

## STATEMENT OF PRINCIPLES

---

Developing a conservative Republican vision for public policy has always proven difficult. Yet, as Russell Kirk notes, “conservatism is the negation of ideology: it is a state of mind, a type of character, a way of looking at the civil social order.”

Democrats believe that expansive government is the cure for what ails America. Opposition to that sentiment alone should compel Republicans to work through internal differences and develop thoughtful alternatives to lead America. To foster these necessary conversations, the Republican Policy Committee offers the following principles:

- **The answer to most public policy questions is to empower Americans.** Rather than pitching multi-trillion-dollar government takeovers of entire economic sectors, the Federal Government should restore power to the individuals, communities, and businesses who have innovatively solved America’s most pressing problems for generations.
- **Liberty remains America’s chief public good.** From free speech and religious exercise to free enterprise and gun ownership, civil liberties are fragile and must be protected.
- **To secure the rights of Americans, the Constitution establishes the duties of and imposes limitations upon the Federal Government.** The Constitution clearly authorizes each branch of the Federal Government to serve distinct and defined roles to avoid the consolidation of power, maintain checks and balances, and protect the republic.
- **The rule of law must be upheld. Federal laws must either be enforced consistently or repealed altogether.** Unequal or inconsistent application of federal law erodes confidence in the legislative process, undermines respect for law enforcement, and destabilizes American society.
- **Free markets with robust competition produce prosperity and empower consumers.** Government should support economic liberty rather than interfering with increasingly burdensome programs and mandates.
- **The Federal Government must be transparent, accessible, and responsive to the American people.** Duplicative, conflicting, and opaque federal mandates and regulations must be modernized, simplified, and available to the public.
- **The consequences of reckless, unsustainable federal spending are dire.** Federal debt has become an issue of national security that requires fiscal discipline and prioritization from Congress.
- **Free and fair trade is critical to American prosperity and global standing.** Trade should be as open and tariff-free as possible with deliberate mindfulness toward strategic national objectives and economic security.

- **Taxes should be limited to support the constitutionally authorized functions of the Federal Government.** Individuals, not federal bureaucrats, are the best stewards of their hard-earned income.
- **Abundant natural resources are one of America's greatest assets and demand a strong conservation ethic.** Environmental regulations should be efficient, stable, and encourage innovation and stewardship.

## **TABLE OF CONTENTS**

---

### **Statement of Principles**

#### **Health Care**

1. Expand Health Reimbursement Arrangements
2. Increase Rural Access to Veteran Health Care
3. Lower Premiums by Codifying Association Health Plans
4. Provide a Better Prescription than Medicare-for-All
5. Reform Federal Prescription Drug Spending
6. Reduce Prescription Drug Costs for Americans
7. Reinsure the Preexisting Condition Unfunded Mandate
8. Scrutinize Anti-Competitive Health Care Contracts

#### **Energy & Environment**

9. Address Climate Change Without Carbon Pricing
10. Combat America's Critical Mineral Dependency
11. Develop Energy on Taxpayer-Owned Lands
12. Divest Federal Electricity Transmission Assets
13. Support Installation of Living Shorelines

#### **Immigration**

14. End Federal Funding of Sanctuary Airports
15. Secure America's Southwest Border

#### **Education**

16. Extend 529 Savings Plans to Homeschool Expenses
17. Promote Income Sharing Agreements in Higher Education
18. Share the Risk of Federal Student Loan Default

#### **Taxes and Trade**

19. Address Taxation of Social Security Benefits
20. Create a Simplified Average Tax
21. End Abuse of the Earned Income Tax Credit
22. Improve Small Business Access to International Markets

## **National Security and Foreign Relations**

23. Hold China Accountable for COVID-19
24. Maintain Peace through American Military Strength
25. Modernize America's Nuclear Triad and Missile Defense Systems
26. Protect America's Technology and Access to Space
27. Reduce Reliance on Chinese Supply Chains
28. Reject Authoritarian Internet Control
29. Respond to Chinese Trade Practices

## **Civil Liberties**

30. Address Political Bias in Social Media
31. Require Accurate National Abortion Data
32. Understand Gun Violence in America
33. Update Section Five of the Voting Rights Act

## **Regulation**

34. Minimize Financial Sector Regulatory Overload
35. Create Congressional Accountability for Major Rules
36. Curtail Regulatory Delays for Infrastructure Projects
37. Invest in America's Entrepreneurs
38. Support Innovation as a Path Toward Financial Inclusion

## **Governance**

39. Address Small Business Resource Duplication
40. Combat Improper Medicaid Payments
41. Confront the Federal Debt
42. Connect Federal Civilian Pay to Private Sector Pay
43. Create Fairness and Accountability for SNAP Benefits
44. Decouple Medicare Hospital Insurance from Social Security
45. Limit Autopilot Federal Spending
46. Modernize Federal Grant Reporting
47. Reclaim Unobligated Federal Funds
48. Reduce the Costs of Federal Construction
49. Reform the United States Postal Service
50. Tackle Federal Improper Payments

### EXPAND HEALTH REIMBURSEMENT ARRANGEMENTS

Employer-sponsored health insurance covers more than half of the American population.<sup>1</sup> For those employees, health insurance is often limited to a few options selected by a corporate administrator. Congress should codify the Trump administration’s rule expanding access to employer-sponsored Health Reimbursement Arrangements (HRA).

#### BACKGROUND

The Affordable Care Act (ACA) requires certain large employers – those with 50 or more full-time employees – to offer employees “minimum essential coverage under an eligible employer-sponsored plan” or risk paying a penalty to the IRS.<sup>2</sup> The “employer mandate” entrenches employer-sponsored group insurance and places health insurance decisions in the hands of corporate human resources personnel, rather than employees.

According to 2017 data from the Census Bureau, 55 percent of the population, or 178 million Americans, received health insurance through employers.<sup>3</sup> While some employers may want to offer group health insurance as a means of retaining employees, others may see a competitive advantage and potential cost savings in giving employees control over their health care decisions.

Many employers have little negotiating power over group insurance products. As employees age, have children, or contract significant illnesses, those health care costs are distributed to the rest of the employee group in the form of higher premiums.

Employees often bear a significant portion of any premium increase. According to the Kaiser Family Foundation, “Premium contributions by covered workers average 18% for single coverage and 30% for family coverage.”<sup>4</sup> If higher premiums or paying an increased premium share creates financial hardship for employees, they are powerless to negotiate directly with the group insurer or take their health insurance business to another provider.

Under the 21<sup>st</sup> Century Cures Act of 2016,<sup>5</sup> employers with under 50 full-time employees who do not sponsor a group health plan may fund employee health reimbursement arrangements (HRAs) to pay for nongroup plan health insurance premiums. These new HRAs, known as qualified small employer health reimbursement arrangements (QSEHRA), cap maximum reimbursement and must generally be offered on the same terms for all employees.

In 2019, the Trump administration finalized a rule that provides more flexibility to HRAs for all employers by creating two classes of HRAs, each funded with pre-tax dollars.<sup>6</sup> The first HRA class allows employees to purchase ACA-compliant individual-market insurance coverage. The other permits employers to give employees up to \$1800 tax-free dollars in order to purchase “excepted” policies such as dental or vision care and short-term insurance.

#### Quick Take

The ACA requires employers to offer group coverage to employees or face a stiff penalty.

Employees often only have a few health insurance options. Congress should allow employers to fund HRAs for purchase of individual-market insurance policies and other health benefits.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution authorizes Congress to tax and spend in a manner that promotes the general welfare of the United States.<sup>7</sup> Congress should allow Americans to keep more money in their pockets while making necessary purchases like health insurance.

## POLICY SOLUTIONS

Congress should enact legislation consolidating the types of HRAs permitted by current law and the Trump administration regulation. HRA access should include all employers (rather than just the small businesses covered under the 21<sup>st</sup> Century Cures Act), satisfy the ACA's employer mandate, and be fully deductible to the employer and excludable from employee income.

Congress should also codify the Trump administration's final rule which would permit employers who offer group coverage to also contribute to an HRA to reimburse employees for medical expenses, dental and vision premiums, and premiums for short-term health insurance.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Edward R. Berchick, Jessica C. Barnett, and Rachel D. Upton. *Health Insurance Coverage in the United States: 2018*, United States Census Bureau, U.S. Department of Commerce (Nov. 2019),

<https://www.census.gov/content/dam/Census/library/publications/2019/demo/p60-267.pdf>.

<sup>2</sup> 26 U.S.C. § 4980H (2013).

<sup>3</sup> Berchick, *supra* note 1.

<sup>4</sup> *2019 Employer Health Benefits Survey*, Henry J. Kaiser Family Foundation (Sept. 25, 2019), <https://www.kff.org/report-section/ehbs-2019-section-1-cost-of-health-insurance/>.

<sup>5</sup> 21<sup>st</sup> Century Cures Act of 2016, Pub. L. No. 114-255, (Dec. 13, 2016).

<sup>6</sup> 84 FR 28888 (2019).

<sup>7</sup> U.S. Const. art. 1, § 8.

## **INCREASE RURAL ACCESS TO VETERAN HEALTH CARE**

Over 9 million veterans<sup>1</sup> rely on health care services from nearly 1,700 Department of Veterans Affairs (VA) medical facilities nationwide.<sup>2</sup> Following recent actions to expand health care options for veterans living in rural and underserved areas, Congress must ensure that such programs are as efficient and easy to utilize as possible.

### **BACKGROUND**

The Government Accountability Office (GAO) has included VA health care in its annual *High-Risk List* since 2015.<sup>3</sup> Longstanding administrative mismanagement, such as months-long waiting periods, and geographical barriers in access to care continue to plague the VA.<sup>4,5</sup> Approximately 33 percent of veterans receiving VA coverage live in rural areas.<sup>6</sup>

Veterans are particularly vulnerable to historic challenges of medical shortages in rural areas. A December 2019 GAO report, for example, found that while veterans lived in rural areas at a higher rate compared to the rest of the population, only 27 percent of veterans in rural areas with an opioid use disorder received medication-assisted treatment, compared to 34 percent in urban areas.<sup>7</sup>

Overall, the population of rural veterans, who must generally travel longer distances to receive VA care, tend to register as older, sicker, and poorer than their urban counterparts, according to the VA.<sup>8,9</sup>

In recent years, Congress and the Trump administration have expanded telehealth services to provide greater access to care for veterans living in remote or rural areas.<sup>10,11</sup> Telehealth generally refers to an alternative type of health care delivery provided via electronic information technology outside of in-person, brick-and-mortar health care facilities.<sup>12</sup>

The 115<sup>th</sup> Congress enacted the VA Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 into law, which required the VA to consolidate community care programs into a single program.<sup>13</sup> The law also authorized the VA to provide telehealth services across state lines.

In August 2017, the White House, the Veterans Health Administration (VHA), and the DOJ launched the joint ‘Anywhere to Anywhere’ initiative to provide veteran patients with the ability to access VA telehealth services from a VA provider located outside VA medical facilities.<sup>14,15</sup>

In November 2019, the VA reported over 900,000 veterans utilized VA telehealth services within the first year of the initiative—a 17 percent increase.<sup>16</sup> Additionally, use of VA Video Connect, which connects veterans “to their care teams through a secure video session,” increased by over 235 percent, with about 99,000 veterans using the app from home.<sup>17</sup>

### **Quick Take**

Over 9 million veterans rely on health care services across 1,700 VA medical facilities nationwide. Approximately 33 percent of veterans receiving VA coverage live in rural areas, and experience higher barriers to treatment.

Congress may consider additional actions to improve access for veterans in rural and underserved areas.

The VA MISSION Act may have unintentionally limited authorized health care professionals to doctors, omitting a large population of medical residents, fellows, interns, and other trainees who are otherwise responsible for providing care from utilizing the telehealth service system.<sup>18,19</sup> H.R. 3228, the VA MISSION Telemedicine Clarification Act, would amend the law to provide such authorization to certain supervised VA trainees.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution authorizes Congress to “make all laws which shall be necessary and proper” to provide for the general welfare. Republicans support commonsense reforms that provide veterans access to quality health care coverage.

