, *supra note 10*, at 180 (OPA's "synergy of state and society resulted in what supporters hoped, and opponents feared, was a natural evolution of New Deal statecraft"); *id*. at 209 ("Because OPA had broad-based, popular support, opponents could not attack it directly.").

controls could set more favorable borrowing terms (such as longer loan durations and other preferential conditions) for such anti-inflationary investment.[126]

Conclusion

Since its inception, the Defense Production Act has been a critical set of tools to fight inflation. By uniting defense mobilization and price stabilization, the law's framers recognized that economic stability is national security.

However, with inflation largely held in check since the early 1980s, this insight took a backseat to other defense needs. The DPA's anti-inflation tools atrophied, leaving government officials underpowered to respond to the reemergence of price escalation during the COVID-19 pandemic.

A modernized anti-inflation DPA as proposed here would give the government a powerful set of tools to stabilize prices during future shocks that provides greater flexibility than the standard central bank monetary policy toolkit. To illustrate using recent sectoral examples:

- The highly concentrated ocean carrier industry charged importers exorbitant fees to transport goods into the United States during the pandemic, reaping massive profits.[127] These fees led to higher prices for all consumer goods imported into the economy, increasing overall inflation.[128] Under a strengthened DPA, the government could have intervened to limit the prices carriers could charge, and the profits they extracted, in order to keep inflation from spreading.

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[126] Beyond responding to inflation, credit controls could also be useful for other industrial policy goals. For example, credit controls could favor clean energy projects and purchases by requiring stricter financing terms for fossil fuel-based ones. *See* Amit Roy, *Green monetary policy to combat climate change: Theory and evidence of selective credit control*, 6 J. OF CLIMATE FIN., Mar. 2024 (available at https://www.sciencedirect.com/science/article/abs/pii/S2949728024000051). Similarly, controls could favor domestically-produced goods by tightening credit access for foreign-made ones.

[127] Peter S. Goodman, *American Importers Accuse Shipping Giants of Profiteering*, N.Y. TIMES (May 4, 2022), https://www.nytimes.com/2022/05/04/business/shipping-container-shortage.html.

[128] *See* Yan Carrière-Swallow & Pragyan Deb, *Shipping Costs and Inflation*, 130 J. OF INT'L MONEY & FIN. 1 (2023) (available at https://www.sciencedirect.com/science/article/pii/S0261560622001747).

- Repeated episodes of avian flu have corresponded with unusually high egg prices in recent years. Those high prices have translated into record profits for egg producers, with the largest company seeing its profits jump 700 percent in 2023.[129] Under a strengthened DPA, the government could have stabilized consumer prices and prohibited industry profiteering, empowering grocery shoppers to monitor for egg price-gouging.

- During the onset of the pandemic, meatpacking companies used the prospect of a meat shortage to significantly mark up prices.[130] Yet in fact, they were holding enough meat inventory to supply every grocery store in the country, including 600 million pounds of frozen pork.[131] Companies saw their profits boom, distributing over $3 billion in dividends during the first two years of the pandemic.[132] Under a strengthened DPA, the government could have audited meat companies and investigated them for price-gouging.

- Oil prices and company profits spiked both as the economy recovered in 2021 and after Russia invaded Ukraine in 2022.[133] A constellation of current and strengthened DPA authorities—including the allocation of energy supplies to high-priority uses, intervention to compel production at offline refineries, corporate profiteering audits, and temporary price stabilization if needed—could have helped shield consumers from price shocks and prevented high fossil fuel costs from cascading into other sectors.

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129 Chris Isidore, *High egg prices send profits at largest US producer soaring more than 700%*, CNN (Mar. 29, 2023, 8:20 AM), https://www.cnn.com/2023/03/29/business/egg-profits-cal-maine/index.html.

130 Manuel Bojorquez, *Inflation or "corporate greed"? Meat prices increased by double digits during pandemic*, CBS NEWS (Mar. 9, 2022, 8:47 PM), https://www.cbsnews.com/news/meat-prices-pandemic-inflation-corporate-greed/.