## POLICY SOLUTIONS

Congress should build on the VA MISSION Act by passing H.R. 3228, the VA MISSION Telemedicine Clarification Act of 2019. H.R. 3228 would authorize trainees to utilize the VA’s Anywhere to Anywhere telehealth program under supervision of a credentialed VA medical professional.<sup>20</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> U.S. Department of Veterans Affairs (VA), *FY2020 Budget In Brief*, 2020 Congressional Submission, pg. BiB-3, 10. <https://www.va.gov/budget/docs/summary/fy2020VAbudgetInBrief.pdf>.

<sup>2</sup> “Chapter 17 of Title 38, U.S.C., requires the VA to provide health care services to eligible veterans through the Veterans Health Administration (VHA) of the VA, which is one of the largest integrated health care systems in the United States.” Victoria L. Elliott, Cong. Research Serv., R45834 *Department of Veterans Affairs (VA): A Primer on Telehealth*, (2019), <https://fas.org/sgp/crs/misc/R45834.pdf>.

<sup>3</sup> U.S. Gov’t Accountability Office (heretofore GAO), *High-Risk List, Summary Page: Managing Risks and Improving VA Health Care*, (2019), [https://www.gao.gov/highrisk/managing\\_risks\\_improving\\_va\\_health\\_care/why\\_did\\_study](https://www.gao.gov/highrisk/managing_risks_improving_va_health_care/why_did_study).

<sup>4</sup> Examples include Senator Johnny Isakson, “Veterans Healthcare,” remarks in the Senate, Congressional Record, daily edition, vol. 163, part 209 (December 21, 2017), p. S8194; and Representative Jeff Fortenberry, “Year-End Report,” remarks in the House, Congressional Record, daily edition, vol. 165, part 4 (January 9, 2019), p. H353. Victoria L. Elliott, Cong. Research Serv., R45834 *Department of Veterans Affairs (VA): A Primer on Telehealth*, (2019), <https://fas.org/sgp/crs/misc/R45834.pdf>.

<sup>5</sup> In 2019, the House Committee on Veterans Affairs held a hearing to assess the VA’s progress on addressing delays in VA care. A witness from the Government Accountability Office (GAO) testified that the VA includes only a portion of the appointment-scheduling process in tracking wait times. Debra A. Draper, Director, Health Care, GAO, *Veterans Health Care: Opportunities Remain to improve Appointment Scheduling within VA and through Community Care*, Testimony before the U.S. House Committee on Veterans’ Affairs (2019), <https://www.gao.gov/assets/710/700574.pdf> and House Comm. On Veterans’ Affairs, Full Cmte. Hearing, *True Transparency? Assessing Wait Times Five Years After Phoenix* (2019), <https://veterans.house.gov/events/hearings/full-committee-hearing-true-transparency-assessing-wait-times-five-years-after-phoenix>

<sup>6</sup> *Supra* at 1, pg. BiB-10, 16.

<sup>7</sup> Gov’t Accountability Off., GAO-20-35, *Veterans Health Care: Services for Substance Use Disorders, and Efforts to Address Access Issues in Rural Areas*, (2019), at <https://www.gao.gov/assets/710/702940.pdf>.

<sup>8</sup> According to the VA, 56 percent of the rural veteran population is over age 65, 52 percent earn less than \$35,000 annually, and experience “a greater number of co-morbidities” compared to their urban counterparts. Dep’t of Veterans’ Affairs, *FY2020 Funding and FY2021 Advance Appropriations, Volume II Medical Programs and Information Technology Programs*, p. VHA-127 <https://www.va.gov/budget/docs/summary/fy2020VAbudgetVolumeIImedicalProgramsAndInformationTechnology.pdf>.

<sup>9</sup> Victoria L. Elliott, Cong. Research Serv., R45834 *Department of Veterans Affairs (VA): A Primer on Telehealth*, (2019), <https://fas.org/sgp/crs/misc/R45834.pdf>.

<sup>10</sup> Telehealth is distinguished from telemedicine as “it refers to a broader scope of remote healthcare services,” such as “remote non-clinical services,” as well as “provider training, administrative meetings, and continuing medical education, in addition to clinical services.” Off. of the National Coordinator, Health Information Technology, Office of the Secretary, Dep’t. of Health and

---

Human Services, *FAQ: What is telehealth? How is telehealth different from telemedicine?*, Oct. 17, 2019, <https://www.healthit.gov/faq/what-telehealth-how-telehealth-different-telemedicine>.

<sup>11</sup> National Public Radio, *Department of Veterans Affairs Thinks Telehealth Clinics May Help Vets in Rural Areas*, (2019), <https://www.npr.org/2019/11/25/782732908/department-of-veterans-affairs-thinks-telehealth-clinics-may-help-vets-in-rural->.

<sup>12</sup> Victoria L. Elliott, Cong. Research Serv., R45834 *Department of Veterans Affairs (VA): A Primer on Telehealth*, (2019), <https://fas.org/sgp/crs/misc/R45834.pdf>.

<sup>13</sup> Pub. L. No. 115-182.

<sup>14</sup> Dep't. of Veterans' Affairs, Veterans Health Administration, Off. of Rural Health, *Telehealth Fact Sheet*, March 2019, [https://www.ruralhealth.va.gov/docs/ORH\\_Telehealth\\_Fact\\_Sheet.pdf](https://www.ruralhealth.va.gov/docs/ORH_Telehealth_Fact_Sheet.pdf).

<sup>15</sup> Dep't. of Veterans' Affairs, Off. of Public and Intergovernmental Affairs, press release, *VA Expands Telehealth by Allowing Health Care Providers to Treat Patients Across State Lines*, May 11, 2018, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=4054>.

<sup>16</sup> Dep't. of Veterans' Affairs, Off. of Public and Intergovernmental Affairs, press release, *VA Reports Significant Increase in Veteran Use of Telehealth Services*, Nov. 22, 2019, <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5365>.

<sup>17</sup> *Id.*

<sup>18</sup> Federal Register, 38 CFR 17, *Authority of Health Care Providers to Practice Telehealth*, May 11, 2018, <https://www.federalregister.gov/documents/2018/05/11/2018-10114/authority-of-health-care-providers-to-practice-telehealth>.

<sup>19</sup> Rep. Buddy Carter, Press Release on Testimony before the House Veterans' Affairs Committee, September 11, 2019, <https://buddycarter.house.gov/news/documentsingle.aspx?DocumentID=6325>.

<sup>20</sup> Rep. Buddy Carter, Press Release, *Carter Introduces Bill to Improve and Increase Access to Telemedicine for Veterans*, Jun. 12, 2019, <https://buddycarter.house.gov/news/documentsingle.aspx?DocumentID=6122>.



## **LOWER PREMIUMS BY CODIFYING ASSOCIATION HEALTH PLANS**

On the heels of judicial action striking down a federal rule expanding access to association health plans (AHPs), Congress should codify AHPs as an effective mechanism to provide quality health insurance at a lower cost to consumers.

### **BACKGROUND**

AHPs have been around for decades<sup>1</sup> and generally refer to “a wide spectrum of arrangements that provide health coverage through different types of organizations, including but not limited to trade associations, professional societies, and chambers of commerce.”<sup>2</sup> Presently, there is no singular definition of AHPs used by all federal regulatory agencies.<sup>3</sup> AHPs permit individuals or employers to shop for coverage as a larger group in an effort to obtain more favorable coverage and pricing from insurers.

The Department of Labor (DOL) regulates AHPs as multiple employer welfare agreements (MEWA) that amount to two or more employers providing benefits to their employees. The majority of AHPs have historically provided individual or small group coverage.<sup>4</sup> In most cases, DOL has concluded that the association is not an employer for regulatory purposes.<sup>5</sup>

On June 18, 2018,<sup>6</sup> DOL increased access to AHPs by expanding the ability of small businesses and self-employed workers to associate by geography or industry and be treated as a single large employer.<sup>7</sup> Under the rule, “AHPs may not charge higher premiums or deny coverage as a result of pre-existing conditions, or cancel coverage because an employee becomes ill.”<sup>8</sup> AHPs, “like any other group health plan, cannot discriminate in eligibility, benefits, or premiums against an individual within a group of similarly situated individuals based on a health factor.”<sup>9</sup>

Following the rule, the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimated that nearly 5 million people would enroll in AHPs in 2022.<sup>10</sup> Additionally, the CBO report estimated that roughly 400,000 people, who would otherwise be uninsured, would receive AHP coverage over the 2019 to 2028 period.<sup>11</sup> Most importantly, “CBO and JCT estimate[d] that premiums for AHPs sold under the new rules will be, on average, roughly 30 percent lower than premiums for fully regulated small-group coverage.”<sup>12</sup>

In March 2019, a federal judge in the District of Columbia struck down the final rule after determining that the DOL’s interpretation of “employer” was unreasonable and exceeded the statutory authority delegated by Congress through the Employee Retirement Income Security Act (ERISA).<sup>13</sup> Following the Department of Justice’s appeal in April 2019, the DOL announced that it would not pursue enforcement actions against employers who relied in good faith on the AHP rule’s validity.<sup>14</sup>

### **Quick Take**

On June 18, 2018, DOL expanded access to AHPs by improving the ability of small businesses and self-employed workers to associate by geography or industry and be treated as a single large employer.

With the rule invalidated by a federal judge, Congress should enact legislation codifying AHPs.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution grants Congress the power to regulate interstate commerce.<sup>15</sup> Consumer choice—not government mandates—should determine the variety of products available in any marketplace.

## POLICY SOLUTIONS

Congress should amend ERISA<sup>16</sup> to provide smaller employers and self-employed individuals access to large-group coverage by permitting AHPs to function as “employers.” Legislation should include nondiscrimination provisions which prohibit an AHP from basing membership, eligibility for health benefits, and premiums on health factors.

Congress should also exempt AHPs from certain state insurance requirements when association members reside in different states. Enacting H.R. 2294, the Association Health Plans Act of 2019, would accomplish many of these objectives.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> U.S. Gov’t Accountability Off., HEHS-96-59R, *Employer Association Health Plans* (1995), <https://www.gao.gov/assets/90/85191.pdf>.

<sup>2</sup> Bernadette Fernandez, Cong. Research Serv., R45216, *Background Information on Health Coverage Options Addressed in Executive Order 13813* (Jun. 2018), <https://fas.org/sgp/crs/misc/R45216.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> See Centers for Medicare & Medicaid Services, *Application of Individual and Group Market Requirements Under Title XXVII of the Public Health Service Act when Insurance Coverage Is Sold to, or Through, Associations* 3 (September 2011), [https://www.cms.gov/CCIIO/Resources/Files/Downloads/association\\_coverage\\_9\\_1\\_2011.pdf](https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf).

<sup>5</sup> Fernandez, *supra*, note 2.

<sup>6</sup> 29 C.F.R. § 2510.3-5 (2018).

<sup>7</sup> U.S. Dep’t of Labor, *About Association Health Plans*, <https://www.dol.gov/general/topic/association-health-plans>, (last visited Jun. 17, 2019).

<sup>8</sup> *Id.*

<sup>9</sup> 29 C.F.R. § 2510.3-5 (2018).

<sup>10</sup> Congressional Budget Office, *How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans* (January 2019), [https://www.cbo.gov/system/files/2019-01/54915-New\\_Rules\\_for\\_AHPs\\_STPs.pdf](https://www.cbo.gov/system/files/2019-01/54915-New_Rules_for_AHPs_STPs.pdf)

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

<sup>13</sup> *California v. U.S. Dep’t of Labor*, 2018 D.C. Cir. 18-1747.

<sup>14</sup> *Id.*

<sup>15</sup> U.S. Const. art. I, § 8, cl. 3.

<sup>16</sup> Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, (1974).

**GUIDE TO THE ISSUES**

**PROVIDE A BETTER PRESCRIPTION  
THAN MEDICARE-FOR-ALL**

The current U.S. health care system is plagued by high costs, industry consolidation, and a poorly functioning marketplace. Democrats believe the prescription for these challenges is a form of single-payer system. Socialized medicine won't solve the challenges our health care system faces – it would nationalize the entire health care sector and wreck the economy.

**BACKGROUND**

U.S. health care spending accounts for approximately 18 percent of America's gross domestic product (GDP).<sup>1</sup> Government spending on health care makes up a substantial portion of that amount.

In 2018, Medicare accounted for 21 percent of health care spending at \$750 billion, and Medicaid carried a 16 percent share at \$597 billion.<sup>2</sup> Nationwide, "personal healthcare spending is currently projected to be \$3.859 trillion in 2022,"<sup>3</sup> while national health expenditures are estimated to reach \$4.562 trillion in 2022.<sup>4</sup> According to one estimate, average households spend more of their income on hospital visits (18.6 percent) than they do on federal taxes (13.9 percent).<sup>5</sup>

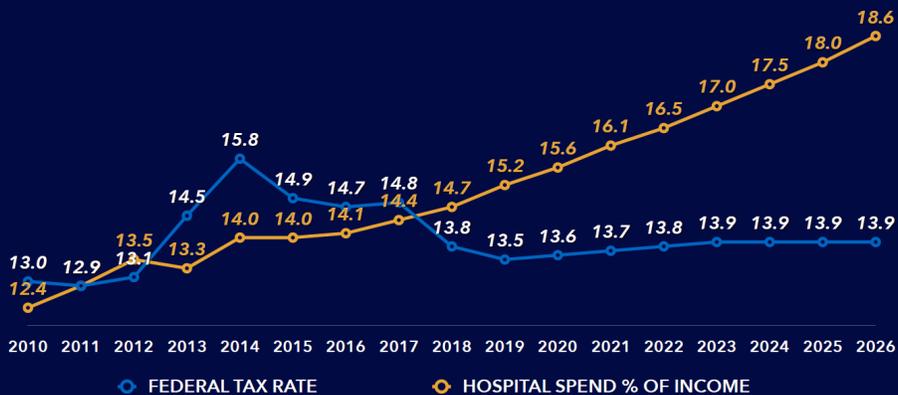
**Quick Take**

Medicare-for-All amounts to a federal takeover of American health care.

Democrats cannot answer how to fund their socialized medicine plans without wrecking the American economy. Congress should consider reforms that address the burdens plaguing our current system.

**AVERAGE FAMILIES PAY MORE TO HOSPITALS THAN TO THE IRS**

Median household federal tax rate vs. median household's share of U.S. hospital spending (%)



Source: Avik Roy, Foundation for Research on Equal Opportunity<sup>6</sup>

Democrats have introduced two major so-called “Medicare-for-All” proposals which have received national attention. The first is Sen. Bernie Sanders’s (I-VT) plan, S. 1804, which was introduced in March 2017. S. 1804 would impose “roughly \$11 trillion” in tax increases to fund roughly a third of Medicare-for-All.<sup>7</sup> According to Charles Blahous of the Mercatus Center, Sen. Sanders’s plan is conservatively estimated to cost \$32.6 trillion in additional federal spending over the first ten years of implementation with steep cuts to providers.<sup>8</sup> This would be higher than the total debt accrued by the Federal Government over the entire course of American history.

The second is Rep. Pramila Jayapal’s (D-WA) plan, H.R. 1384, which has received over 115 cosponsors in the 116<sup>th</sup> Congress. The House Rules Committee examined H.R. 1384 in a hearing on April 31, 2019.<sup>9</sup>

Although the details of Democrats’ Medicare-for-All plan vary significantly, they contain some consistent themes:

- **Everyone is on the Government Plan** - Both the Sanders and Jayapal plans intend to cover all Americans over varying time periods. If senior citizens like their current Medicare plans, they can’t keep them. Democratic Medicare-for-All plans phase out Medicare and Medicaid in their current forms. Working Americans who like their employer-offered health plans would likewise be stripped of their current plans and thrown onto the government-run system. Democrats would bar employers from offering health plans that compete with Medicare-for-All.
- **Government Controls Health Care Prices** - Any argument that claims Medicare-for-All isn’t socialized medicine is disingenuous. While the government may not initially provide health services, it would control the payments and the prices forcing the entire American health system to essentially work for the Federal Government.
- **Democrats Have No Idea How to Fund Medicare-for-All** - Repealing the Tax Cut and Jobs Act,<sup>10</sup> a common talking point for Democrats, would increase available revenues by less than \$1.5 trillion over ten years.<sup>11</sup> That leaves Democrats needing to find more than \$30 trillion to fund their proposals. Sen. Sanders offered a wish list of tax hikes that includes taxes on middle class families, taxes on businesses, and expanded taxes on investments.<sup>12</sup> Even if Sen. Sanders’s wish list was enacted into law, it only amounts to \$16.2 trillion.<sup>13</sup>
- **Decimation of American Health Care** - Democrats would not be able to raise enough taxes to pay for Medicare-for-All without wrecking the American economy. As a result, they will almost certainly argue for government control to impose steep provider payment cuts to doctors and hospitals, as well as the long-term care facilities they plan to cover. In short, they will transform our current system into a socialized medicine program like the United Kingdom’s National Health Service.

More importantly, international experience with socialized medicine suggests that Medicare-for-All will not function as sold to the public by Democrats.

A *Vox* analysis of Sen. Sanders’s plan noted, “Medicare, employer coverage, and these other countries [with public health plans] show that nearly every insurance scheme we’re familiar with covers a smaller set of benefits with more out-of-pocket spending on the part of citizens.”<sup>14</sup> Medicare-for-All doesn’t exist anywhere in the world because no government can make health care cost nothing for beneficiaries, maintain a thriving supply of private health care providers, and foot the massive bill at the same time.

The Fraser Institute reports that patients in Canada’s government-run health care system wait an average of 19.8 weeks from the time their general practitioner doctor refers them to a specialist until they receive treatment.<sup>15</sup>

- Canadians can expect long wait times for diagnostic technologies such as a CT scan (4.3 weeks), an MRI (10.6 weeks), or an ultrasound (3.9 weeks).
- The study also reported that between 1993 and 2009 increased wait times in Canada may be associated with more than 44,000 female deaths.

Additionally, hundreds are reportedly going blind in the UK each year due to wait times at the National Health Service.<sup>16</sup>

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution empowers Congress to “make all laws which shall be necessary and proper” to provide for the general welfare.<sup>17</sup> The government’s role in health care should be to support coverage for the sickest, poorest, and most vulnerable Americans while simultaneously pursuing policies which support a competitive private health care marketplace.

## **POLICY SOLUTIONS**

Medicare-for-All is not a viable option for any American who rejects the idea of socialized medicine. Congress can offer better solutions for Americans through some of the following options:

- **Establish a Reinsurance Model for the Sickest Americans** - Protecting Americans with preexisting conditions has bipartisan support. However, government-mandated coverage currently amounts to an unfunded mandate. Establishing a federal reinsurance model or risk-sharing plan may reduce health insurance premiums for remaining beneficiaries.
- **Provide Employees Flexibility with Health Insurance** - Allow employers to fund health care reimbursement accounts (HRAs) to pay for health care premiums as a normal business expense and permit employees to exclude such contributions from their income. This allows consumers the ability to shop for the health plan that best fits their needs and take it with them when they leave their current job.
- **Embrace Medicare Advantage** - Make Medicare Advantage the default coverage option for Medicare while preserving the option for seniors to choose the fee-for-service model.
- **Negotiate Drug Prices** - Permit the Federal Government to negotiate drug prices with pharmaceutical companies. Although the government shouldn’t set prices, it should be able to use its purchasing power to obtain lower prices for public program beneficiaries.
- **Combat Anti-Competitive Health Care Practices** - Enforcing existing antitrust laws to ensure that market consolidation doesn’t result in anti-competitive practices is crucial to maintaining a vibrant health care marketplace that benefits consumers.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> *NHE Fact Sheet*, Centers for Medicare and Medicaid Services (2018), <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet>.

<sup>2</sup> *Id.*

<sup>3</sup> Charles Blahous, *The Costs of a National Single-Payer Healthcare System* 4, Mercatus Working Paper, Mercatus Center at George Mason University (July 2018), [https://www.mercatus.org/system/files/blahous-costs-medicare-mercatus-working-paper-v1\\_1.pdf](https://www.mercatus.org/system/files/blahous-costs-medicare-mercatus-working-paper-v1_1.pdf).

<sup>4</sup> *Id.* “NHE differs from personal health spending in that NHE also includes expenditures for research, structures and equipment, and administrative costs.”

<sup>5</sup> Avik Roy, Presentation from Republican Policy Cmte. Member Meeting, The Foundation for Research on Equal Opportunity (April 31, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> *How Much will Medicare for All Cost?*, Committee for a Responsible Federal Budget (Feb. 27, 2019), <https://www.crfb.org/blogs/how-much-will-medicare-all-cost>.

<sup>8</sup> Blahous, *supra*, note 3. These conservative estimates are based on a review of Sen. Bernie Sanders’s M4A bill, S.1804, introduced in 2017. There is no comprehensive report or cost estimate on H.R. 1384, which was introduced on February 27, 2019.

<sup>9</sup> Medicare for All Act of 2019: Hearing on H.R. 1384 Before the H. Rules Comm., 116<sup>th</sup> Cong. (2019).

<sup>10</sup> H.R. 1, 115<sup>th</sup> Cong. (2018) (enacted).

<sup>11</sup> Cecilia Pastrone, Staff on the Joint Committee of Taxation, Congressional Budget Office Cost Estimate, Congressional Budget Office (Nov. 13, 2017), <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1.pdf>.

<sup>12</sup> Blahous, *supra*, note 3.

<sup>13</sup> *Options to Finance Medicare for All*, Bernie Sanders Senator for Vermont, <https://www.sanders.senate.gov/download/options-to-finance-medicare-for-all?inline=file>.

<sup>14</sup> Sarah Kliff, *Bernie Sanders’s Medicare-for-all plan, explained*, Vox (Apr. 10, 2019), <https://www.vox.com/2019/4/10/18304448/bernie-sanders-medicare-for-all>.

<sup>15</sup> Bacchus Barua, David Jaques, Antonia Collyer, *Waiting Your Turn: Wait Times for Health Care in Canada, 2018 Report*, Fraser Institute (Dec. 4, 2018), <https://www.fraserinstitute.org/studies/waiting-your-turn-wait-times-for-health-care-in-canada-2018>.

<sup>16</sup> Sally C. Pipes, *Why Does the Left Want Universal Health Care? Britain’s Is on Its Deathbed*, FORTUNE (Jul. 10, 2018), <https://fortune.com/2018/07/10/nhs-70-years-uk-britain-single-payer/>.

<sup>17</sup> U.S. Const. art. 1, § 8. These constitutional powers have provided the constitutional authority for programs such as Medicare and Medicaid.

## **REFORM FEDERAL PRESCRIPTION DRUG SPENDING**

As a major direct and indirect purchaser of prescription drugs, Congress must analyze the current federal drug purchasing system, ensure that the drug marketplace is competitive, and protect taxpayers.

### **BACKGROUND**

As of 2018, 90 percent of prescriptions filled in the United States are low-cost generics which account for roughly 22 percent of total drug spending.<sup>1</sup> Most increases in prescription drug spending are driven by brand-name drugs, biologics, and specialty drugs.<sup>2</sup>

The Federal Government purchases prescription drugs through a wide range of programs. In 2017, the Federal Government spent about \$133 billion on prescription drugs through Medicare, Medicaid, Children's Health Insurance Program (CHIP), the Department of Defense and the Department of Veterans Affairs (VA) alone. That amount represents almost 40 percent of the \$333 billion in total national expenditures on prescription drugs.<sup>3</sup>

From 2007 to 2017, federal prescription drug spending across the aforementioned federal programs increased 105 percent, but spending growth wasn't spread equally across the programs.<sup>4</sup> For example, Medicare drug spending increased 120 percent from 2007 to 2017, and the federal portion of Medicaid drug expenditures increased 101 percent.<sup>5</sup> Over the same period, VA prescription drug spending increased by only 35 percent.<sup>6</sup>

Many variables contribute to the discrepancy in prescription drug spending across different federal programs, but, ultimately, the Federal Government pays different prices for many of the same prescription drugs depending on the federal program:

- **Medicare Part D** is a voluntary drug benefit offered through private health care plans that contract with the Department of Health and Human Services (HHS). The Part D program relies on market competition to limit spending. Plan sponsors, which compete for enrollees, negotiate rebates, discounts, and other price concessions with manufacturers. The Affordable Care Act (ACA) amended Part D to require additional price discounts from manufacturers.
- **Medicare Part B** covers, among other services, injectable or intravenous drugs administered as part of a service in a doctor's office or hospital outpatient department. Part B also covers specific drugs, such as immunosuppressant products, vaccines, transplant drugs, and oral end stage renal disease medications. Under Part B, physicians who purchase prescription drugs for administration are reimbursed by Medicare for the average sales price of a drug, plus an additional 6 percent.