131 Peter Goodman, *How the Trump Administration Sacrificed Slaughterhouse Workers for Meat Monopolies*, VANITY FAIR (Jun. 10, 2024), https://www.vanityfair.com/news/story/how-the-trump-administration-sacrificed-slaughterhouse-workers-for-meat-monopolies.

132 *Id.*

133 *See* Isabella M. Weber & Evan Wasner, *Sellers' Inflation, Profits and Conflict: Why can Large Firms Hike Prices in an Emergency?* 14 (Pol. Econ. Rsch. Inst., Univ. of Mass. Amherst, Working Paper No. 571, 2023), https://scholarworks.umass.edu/server/api/core/bitstreams/669e543e-5b6f-44c7-a657-641e024740ee/content; Ron Bousso, *Big Oil doubles profits in blockbuster*, REUTERS (Feb. 8, 2023, 6:59 AM), https://www.reuters.com/business/energy/big-oil-doubles-profits-blockbuster-2022-2023-02-08/.

Of course, the DPA is not an anti-inflation panacea—the government needs a broad toolkit to complement it. Such additional tools might include creating new public stockpiles of critical and economically-significant goods,[134] as well as mandating private stockpiles of such goods by holding producers to minimum inventory requirements.[135] They might also include restrictions on commodity speculation during inflationary periods,[136] enhanced supply-chain intervention authorities,[137] and windfall profits taxes.[138] The government should also rely on existing tools, such as interest-rate-setting policy and antitrust enforcement, where appropriate.

In an era where supply shocks are poised to become more common, the government must have more comprehensive tools to protect its citizens from inflation. We need not accept price volatility as an unavoidable "transitory" pain that will eventually pass through market corrections. Tolerating such inflation, the economist John Kenneth Galbraith once warned, poses "a clear and present economic danger." [139]

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134 *See* Daleep Singh & Arnab Datta, *Reimagining the SPR*, FIN. TIMES (Feb. 4, 2024), https://www.ft.com/content/e948ae78-cfec-43c0-ad5e-2ff59d1555e9; *see also* Isabella Weber & Merle Schulken, *Towards a Post-neoliberal Stabilization Paradigm: Revisiting International Buffer Stocks in an Age of Overlapping Emergencies Based on the Case of Food* (Pol. Econ. Rsch. Inst., Univ. of Mass. Amherst, Working Paper No. 602, 2024), https://peri.umass.edu/images/publication/WP602c.pdf.

135 Weber & Jauregui et al., *supra* note 118, at 315.

136 President Truman asked Congress for such authority "to regulate speculation on the commodity exchanges" in his 1949 State of the Union address. President Harry S. Truman, Annual Message to the Congress on the State of the Union, 1 PUB. PAPERS 2, 3 (Jan. 5, 1949) (transcript available at The American Presidency Project, https://www.presidency.ucsb.edu/documents/annual-message-the-congress-the-state-the-union-21).

137 Such authorities were originally proposed in 2021 legislation that ultimately became the CHIPS and Science Act. *See* United States Innovation and Competition Act of 2021, H.R. 4521, 117th Cong. (2021), § 60903 (Investment in supply chain security) (available at https://www.govinfo.gov/content/pkg/BILLS-117hr4521eh/html/BILLS-117hr4521eh.htm).

138 *See* Press Release, Bernie Sanders, U.S. Senator for Vermont, NEWS: Sanders, Bowman, Markey Introduce Legislation to Combat Corporate Greed and Windfall Profits (Jun. 21, 2024) (available at https://www.sanders.senate.gov/press-releases/news-sanders-bowman-markey-introduce-legislation-to-combat-corporate-greed-and-windfall-profits/).

139 JOHN KENNETH GALBRAITH, A THEORY OF PRICE CONTROL 9 (Harvard Univ. Press 1952).