### **Quick Take**

The Federal Government spends billions of taxpayer dollars on prescription drugs across a patchwork system of federal programs.

Congress must create transparency for federal drug purchasing programs to reduce drug costs imposed on taxpayers.

- **Medicaid** prescription drug coverage is an optional benefit covered by all states. Manufacturers that choose to sell their drugs to state Medicaid agencies must enter into a national rebate agreement with the HHS Secretary and provide information on their lowest or “best” drug prices.<sup>7</sup> Manufacturer rebates vary depending on the specific product. States may limit formularies and require use of generic drugs when possible. Drug manufacturers that participate in Medicaid must sell their products at a discounted price to health providers covered by the 340B program.
- **The Veterans Health Administration (VHA)** reduces variability in access to pharmaceuticals by using a national formulary process. The VA uses multiple contracting mechanisms to acquire pharmaceutical supplies including the federal supply schedule (FSS), performance-based incentive agreements, or blanket purchase agreements (BPAs), temporary price reductions, pricing under the Veterans Health Care Act of 1992,<sup>8</sup> and national standardization contracts. On a drug-by-drug basis, the VHA selects the mechanism that offers the best value at the lowest price.<sup>9</sup>

Medicare prescription drug purchasing is notably distinct in that the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), which created Medicare Part D, contains a “noninterference provision.”<sup>10</sup> This provision prohibits the HHS Secretary from intervening in negotiations between Part D plan sponsors, drug manufacturers, and pharmacies or from requiring a specific Part D formulary.<sup>11</sup> Federal law also requires Medicare Part D plans to purchase six categories of drugs regardless of price or value.<sup>12</sup>

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution authorizes Congress to tax and spend in a manner that promotes the general welfare of the United States.<sup>13</sup> Congress must protect a competitive drug marketplace and ensure that federal programs secure the best prices possible with federal purchasing power.

## **POLICY SOLUTIONS**

All prescriptions are not created equally. Some have been around for decades, are effective treatments, and are quite affordable in generic form. Others represent cutting-edge biotechnology, treat relatively small populations, and are exceptionally expensive branded drugs and biologics. Congress may consider the following options to address drug prices:

- Require cost transparency for prescription drugs and biologics purchased by the Federal Government. Because of various rebates and discounts, determining the actual cost of a given unit of a specific therapy often proves difficult. The Federal Government should standardize this formula for federal purchases and provide a price-per-unit cost under each federal program that purchases prescription drugs.
- Allow reimportation of drugs that meet FDA standards. Significant price differences for the same drugs and biologics sold inside and outside of the United States are well documented. Allowing the safe reimportation of drugs purchased from foreign countries should result in cost savings for consumers. Currently, four states enacted laws to promote federal importation of prescription drugs in 2019.<sup>14</sup>
- Permit the HHS Secretary to negotiate drug prices with drug manufacturers. In May 2019, the Congressional Budget Office (CBO) released a letter to Chairman Grassley asking for an update to a 2007 letter on Medicare Part D price negotiations. CBO’s 2019 letter upheld the 2007 findings which suggested that cost savings would not occur unless the government possessed an additional “stick” to

leverage drug companies in price negotiations.<sup>15</sup> Enabling negotiations provides Congress a reference point for further action.

- Address practices that unnecessarily delay generic alternatives coming to market. Whether it's limiting frivolous petitions against generic drug approvals, ensuring generic manufacturers' access to drug samples, or curbing reverse-payment settlements which delay generics coming to market, Congress has many options to make lower-cost generic drugs and biologics available as soon as patents expire.<sup>16</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Association for Affordable Medicine, *The Case for Competition: 2019 Generic Drug & Biosimilars Access & Savings in the U.S.* Report 4 (2019), <https://accessiblemeds.org/sites/default/files/2019-09/AAM-2019-Generic-Biosimilars-Access-and-Savings-US-Report-WEB.pdf>.

<sup>2</sup> Suzanne M. Kirchhoff, Judith A. Johnson, and Susan Thaul, Cong. Research Serv., R44832, *Frequently Asked Questions About Prescription Drug Pricing and Policy* 9 (2018), <https://fas.org/sgp/crs/misc/R44832.pdf>.

<sup>3</sup> CMS, "National Health Expenditure Projections 2018-2027," at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/Proj2018Tables.zip>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* Notably, out-of-pocket prescription drug spending decreased 10% from 2007-2017 while private health insurance spending increased 31%.

<sup>7</sup> Rachel Dolan and Marina Tran, *Pricing and Payment for Medicaid Prescription Drugs*, Kaiser Family Foundation, Jan. 23, 2020, <https://www.kff.org/medicaid/issue-brief/pricing-and-payment-for-medicaid-prescription-drugs/>.

<sup>8</sup> Pub. L. No. 102-585

<sup>9</sup> *See*, Kirchhoff, *supra*, note 2.

<sup>10</sup> Pub. L. No. 108-173

<sup>11</sup> §1860D-11(i) of the Social Security Act states, "In order to promote competition under this part and in carrying out this part, the Secretary (1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and (2) may not require a particular formulary or institute a price structure for the reimbursement of covered Part D drugs."

<sup>12</sup> The categories are antidepressants, antipsychotics, anticonvulsants, immunosuppressants for treatment of transplant rejection, antiretroviral drugs (such as those used to treat HIV), and anti-cancer drugs.

<sup>13</sup> U.S. Const. art. 1, § 8.

<sup>14</sup> Steven Findlay, *States Pass Record Number of Laws To Reel In Drug Prices*, Kaiser Health News, Sept. 9, 2019, <https://khn.org/news/states-pass-record-number-of-laws-to-reel-in-drug-prices/>.

<sup>15</sup> Letter from Cong. Budget Office Director Keith Hall to Sen. Chuck Grassley, *RE: Negotiation Over Drug Prices in Medicare* (May 17, 2019), <https://www.cbo.gov/publication/55270>.

<sup>16</sup> *See generally*, Aaron S. Kesselheim, *Strategies That Delay Market Entry of Generic Drugs*, The Commonwealth Fund, Sept. 18, 2017, <https://www.commonwealthfund.org/publications/journal-article/2017/sep/strategies-delay-market-entry-generic-drugs>.



## **REDUCE PRESCRIPTION DRUG COSTS FOR AMERICANS**

According to polling from the Kaiser Family Foundation, more than three quarters of Americans say the cost of prescription drugs is unreasonable.<sup>1</sup> Americans also pay higher prices for drugs than patients around the world.<sup>2</sup> Congress must ensure that the drug marketplace is competitive in a manner that rewards innovation and benefits consumers.

### **BACKGROUND**

As of 2018, 90 percent of prescriptions filled in the United States are low-cost generics which account for roughly 22 percent of total drug spending.<sup>3</sup> Most increases in prescription drug spending are driven by brand-name drugs, biologics, and specialty drugs.<sup>4</sup> One of the greatest challenges facing drug innovators is recovering the cost of developing a specific drug or biologic and generating a profit while they have a temporary government-sanctioned monopoly.

As such, brand-name market focus tends to be on drugs that will reach a relatively large number of patients with chronic conditions which require ongoing prescriptions. For example, Humira,<sup>5</sup> a biologic which treats conditions such as rheumatoid arthritis, Crohn's disease, and psoriasis, accounted for \$18.3 billion in non-discounted prescription drug spending in 2018 alone.<sup>6</sup> Even a therapy as well-known as Humira treats a relatively small portion of the U.S. population (4.2 million prescriptions in 2016) when compared to a drug like Metformin HCL which treats high blood sugar (81.3 million prescriptions in 2016).<sup>7</sup>

On the other end of the volume spectrum are so-called "orphan" drugs which treat illnesses in a relatively small population, usually less than 200,000 individuals. Federal law provides several incentives for manufacturers of orphan drugs through the Orphan Drug Act of 1983 and subsequent amendments.<sup>8</sup> Even so, the median cost of orphan drugs in 2017 was "more than \$46,800 per year."<sup>9</sup> On a more positive note, "the median annual cost for the top ten rare disease therapies used by the greatest number of patients was much lower at \$1,216."<sup>10</sup> These cost figures effectively demonstrate the challenge of balancing the marketplace incentive for innovation with the need for competition that benefits consumers.

Once a drug manufacturer's patent or exclusivity period expires, generic manufacturers produce the same or similar medication at a radically reduced cost. As such drug innovators have every incentive to protect their monopoly pricing power for as long as possible. This has led to the so-called creation of patent thickets where manufacturers seek to patent process numerous technical or process aspects of drug or biologic production that effectively extend patent protection long after a patent expires on the drug itself. For example, Humira's primary patent expired in 2016, but related patents extend to "2034—providing more than double the protection span a drug such as Humira might normally expect."<sup>11</sup> Delaying the opportunity for generics directly leads to higher drug costs.

### **Quick Take**

Policymakers must balance the marketplace incentive for innovation with the need for competition that benefits consumers.

Congress must create patent certainty, ensure the ability of generic manufacturers to compete when patents and exclusivity periods expire, and allow safe reimportation of drugs.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution authorizes Congress to promote the general welfare of the United States.<sup>12</sup> Congress must protect a competitive drug marketplace which will reduce costs for consumers.

## POLICY SOLUTIONS

All prescriptions are not created equally. Some have been around for decades, are effective treatments, and are affordable in generic form. Others represent cutting-edge biotechnology, treat relatively small populations, and are exceptionally expensive branded drugs and biologics. Congress has several tools at its disposal to address drug prices:

- Allow reimportation of drugs that meet FDA standards. Significant price differences for the same drugs and biologics sold inside and outside of the United States are well-established.<sup>13</sup> Allowing for the safe reimportation of drugs purchased from foreign countries would likely result in cost savings for consumers. Currently, four states enacted laws to promote federal importation of prescription drugs in 2019.<sup>14</sup>
- Address practices that unnecessarily delay generic alternatives coming to market. Congress has many options to make lower-cost generic drugs and biologics available as soon as patents expire.<sup>15</sup> Options include streamlining unnecessary regulatory requirements, limiting frivolous petitions against generic drug approvals, ensuring generic manufacturers' access to drug samples, or curbing reverse-payment settlements which delay generics coming to market.
- Reduce the so-called "patent thicket" in the area of pharmaceuticals by considering a "one-and-done" approach to patents and market exclusivities in coordination with the Food and Drug Administration's approval process.<sup>16</sup> Doing so acknowledges the unique intellectual property issues attendant to pharmaceuticals.

---

<sup>1</sup> Kaiser Family Foundation, *Public Opinion on Prescription Drugs and Their Prices* (Nov. 20, 2019), <https://www.kff.org/slideshow/public-opinion-on-prescription-drugs-and-their-prices/>.

<sup>2</sup> Assistant Secretary for Planning and Evaluation, U.S. Dept. of Health and Human Services, *Comparison of U.S. and International Prices for Top Medicare Part B Drugs by Total Expenditures* (Oct. 25, 2018), <https://aspe.hhs.gov/system/files/pdf/259996/ComparisonUSInternationalPricesTopSpendingPartBDrugs.pdf>

<sup>3</sup> Association for Affordable Medicine, *The Case for Competition: 2019 Generic Drug & Biosimilars Access & Savings in the U.S. Report 4* (2019), <https://accessiblemeds.org/sites/default/files/2019-09/AAM-2019-Generic-Biosimilars-Access-and-Savings-US-Report-WEB.pdf>.

<sup>4</sup> Suzanne M. Kirchoff, Judith A. Johnson, and Susan Thaul, Cong. Research Serv., R44832, *Frequently Asked Questions About Prescription Drug Pricing and Policy* 9 (2018), <https://fas.org/sgp/crs/misc/R44832.pdf>.

<sup>5</sup> Adalimumab is the generic name.

<sup>6</sup> Murray Aitken and Michael Kleinrock, *Medicine Use and Spending in the U.S.: A Review of 2018 and Outlook to 2023* (2019), IQVIA Institute for Human Data Science, [https://www.iqvia.com/-/media/iqvia/pdfs/institute-reports/medicine-use-and-spending-in-the-us---a-review-of-2018-outlook-to-2023.pdf?\\_=1573664654948](https://www.iqvia.com/-/media/iqvia/pdfs/institute-reports/medicine-use-and-spending-in-the-us---a-review-of-2018-outlook-to-2023.pdf?_=1573664654948).

<sup>7</sup> ClinCalc.com, *The Top 300 of 2016* (2016), <https://clincalc.com/DrugStats/Top300Drugs.aspx>.

<sup>8</sup> PL 97-414 (1983) and 21 CFR 360c.

<sup>9</sup> Murray Aitken and Michael Kleinrock, *Orphan Drugs in the United States: Growth Trends in Rare Disease Treatments* (2018), IQVIA Institute for Human Data Science, <https://www.iqvia.com/insights/the-iqvia-institute/reports/orphan-drugs-in-the-united-states-growth-trends-in-rare-disease-treatments>.

---

<sup>10</sup> *Id.*

<sup>11</sup> Cynthia Koons, *This Shield of Patents Protects the World's Best-Selling Drug*, Bloomberg Business, Sept. 7, 2017, <https://www.bloomberg.com/news/articles/2017-09-07/this-shield-of-patents-protects-the-world-s-best-selling-drug>.

<sup>12</sup> U.S. Const. art. 1, § 8.

<sup>13</sup> Assistant Secretary for Planning and Evaluation, *supra*, note 2.

<sup>14</sup> Steven Findlay, *States Pass Record Number of Laws to Reel In Drug Prices*, Kaiser Health News, Sept. 9, 2019, <https://khn.org/news/states-pass-record-number-of-laws-to-reel-in-drug-prices/>.

<sup>15</sup> *See generally*, Aaron S. Kesselheim, *Strategies That Delay Market Entry of Generic Drugs*, The Commonwealth Fund, Sept. 18, 2017, <https://www.commonwealthfund.org/publications/journal-article/2017/sep/strategies-delay-market-entry-generic-drugs>.

<sup>16</sup> <https://www.statnews.com/2019/02/11/drug-patent-protection-one-done/>



## **REINSURE THE PREEXISTING CONDITION UNFUNDED MANDATE**

A small portion of the population accounts for a disproportionately high percentage of health care spending. When included in group insurance coverage, these individuals drive up costs for all enrollees. The Federal Government should support reinsurance for the costliest utilizers of health care to reduce premiums for the remaining population.

### **BACKGROUND**

The Affordable Care Act (ACA) requires private health insurers to provide coverage to individuals regardless of health status, medical history, and preexisting conditions.<sup>1</sup> Under the ACA, insurers can adjust premiums based solely on certain ACA-specified factors (i.e., individual or family enrollment, geographic rating area, tobacco use, and age).

Democrats and Republicans have supported such policies despite polarizing disagreements over the ACA. Regardless of the future status of the ACA law, the Federal Government will likely continue to mandate coverage for preexisting conditions in a manner that fails to account for their comparably high health care spending.

According to the Peterson-Kaiser Health System Tracker, “5% of the population accounted for half of all health spending [in 2016].”<sup>2</sup> The dollar figures attached to the highest health care spenders are significant. “The 5% of people who spend the most on health care spend an average of around \$50,000 annually; people in the top 1% have average spending of over \$109,750.”<sup>3</sup>

Under the terms of the ACA, the Federal Government imposes a mandate on private companies to provide benefits to a population which might otherwise be denied coverage or exhaust lifetime policy limits. Because health insurers may not charge increased premiums for various health conditions under the law,<sup>4</sup> those additional costs are spread across their respective enrollees in the form of higher premiums. In short, the preexisting condition coverage requirement and ban on lifetime policy limits are essentially unfunded government mandates.

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution empowers Congress to “make all laws which shall be necessary and proper” to carry out its mandate to provide for the general welfare.<sup>5</sup>

Government’s role in health care should be to support coverage for the sickest, poorest, and most vulnerable Americans while simultaneously pursuing policies which support a competitive private health care marketplace. Federal mandates should be adequately funded or eliminated altogether.

### **Quick Take**

In 2016, five percent of the population accounted for half of all health spending.

The ACA’s preexisting condition coverage requirement and ban on lifetime policy limits are unfunded government mandates. Congress should offer some form of reinsurance for the costliest health care users or repeal the mandates.

## POLICY SOLUTIONS

One option to end the ACA's unfunded coverage mandates is to simply repeal the mandates outright. Alternatively, Congress should reinsure against risk of loss from the costliest enrollees to reduce insurance premiums for most Americans. If the Federal Government insists on mandating coverage, it should share a corresponding portion of increased premium costs due to preexisting conditions.

The Fair Care Act of 2019 contained a program known as the Invisible High Risk Pool Reinsurance (IHRPR) Program.<sup>6</sup> An actuarial study of the IHRPR program found that a reinsurance program covering risk beyond \$10,000 of benefits per year would reduce “average premiums in the new risk pool in the individual marketplace” between 12 to 31 percent.<sup>7</sup>

The Foundation for Research on Equal Opportunity suggests the funds could be administered through: federal reinsurance program, block grants to states, or a combination of each “under which states could have the option to take the funds in a block grant form, or leave the reinsurance program to the federal government.”<sup>8</sup> Congress should consider basing the reinsurance premium amount and risk retention for insurers on the relative year-over-year health care spending by the covered high-risk individual. Doing so would ensure that health insurers retain an incentive to create downward pressure on health care spending.

To ensure the reinsurance program doesn't exceed Medicare payment rates, Congress must ensure that the negotiated reinsurance policy payment rate for items and services is equivalent to the Medicare reimbursement rate under Title XVIII of the Social Security Act. If the underlying health care policy covers items and services not covered by the Medicare program, the Secretary of the Department of Health and Human Services should determine a payment schedule.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup>Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

<sup>2</sup>Bradley Sawyer and Gary Claxton, *How Do Health Expenditures Vary Across the Population?* (2019), Kaiser Family Foundation, [https://www.healthsystemtracker.org/chart-collection/health-expenditures-vary-across-population/#item-discussion-of-health-spending-often-focus-on-averages-but-a-small-share-of-the-population-incurs-most-of-the-cost\\_2016](https://www.healthsystemtracker.org/chart-collection/health-expenditures-vary-across-population/#item-discussion-of-health-spending-often-focus-on-averages-but-a-small-share-of-the-population-incurs-most-of-the-cost_2016).

<sup>3</sup>*Id.*

<sup>4</sup> 45 C.F.R. § 144, 146, and 147 (2010).

<sup>5</sup> U.S. Const. art. 1, § 8. These powers have provided the constitutional authority for programs such as Medicare and Medicaid.

<sup>6</sup> H.R. 1332, 116th Cong. (2019).

<sup>7</sup> *The Federal Invisible High Risk Pool*, Milliman, Inc. (2017), <https://thefga.org/wp-content/uploads/2017/04/The-Federal-Invisible-High-Risk-Pool.pdf>.

<sup>8</sup> Avik Roy, *Bringing Private Health Insurance Into the 21st Century*, <https://freopp.org/bringing-private-health-insurance-into-the-21st-century-d1df138f1f0c> (last accessed February 10, 2019).

## **SCRUTINIZE ANTI-COMPETITIVE HEALTH CARE CONTRACTS**

Market consolidation among health services providers and within the insurance industry should be examined to ensure consumers are not harmed by anti-competitive contracting practices.

### **BACKGROUND**

The health care sector represents about one-fifth of America's economy.<sup>1</sup> Over the past twenty years, the health care marketplace has experienced significant consolidation among hospitals, providers, and insurance companies.<sup>2</sup> Moreover, restrictive clauses in contracts containing “anti-competitive elements” have emerged as a commonplace practice across the industry.<sup>3</sup> These restrictive contracts are designed to retain the market advantage for larger firms at the expense of competitors and consumers.

Rural communities are particularly adversely impacted by this monopolization due to limited alternatives and access to providers.<sup>4</sup> In 2017, the National Rural Health Association estimated that 673 rural facilities – over one-third of rural hospitals – were at risk of closure.<sup>5</sup> Additionally, the two largest insurers reportedly claim over 70 percent of the health care market “in one-half of all local insurance markets.”<sup>6</sup>

A 2017 analysis by Carnegie Mellon University professor Martin Gaynor addressed recent antitrust cases that highlight the anti-competitive practices in the health care marketplace.<sup>7</sup> In one example from 2016, the Department of Justice (DOJ) and the State of North Carolina filed a civil antitrust lawsuit against a large hospital system in North Carolina now known as Atrium Health.

The complaint alleged that the health care system contractually prohibited insurers from steering patients to lower-cost providers or equipping patients with certain price and quality information in an effort to undermine competition.<sup>8</sup> These contractual provisions known as “anti-steering” and “gag” clauses respectively may significantly undermine price competition in health care, especially in situations where a health provider has a dominant market position.<sup>9,10</sup>

Ultimately, Atrium Health settled with the DOJ and agreed to nullify certain anti-competitive steering provisions in its contracts.<sup>11</sup>

Anti-competitive contracting is not limited to health care providers. Market-dominating insurers may also extract contractual concessions that potentially harm competition.

In 2010, the DOJ and the State of Michigan filed an antitrust suit against Blue Cross Blue Shield (BCBS) of Michigan which alleged the insurer's use of “most favored nation” clauses illegally inhibited hospitals from negotiating contracts with BCBS's competitors.<sup>12</sup> A “most favored nation” provision generally requires that

### **Quick Take**

Restrictive clauses in contracts containing “anti-competitive elements” have emerged as a commonplace practice across the health care industry.

Congress should empower the FTC to enforce existing antitrust laws in the health care space.

a provider not give an equal or more favorable price for services to any other plan. The DOJ claimed that the contractual provisions were “likely raising prices for health insurance in Michigan.”<sup>13</sup>

The State of Michigan enacted laws banning “the use of most favored nation clauses by insurers, health maintenance organizations, and nonprofit health care corporations in contracts with providers.”<sup>14</sup> As a result, the DOJ agreed to dismiss the case without prejudice.<sup>15</sup>

Presently, federal law limits the Federal Trade Commission’s (FTC) authority over the insurance industry<sup>16,17</sup> and any antitrust violations other than mergers by non-profit firms.<sup>18,19</sup> As a result, the Federal Government’s top antitrust officials do not have jurisdiction over important competitive aspects of American health care.

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution grants Congress the power to regulate interstate commerce.<sup>20</sup> Government should promote competition to benefit consumers. Market participants should be treated equally with respect to government oversight.

## **POLICY SOLUTIONS**

Authorizing the FTC to conduct oversight regarding these matters has bipartisan support. For example, the Brookings Institution and the American Enterprise Institute have noted, “Empowering the FTC to study the insurance industry, enforce antitrust laws in the insurance industry and enforce antitrust laws with respect to nonprofit health care organizations could enable it to work against anticompetitive practices.”<sup>21</sup>

Congress should empower the FTC to enforce existing antitrust laws in the health care sector including oversight of actions taken by non-profit health care companies.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

<sup>1</sup> Will Kenton, *Health care Sector*, Investopedia (July 7, 2019), [https://www.investopedia.com/terms/h/health\\_care\\_sector.asp](https://www.investopedia.com/terms/h/health_care_sector.asp).

<sup>2</sup> According to the American Hospital Association, for example, “over 1,600 hospital mergers have occurred from 1998 to 2017.”

<sup>3</sup> Martin Gaynor, *Diagnosing the Problem: Exploring the Effects of Consolidation and Anticompetitive Conduct in Health Care Markets*, Statement before the Committee on the Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law U.S. House of Representatives, (Mar. 7, 2019), <https://docs.house.gov/meetings/JU/JU05/20190307/109024/HHRG-116-JU05-Bio-GaynorM-20190307.pdf>.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *NRHA endorses reintroduction of Save Rural Hospitals Act to new Congress*, National Rural Health Association, Government Affairs Office (Jun. 20, 2017), [https://www.ruralhealthweb.org/NRHA/media/Emerge\\_NRHA/Press%20releases/NRHA-Release-2017-Save-Rural-Hospitals-Act.pdf](https://www.ruralhealthweb.org/NRHA/media/Emerge_NRHA/Press%20releases/NRHA-Release-2017-Save-Rural-Hospitals-Act.pdf).

<sup>6</sup> Gaynor, *supra* note 3, at 2.

<sup>7</sup> Martin Gaynor, Farzad Mostashari, Paul B. Ginsberg, *Making Health Care Markets Work: Competition Policy for Health Care*, Brookings Institution (Apr. 2017), <https://www.brookings.edu/wp-content/uploads/2017/04/gaynor-et-al-final-report-v11.pdf>.

<sup>8</sup> *United States of America and North Carolina v. The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Health care System*, Vol. 84, FR 14675 (4<sup>th</sup> Cir. 2018), <https://www.justice.gov/atr/case-document/file/1117111/download>.

<sup>9</sup> Gaynor, Mostashari, Ginsberg, *supra* note 7.

<sup>10</sup> Martin Gaynor testified that there is presently no systematic evidence or analysis on the extent, effect, or impact of restrictive “anti-steering” and “gag” clauses being employed in these contracts or on market competition, due in part to a lack of federal authority to conduct investigations. *See* Gaynor, *supra* note 3, pg. 17.

<sup>11</sup> *United States of America and The State of North Carolina v. The Charlotte-Mecklenburg Hospital Authority d/b/a Carolinas Health care System*, Vol. 84, FR 14675 (4<sup>th</sup> Cir. 2018), <https://www.justice.gov/atr/case-document/file/1157461/download>.

---

<sup>12</sup> United States of America and the State of Michigan v. Blue Cross Blue Shield of Michigan, Case 2:10-cv-14155-DPH -MKM (Oct. 18, 2010), <https://www.justice.gov/atr/case-document/complaint-43>.

<sup>13</sup> *Id.*

<sup>14</sup> 2013 P.A. 5 and 2013 P.A. 6.

<sup>15</sup> Civil Action No.: 210-CV-14155 (E.D. Mich. Oct. 11, 2012), <https://www.justice.gov/atr/case-document/file/489421/download>.

<sup>16</sup> Federal Trade Commission Act, 15 U.S.C. §§ 71-77 (1916).

<sup>17</sup> McCarran-Ferguson Act, 15 U.S.C. § 6 1011-1015 (1945).

<sup>18</sup> Federal Trade Commission Act, 15 U.S.C. §§ 4 (1947).

<sup>19</sup> Gaynor, Motashari, Ginsberg, *supra* note 7.

<sup>20</sup> U.S. Const. art. I, § 8, cl. 3.

<sup>21</sup> Henry Aaron, Joseph Antos, Loren Adler, James Capretta, Matthew Fiedler, Paul Ginsburg, Benedic Ippolito, Alice Rivlin, *Attachment: Recommendations to Reduce Health Care Costs* (2019), Brookings Institute, American Enterprise Institute, [https://www.brookings.edu/wp-content/uploads/2019/03/AEI\\_Brookings\\_Attachment\\_Cost\\_Reducing\\_Health\\_Policies\\_Update.pdf](https://www.brookings.edu/wp-content/uploads/2019/03/AEI_Brookings_Attachment_Cost_Reducing_Health_Policies_Update.pdf).



## **ADDRESS CLIMATE CHANGE WITHOUT CARBON PRICING**

Imposing carbon pricing in addition to the Environmental Protection Agency’s (EPA) current regulatory scheme would prove economically disastrous for the United States. Incentives to develop innovative technologies and policies which adapt to environmental realities are superior mechanisms to address climate change.

### **BACKGROUND**

Advocates of federal carbon emission restraints believe them to be necessary, above and beyond current U.S. policies, to mitigate the negative effects of climate change.

Carbon pricing is an effort to make fossil fuel use more costly by pricing an externality (i.e., carbon emissions)<sup>1</sup> for the purpose of discouraging its production. Pollution pricing’s main advantage over traditional emissions regulation is the ability of industry to exercise greater control over the means to avoid the financial penalties associated with emissions. Policies that place a price on carbon often take the form of cap-and-trade schemes, taxes, or other mandatory punitive standards.

U.S. emissions policies have produced significant progress in addressing climate changes. Current U.S. policies have led to a reduction in energy-related carbon emissions of “almost 1 [gigaton (Gt)] from their peak in the year 2000, the largest absolute decline by any country over that period.”<sup>2</sup> Since 2005, U.S. “national greenhouse gas emissions have fallen by 11 percent, and power sector emissions have fallen by 27 percent.”<sup>3</sup>

Americans should be encouraged to continue the trend of emissions reduction, instead of being financially penalized. Democrats hope to layer carbon pricing over existing regulations to effectively control energy generation. In fact, many Democrats aren’t bashful about their actual intentions for the energy sector. In an open letter to former Sen. Robert Stafford (R-VT), current Democratic presidential candidate Bernie Sanders advocated for the nationalization of the entire energy industry. “The oil industry, and the entire energy industry, should be owned by the public,” Sanders wrote.<sup>4</sup>

If proponents of carbon pricing—or any pollution pricing—truly believe this approach to be a superior method of pollution control, proponents should offer it as a replacement of the EPA’s current regulatory regime rather than a heavy-handed addition to it. Democrats are unwilling to do so.

### **Carbon Pricing Harms Consumers**

For the last century, roughly 80 percent of American energy has come from traditional fossil fuel sources such as coal, oil, and natural gas.<sup>5</sup> Any industry using fossil fuel energy would find their production costs increasing proportionally to the carbon price imposed. Those costs are directly passed on to consumers.

### **Quick Take**

The economic consequences of imposing a price on carbon are both substantial and regressive—impacting lower-income Americans the most.

Congress should address climate change by considering a wide range of policies that encourage the United States to adapt to such changes and protect America’s infrastructure.

Politically savvy carbon pricing proposals offer tax cuts, dividend payments, or some other form of compensation to offset energy price increases.

Unfortunately, the Americans most impacted are the least able to afford the change. A 2013 Congressional Budget Office carbon tax study found, “The higher prices resulting from a carbon tax would tend to be regressive—that is, they would impose a larger burden (relative to income) on low-income households than on high-income households.”<sup>6</sup>

### **Lack of Support for Carbon Pricing**

As of April 2019, only 30 countries and the European Union have implemented carbon restrictions accounting for less than ten percent of annual global greenhouse gas (GHG) emissions.<sup>7</sup> Carbon pricing schemes have been defeated both nationally and worldwide:

- **United States** - In 2009, Democrats with majorities in the House and Senate and a Democratic president failed to enact the American Clean Energy and Security Act,<sup>8</sup> which would have imposed a cap-and-trade scheme in the United States. The measure narrowly passed the House but failed in the Senate.
- **Washington State** - Ballot initiative I-1631 would have imposed a \$15-per-ton carbon emissions fee used to fund various environmental programs and projects. The measure failed with 56.56 percent of voters opposed. In 2016, I-732, a carbon tax that would reduce the state sales tax, was similarly unsuccessful.
- **France** - As the "yellow vest" protests railed against a fossil fuel tax, President Emmanuel Macron suspended the tax increase originally set to take place in 2019.
- **Australia** - Australia, one of the world’s top coal exporters, introduced a carbon pricing scheme in 2012 which reduced income taxes and slightly increased pensions and welfare payments to offset higher energy prices. The Australian government repealed the law in 2014.<sup>9</sup>
- **Alberta, Canada** - Alberta repealed its provincial carbon tax in June 2019 even in the face of threats from the national government to impose a backstop carbon tax.<sup>10</sup>

Even in countries which place a price on carbon, the price imposed on carbon emissions is insufficient to have a material impact on climate change. According to a 2017 World Bank report:

[H]alf of current emissions covered by carbon pricing initiatives are priced at less than \$10 per ton CO<sub>2</sub>e. This is far short of the level needed to drive transformational change: estimated at \$40-80 per ton by 2020 and \$50-100 per ton by 2030 according to the High-Level Commission on Carbon Prices, co-chaired by Joseph Stiglitz and Lord Nicholas Stern and supported by the World Bank.<sup>11</sup>

The economic consequences of imposing an “adequate” price on carbon are political non-starters in even the most liberal states in the U.S. For example, California’s policies aggressively set “a floor of approximately \$26 per metric ton in 2030,”<sup>12</sup> well below the mark suggested by the High-Level Commission on Carbon Prices.

More importantly, many carbon pricing regimes expect Americans to shoulder the economic burden of potential harm around the entire globe. The Trump administration recalculated Obama administration climate

models by restricting them to damages occurring within the borders of the United States. That one change reduced the social cost of carbon to \$7 per ton from as high as \$50 under the Obama regime.<sup>13</sup>

Many hardline Democrats find carbon pricing altogether insufficient — supporting instead more onerous government mandates and direct spending on green energy programs. This is precisely the perspective that led to the defeat of the carbon regulation efforts in a Democrat-controlled Washington State.<sup>14</sup>

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution authorizes Congress to tax and spend in a manner that promotes the general welfare of the United States.<sup>15</sup> Free markets most effectively allocate goods, deliver services, and represent consumer preferences in the American economy.

## **POLICY SOLUTIONS**

Rather than substitute government mandates and taxes for consumer choices, Congress should address effects of climate change by considering a wide range of climate change adaptations and infrastructure investments:

- Incentivize efforts to harden America’s shorelines and engage in flood mitigation practices by reforming the National Flood Insurance Program.
- Ensure that the U.S. Fish and Wildlife Services’ coastal barrier resources system maps are regularly updated and that federal resources are not expended in environmentally sensitive areas prone to flooding.<sup>16</sup>
- Invest in improved short-term forecasting technology to better prepare for severe weather events because the United States lags Europe in short-term weather forecasting.<sup>17</sup>
- Support superior forestry management practices and more effectively monetize silviculture resources in areas prone to wildfires. Use generated revenues to support state and regional conservation projects.
- Incentivize innovation that is affordable and exportable and streamline regulation in low-emission technologies such as small modular nuclear power, improved energy storage for intermittent wind and solar power generation, and continued emission reductions for stable fuel sources like natural gas.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> External costs of carbon emissions generally refer to the costs imposed by a changing climate such as coastal property damage and health impacts of rising temperatures.

<sup>2</sup> International Energy Agency, *Global CO2 emissions in 2019* (Feb. 11, 2020), <https://www.iea.org/articles/global-co2-emissions-in-2019>.

<sup>3</sup> U.S. Environmental Protection Agency, *Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2018* (Feb. 12, 2020), <https://www.epa.gov/sites/production/files/2020-02/documents/us-ghg-inventory-2020-main-text.pdf>.

<sup>4</sup> Bernard Sanders, *Open Letter to Senator Robert Stafford*, Vermont Freeman, December 1973, [https://www.scribd.com/document/401621202/Vermont-Freeman?secret\\_password=Ivy3D7ovhCAPJI9TZdTb](https://www.scribd.com/document/401621202/Vermont-Freeman?secret_password=Ivy3D7ovhCAPJI9TZdTb)

---

<sup>5</sup> U.S. Energy Information Administration, *Today in Energy: Fossil fuels have made up at least 80% of U.S. fuel mix since 1900* (July 2, 2015), <https://www.eia.gov/todayinenergy/detail.php?id=21912>.

<sup>6</sup> Cong. Budget Office, 44223, *Effects of a Carbon Tax on the Economy and the Environment* 8 (2013), [http://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44223\\_Carbon\\_0.pdf](http://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44223_Carbon_0.pdf).

<sup>7</sup> The World Bank, *Carbon Pricing Dashboard* (Data last updated Apr. 1, 2019), [https://carbonpricingdashboard.worldbank.org/map\\_data](https://carbonpricingdashboard.worldbank.org/map_data). Selected Year 2019, for the Status Implemented, for multiple Instruments, for National and Regional Jurisdictions.

<sup>8</sup> H.R. 2454, 111th Cong. (2009).

<sup>9</sup> Lenore Taylor, *Tony Abbott hails demise of 'useless, destructive' carbon tax*, *The Guardian*, July 17, 2014, <https://www.theguardian.com/environment/2014/jul/17/tony-abbott-hails-demise-of-useless-destructive-carbon-tax>.

<sup>10</sup> Bret Wells, *Alberta Repealed Its Carbon Tax. What Now?*, *Forbes*, June 6, 2019,

<https://www.forbes.com/sites/uhenergy/2019/06/06/alberta-repealed-its-carbon-tax-what-now/#4d446c705dd1>.

<sup>11</sup> The World Bank, *Result Briefs: Carbon Pricing* (Dec. 1, 2017), <https://www.worldbank.org/en/results/2017/12/01/carbon-pricing>.

<sup>12</sup> John Larsen, *The Footprint of US Carbon Pricing Plans*, Rhodium Group, May 23, 2018, <https://rhg.com/research/the-footprint-of-us-carbon-pricing-plans/>.

<sup>13</sup> Brad Plumer, *Trump Put a Low Cost on Carbon Emissions. Here's Why It Matters*, *The New York Times*, Aug. 23, 2018, <https://www.nytimes.com/2018/08/23/climate/social-cost-carbon.html>.

<sup>14</sup> David Roberts, *Washington votes no on a carbon tax — again*, *Vox*, Nov. 6, 2018, <https://www.vox.com/energy-and-environment/2018/9/28/17899804/washington-1631-results-carbon-fee-green-new-deal>.

<sup>15</sup> U.S. Const. art. 1, § 8.

<sup>16</sup> U.S. Fish & Wildlife Services, *Coastal Barrier Resources System: Overview* (July 2019), <https://www.fws.gov/CBRA/>. The CBRS maps were most recently revised by Public Law 116-9 on March 12, 2019.

<sup>17</sup> Diana Kwon, *Are Europeans Better Than Americans at Forecasting Storms?*, *Scientific American*, Oct. 1, 2015, <https://www.scientificamerican.com/article/are-europeans-better-than-americans-at-forecasting-storms1/>.

## **COMBAT AMERICA'S CRITICAL MINERAL DEPENDENCY**

Critical minerals are necessary for the modern economy, with applications in manufacturing, defense, renewable energy, advanced technology, and many other sectors. Congress must ensure that the U.S. is less dependent on foreign nations to meet its demand for these materials.

### **BACKGROUND**

The United States needs a comprehensive, long-term policy to ensure a steady supply of domestic critical minerals. These materials are necessary for America's economic competitiveness, modernization of infrastructure, national security, and advanced technological development, including renewable energy technologies necessary for the expansion of solar, wind, energy storage, and electric vehicles. Despite the existence of substantial reserves of these resources in the United States, most critical minerals are not mined in the U.S. In fact, the U.S. has become increasingly dependent on foreign nations – China in particular – to meet demand for these essential commodities.

For example, in 2019, the United States had a 100 percent net import reliance on other nations for 17 minerals, including gallium, indium, and rare earth elements.<sup>1</sup> Among other uses, gallium, indium, and rare earth elements are components of smartphones, satellites, semiconductors, solar panels, and electric vehicles.<sup>2</sup> China was the top import source for all three of these elements.<sup>3</sup>

Critical minerals are required for many modern defense systems, including aerospace applications.<sup>4</sup> Another mineral with high relevance to our defense interests, uranium, was imported at a rate of 97 percent in 2018.<sup>5</sup> The world's largest uranium producer is Kazakhstan, with Russia and Uzbekistan also as major producers.<sup>6</sup> China is signaling an interest in the uranium market as well, buying large mines in Namibia.<sup>7</sup>

Given the serious need to maintain a stable supply of critical minerals, encouraging domestic production is in the nation's best interest. Moreover, since the United States has some of the best environmental and human labor standards in the world, it is preferable—as well as safer for the supply chain—to maximize domestic production of these resources.

One major obstacle to domestic mineral development is the long, confusing, and overly burdensome permitting process in the United States. Mining projects require years of environmental studies, permitting, bonding, and stakeholder engagement, both at the state and federal level. All told, a mining project in the United States may spend 7 to 10 years waiting for final permitting approval. In comparison, countries like Canada and Australia have illustrated a capacity to follow specific permitting timelines while maintaining environmental protections. Both countries' permitting timeframes average around two years, and both nations rank as the top two countries for mining investment.

### **Quick Take**

Certain critical minerals are essential for America's modern economy and national defense.

The United States is far too reliant on foreign nations—particularly China—to supply many of them.

Congress must ensure that we develop America's existing natural resources to supply as much domestic demand for critical minerals as possible.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution grants Congress the power to regulate interstate commerce and promote the general welfare of the United States.<sup>8</sup> Congress should ensure that federal regulations are as minimally burdensome as possible to achieve their constitutionally authorized purpose. America's natural resources should be efficiently developed to meet domestic needs.

## POLICY SOLUTIONS

As demand grows for renewable energy technologies, electric vehicles, and high-tech devices such as smart phones, the need for critical minerals will continue to increase. The United States lacks resources in many stages of the minerals supply chain, with very little mining or processing of these materials occurring domestically. Congress should:

- Streamline the federal permitting process to boost access to critical minerals in a reliable and timely manner. The United States can promote domestic mineral independence by reducing delays and duplicative reviews while also maintaining robust environmental standards.
- Incentivize enough domestic refining capacity to meet demand. Much of what is mined in the U.S. must be shipped overseas to be refined and processed.<sup>9</sup> Increasing the number of refineries in the U.S. would help prevent a chokehold at the processing stage of the supply chain.
- Prioritize mineral assessments at the federal level to identify valuable deposits across the country, allowing for more efficient and targeted development. Many potential domestic mineral reserves remain undiscovered. In fact, less than 18 percent of the U.S. has been adequately geologically mapped.<sup>10</sup> The exploration phase of a mining project takes many years, potentially a decade or more.<sup>11,12</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> U.S. Geological Survey (USGS), *Mineral Commodity Summaries 2020* (January 31, 2020), <https://pubs.usgs.gov/periodicals/mcs2020/mcs2020.pdf>.

<sup>2</sup> *Mining the Future*, Foreign Policy Analytics Special Report (May 2019).

<sup>3</sup> USGS, *supra*, note 1.

<sup>4</sup> *Id.*

<sup>5</sup> U.S. Energy Information Administration. *2018 Uranium Marketing Annual Report* (May 2019), <https://www.eia.gov/uranium/marketing/pdf/umar2018.pdf>.

<sup>6</sup> U.S. Department of Commerce. "*A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals* (June 4, 2019), <https://www.commerce.gov/news/reports/2019/06/federal-strategy-ensure-secure-and-reliable-supplies-critical-minerals>.

<sup>7</sup> Thomas Duesterberg, "*Opponents of Trade Relief for Uranium Mining Have Unconvincing Case.*" *Forbes* (March 25, 2019). <https://www.forbes.com/sites/thomasduesterberg/2019/03/25/opponents-of-section-232-relief-for-uranium-mining-relief-have-unconvincing-case/#274ce28b3f8d>.

<sup>8</sup> U.S. Const. art. 1, § 8.

<sup>9</sup> Marc Humphries, *Critical Minerals and U.S. Public Policy*, Congressional Research Service (June 28, 2019).

<sup>10</sup> U.S. Department of Commerce, *A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals* (June 4, 2019), [https://www.commerce.gov/sites/default/files/2020-01/Critical\\_Minerals\\_Strategy\\_Final.pdf](https://www.commerce.gov/sites/default/files/2020-01/Critical_Minerals_Strategy_Final.pdf).

<sup>11</sup> Humphries, *supra*, note 9.

<sup>12</sup> World Bank Group. *From Commodity Discovery to Production* (September 2016), <http://documents.worldbank.org/curated/en/573121473944783883/pdf/WPS7823.pdf>.



### DEVELOP ENERGY ON TAXPAYER-OWNED LANDS

As oil and gas production has increased in the United States, the rate of production on federal land has lagged relative to development on state and private lands, where higher royalty rates exist.

Delegating certain responsibilities for oil and gas development to state regulators would allow states to facilitate responsible, efficient oil and gas development on federal lands.

#### BACKGROUND

Energy development on federal lands is a crucial source of economic activity, jobs, and revenue for Western States. Natural resource revenues mitigate environmental impacts, support infrastructure projects,<sup>1</sup> and fund public services, including public school systems and community colleges.<sup>2</sup> The benefit of these taxpayer-owned resources also provides significant revenues at the federal level. In Fiscal Year (FY)2019, oil and gas companies producing on federal land paid a total of \$4.1 billion into federal coffers, not to mention additional state and federal taxes.<sup>3</sup>

The U.S. Department of the Interior's Bureau of Land Management (BLM) is responsible for managing the federal onshore mineral estate, which includes roughly 700 million acres of land held primarily by the BLM and U.S. Forest Service.<sup>4</sup> BLM leases these lands to developers through quarterly lease sales (when parcels are available for lease)<sup>5</sup> and issues the necessary federal permits to leaseholders required for oil and gas development.

In recent years, costly regulatory requirements have discouraged oil and gas developers from operating on federal land. Instead, developers have opted to do business on state and private lands in spite of higher royalty rates.<sup>6,7</sup> While oil and gas production has increased since 2008, this growth has occurred largely on state and private lands.<sup>8</sup> Between FY2008 and FY2017, daily nonfederal oil and gas production more than doubled.<sup>9</sup> However, as overall production grew, the federal share of domestic crude oil production fell from 36% in 2009 to 24% in 2017 and the federal share of natural gas production decreased from 25% in 2008 to 13% in 2017.

Burdensome leasing, permitting, and regulatory processes hamper development, resulting in lost revenue and delaying revenue payments to the states—jeopardizing state budgets and public priorities. For example, in September 2016, the BLM held a successful lease sale in New Mexico, which generated \$145 million in revenue, nearly \$70 million of which was owed to the state. Environmental groups filed multiple protests on the sale, causing BLM to spend months reviewing protests and a 250-day delay in issuing the payment to the state. This delay jeopardized the state budgeting process and threatened the provision of key services funded by anticipated revenues.<sup>10</sup>

#### Quick Take

Burdensome federal regulations and bureaucracy deter energy producers from developing federal natural resources despite higher royalty payments on state and private land.

Congress should empower the Secretary of the Interior to work with states in an effort to ensure that federal resources are responsibly developed for the benefit of all Americans.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

Congress possesses the constitutional authority to manage federal lands.<sup>11</sup> Citizens should be fairly compensated for the use of public resources under federal management. As a matter of principle, generating fair-market revenues from existing federal resources is preferable to tax increases or borrowing to pay U.S. obligations.

## POLICY SOLUTIONS

States have stringent, modern, and comprehensive regulatory regimes capable of responsibly regulating energy development on federal lands. Increasing the role of states in federal land management can create opportunities for more efficient and expanded development while ensuring American taxpayers realize the value of the nationally owned natural resources. Congress should:

- Allow the Secretary of the Interior to delegate certain regulatory authorities for oil and gas development on federal lands to the states to streamline the regulatory process and eliminate unnecessary delays at the federal level. One proposal for authorizing delegated authority to the states for oil and gas development is included in H.R. 4294, the American Energy First Act of 2019.<sup>12</sup>
- Refocus the limited resources of BLM and the U.S. Forest Service on their core mission of managing federal lands.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

<sup>1</sup> Marc Humphries, *Mineral Royalties on Federal Lands: Issues for Congress* (2015), <http://www.crs.gov/reports/pdf/R43891>.

<sup>2</sup> The United States Extractive Industries Transparency Initiative. Explore Data, Wyoming, <https://useiti.doi.gov/explore/WY/#disbursements> (Accessed August 29, 2017).

<sup>3</sup> Office of Natural Resource Revenue. *Natural Resources Revenue Data*, <https://revenue.data.doi.gov/query-data/?dataType=Disbursements> (Accessed March 3, 2020).

<sup>4</sup> Bureau of Land Management. *About the BLM Oil and Gas Program*, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about>.

<sup>5</sup> Bureau of Land Management. *Oil and Gas Leasing Instructions*, <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing> (Accessed October 10, 2017).

<sup>6</sup> Western Energy Alliance. *Tax & Royalty Revenue*, <https://www.westernenergyalliance.org/knowledge-center/tax-royalty-revenue>.

<sup>7</sup> Government Accountability Office. *Oil, Gas, and Coal Royalties* (June 2017), <https://www.gao.gov/assets/690/685335.pdf>

<sup>8</sup> Michael Ratner, *21<sup>st</sup> Century U.S. Energy Sources: A Primer*, <http://www.crs.gov/reports/pdf/R44854>.

<sup>9</sup> Marc Humphries, *U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas*. Updated October 23, 2018. <http://www.crs.gov/reports/pdf/R42432>.

<sup>10</sup> Hayden, Maddy, *N.M. Delegation calls for \$69M from BLM*, April 6, 2017, <http://www.currentargus.com/story/news/local/new-mexico/2017/04/06/nm-delegation-calls-69m-blm/100124060/>.

<sup>11</sup> U.S. Const. art. IV, § 3, cl. 2.

<sup>12</sup> H.R.4294, 116th Cong. (2019).

### DIVEST FEDERAL ELECTRICITY TRANSMISSION ASSETS

Divesting electricity transmission assets would reduce the size of the Federal Government by limiting its role in electricity markets while simultaneously generating billions in savings.

#### BACKGROUND

The Federal Government “owns, operates, and maintains over 50,000 miles of electricity transmission lines and related assets.”<sup>1</sup> Such assets<sup>2</sup> account for about 14 percent of the nation’s transmission lines.<sup>3</sup>

While most the country’s electricity demands are met through the private sector, the Tennessee Valley Authority (TVA) and agencies within the Department of Energy (DOE) — the Southwestern, Western, and Bonneville Power Administrations — own and operate federal transmission assets.<sup>4</sup>

Historically, the Federal Government’s involvement in energy production dates back to the New Deal and has since expanded “to include owning and operating electric transmission assets.”<sup>5</sup>

The Congressional Budget Office (CBO) estimates that divesting federal transmission assets of the Southwestern Power Administration and the Western Area Power Administration alone would save about \$2 billion in mandatory spending over a nine-year period.<sup>6</sup> Additionally, CBO estimates that privatizing the functions of the two agencies would reduce nearly a billion dollars in discretionary spending.<sup>7</sup>

In 2017, President Trump issued an Executive Order requiring the Office of Management and Budget (OMB) to propose a plan to reorganize government-wide functions.<sup>8</sup> The plan, entitled *Delivering Government Solutions to the 21<sup>st</sup> Century*, also known as the Government Reorganization plan, proposed privatization of federal transmission assets to mitigate unnecessary risk to taxpayers, reduce the deficit, and encourage greater market competition and efficiency.

Divesting and privatizing federal electricity infrastructure have bipartisan support. In 1996, for example, the Clinton administration successfully sold the Alaska Power Administration. Additionally, the Obama administration announced a strategic review of the TVA, including options for potential divestiture, in the Fiscal Year 2014 budget.<sup>9</sup>

#### CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

Congress has the authority to dispose of property acquired by the United States.<sup>10</sup> The Federal Government should not be a competitor in the private marketplace.

#### Quick Take

The Federal Government owns, operates, and maintains over 50,000 miles of electricity transmission lines and related assets.

According to the Trump administration’s government reorganization proposal, divesting federal electricity assets would save about \$9.5 billion over ten years.

## POLICY SOLUTIONS

According to the Trump administration's government reorganization proposal, divesting federal electricity assets would save about \$9.5 billion over a ten-year window.<sup>11</sup> CBO reports that divesting Southwestern Power Administration and the Western Area Power Administration transmission assets would generate over \$2 billion in savings.<sup>12</sup>

Congress should consider divesting federal electricity assets while ensuring that current ratepayers are not adversely impacted in the process. For example, creating priority consideration for existing electric co-ops to acquire federal electricity assets could improve the speed of transition and minimize disruption for ratepayers.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Executive Office of the President (EOP), *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations* (2018), <https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf>.

<sup>2</sup> Federal transmission assets include lines, towers, substations, and right-of-ways.

<sup>3</sup> Quadrennial Energy Review, *Transforming the Nation's Electricity System: The Second Installment of the QER*, January 2017, p. A-34.

<sup>4</sup> EOP, *supra*, note 1.

<sup>5</sup> *Id.*

<sup>6</sup> Over the 2019-2028 period.

<sup>7</sup> Cong. Budget Office (CBO), 54827, *Divest Two Agencies of Their Electric Transmission Assets* (2018).

<sup>8</sup> EO No. 13,781, *Comprehensive Plan for Reorganizing the Executive Branch*, 82 Fed. Reg. 13,959 (Mar. 13, 2017).

<sup>9</sup> EOP, *supra*, note 1.

<sup>10</sup> U.S. Const. art. IV, § 3.

<sup>11</sup> EOP, *supra*, note 1.

<sup>12</sup> CBO, *supra*, note 7.

## **SUPPORT INSTALLATION OF LIVING SHORELINES**

America’s coastal communities face persistent challenges due to the dynamic forces at the water’s edge. Congress must address coastal erosion in order to protect property, the environment, and valuable fisheries.

### **BACKGROUND**

The loss of valuable coastal property and critical wetlands occurs at an alarming rate. At 3 million acres (40 percent of total wetlands in the United States), Louisiana's wetlands “are lost at the rate about 75 square kilometers annually.”<sup>1</sup> The annual losses amount to an area about 127 percent of Manhattan Island in New York. Every year, the United States loses about \$500 million worth of coastal structures due to erosion.<sup>2</sup>

Currently, about 14 percent of America’s shoreline is “armored” with fixed structures such as seawalls, jettis, and groins.<sup>3</sup> While such structures may protect valuable property for some time, conventional methods of armoring shorelines may actually accelerate erosion and loss of beaches adjacent to the armoring.<sup>4</sup> As such, the practice may directly impact property rights of other private landowners as well as enjoyment of public resources such as beaches.

Living shorelines provide a safeguard against coastal erosion without many of the negative side effects of coastal armoring. According to the National Oceanic and Atmospheric Administration (NOAA), “Living shorelines can reduce damage and erosion while simultaneously providing ecosystem services to society, including food production, nutrient and sediment removal, and water quality improvement.”<sup>5</sup>

A living shoreline “incorporates natural vegetation or other living, natural soft elements alone or in combination with some type of harder shoreline structure, like oyster reefs, rock sills, or anchored large wood for added stability.”<sup>6</sup> Most significantly, living shorelines retain the critical connection between the water and shore where many traditional coastal armoring techniques do not.

NOAA currently funds a wide range of living shoreline projects around the nation.<sup>7</sup> Coastal states such as Alabama have used RESTORE Act<sup>8</sup> funds to lead the way on developing living shorelines.<sup>9</sup>

Unfortunately, adoption of living shorelines as techniques to combat coastal erosion is relatively limited due to complex, intergovernmental regulations and permitting requirements.<sup>10</sup> For example, the U.S. Army Corps of Engineers generally has permitting jurisdiction of navigable waters up to the mean high water line.<sup>11</sup> State and local governments may also impose requirements. The numerous regulatory layers favor traditional coastal armoring even where more natural options may be most appropriate.

### **Quick Take**

Coastal erosion imposes significant costs on Americans. Conventional efforts to armor shorelines frequently harm adjacent properties and fisheries.

Streamlining permitting, updating regulations, and incentivizing living shorelines protects private property, sensitive environmental areas, and valuable fisheries.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

Congress has the constitutional authority to regulate waters related to interstate and foreign commerce<sup>12</sup> and manage federal lands.<sup>13</sup> Policymakers should provide strong incentives to conserve America's natural resources and create efficient regulatory systems that support rather than hinder evidence-based conservation techniques.

## POLICY SOLUTIONS

Congress should consider opportunities to streamline permitting and regulatory compliance for the installation of living shorelines. Given the potential revenue loss association with disappearing public beaches and critical habitat for economically significant fisheries, Congress should also consider tax incentives to support the adoption of living shorelines.

Additionally, Congress should ensure that living shorelines are appropriately weighted in the National Flood Insurance Program's Community Rating System,<sup>14</sup> a voluntary floodplain management program which has the potential to significantly reduce flood insurance premiums for consumers.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> United States Geological Survey, Coastal and Marine Geology Program, *USGS Fact Sheet: Louisiana Coastal Wetlands: A Resource at Risk*, <https://pubs.usgs.gov/fs/la-wetlands/>.

<sup>2</sup> Priya Shukla, *Nearly 75% Of Coastal States Aren't Prepared For Sea Level Rise*, Forbes, Dec. 27, 2018, <https://www.forbes.com/sites/priyashukla/2018/12/27/nearly-75-of-coastal-states-arent-prepared-for-sea-level-rise/#4b5d0aaa3205>.

<sup>3</sup> Rachel K. Gittman, *Engineering away our natural defenses: an analysis of shoreline hardening in the US*, 13 *Frontiers in Ecology and the Environment* 301-307 (August 1, 2015).

<sup>4</sup> United States Geological Survey, *Puget Sound Shorelines and the Impacts of Armoring—Proceedings of a State of the Science Workshop* (May 2009), <https://pubs.usgs.gov/sir/2010/5254/pdf/sir20105254.pdf>.

<sup>5</sup> National Oceanic and Atmospheric Administration, *Habitat Blueprint*, <https://www.habitatblueprint.noaa.gov/living-shorelines/>

<sup>6</sup> *Id.*

<sup>7</sup> National Oceanic and Atmospheric Administration, *NOAA's Restoration Center Funded Living Shorelines Projects*, <https://www.habitatblueprint.noaa.gov/storymap/ls/index.html/>.

<sup>8</sup> 33 U.S.C. § 1321(t).

<sup>9</sup> Deepwater Horizon Natural Resource Damage Assessment, *Alabama Living Shorelines Projects: Shell Belt and Coden Belt Roads Living Shoreline Point aux Pins Living Shoreline* (2015), <https://www.gulfspillrestoration.noaa.gov/sites/default/files/wp-content/uploads/Alabama-Living-Shorelines-5-19-15-2.pdf>.

<sup>10</sup> Jennifer E.D. O'Donnell, *Regulatory Issues for Implementing Living Shorelines*, 38 *National Wetlands Newsletter* 19-24 (Mar.-Apr. 2016), <https://pdfs.semanticscholar.org/f41c/08d5225118d34e8e42fa07a1241000d544a1.pdf>

<sup>11</sup> *Id.*

<sup>12</sup> U.S. Const. art. I, § 8, cl. 3.

<sup>13</sup> U.S. Const. art. IV, § 3, cl. 2.

<sup>14</sup> Federal Emergency Management Agency, *National Flood Insurance Community Rating System* (2019), <https://www.fema.gov/national-flood-insurance-program-community-rating-system>.

## **END FEDERAL FUNDING OF SANCTUARY AIRPORTS**

With a surge in illegal immigration, Congress must empower the Department of Transportation (DOT) to withhold federal grant funds from airport authorities which refuse to allow flights of federal immigration detainees.

### **BACKGROUND**

Apprehensions at the U.S. Southern border with Mexico surged to a 13-year high in May 2019, leading to over 132,000 detentions of undocumented immigrants, a 33 percent increase from the prior month.<sup>1</sup> Despite the spike in illegal entry, about 300 sanctuary cities and jurisdictions across the U.S. reportedly refuse to assist or actively obstruct Immigration and Customs Enforcement (ICE) agents from enforcing federal immigration law.<sup>2</sup>

ICE contracts with charter airline companies to return undocumented immigrants to their home country.<sup>3</sup> Over the past eight years, ICE utilized the King County International Airport (also known as Boeing Field) in Seattle, Washington, to transport roughly 34,400 detainees.<sup>4</sup> According to the Center for Immigration Studies, King County is one of nearly 20 sanctuary jurisdictions in Washington state.<sup>5</sup>

On April 23, 2019, King County Executive Dow Constantine signed an executive order<sup>6</sup> directing operators to take certain actions to minimize deportation services, with the “goal of banning flights of immigration detainees chartered by [ICE]...from our publicly owned airport.”<sup>7</sup> Following the release of the executive order, operators terminated the lease of the airport’s only ICE-contracted airline.<sup>8</sup> One county official stated they are “hoping to be leading the way” in obstructing ICE deportation flights.<sup>9</sup>

On May 1, 2019, DOT issued a letter warning county officials that “federal law expressly prohibits the enforcement of any such directive.”<sup>10</sup> According to DOT, the King County Airport has received \$21 million in federal grants since 2012, under a condition that in part requires King County International Airport to allow the U.S. government use of its facilities.<sup>11</sup>

In 2017, President Trump issued Executive Order (EO) 13,768, directing the Attorney General and the Secretary of the Department of Homeland Security (DHS) to withhold federal grant funding from sanctuary cities and jurisdictions.<sup>12</sup> The Ninth Circuit Court of Appeals struck down the EO 13,768 in August 2018, ruling that the Constitution vests Congress with the exclusive authority to impose conditions on federal grants.<sup>13</sup>

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution grants Congress the power to “establish a uniform Rule of Naturalization.”<sup>14</sup> While welcoming legal immigrants, the Federal Government has a responsibility to protect America’s sovereignty and secure national borders. Taxpayer dollars should not be awarded to support policies intended to thwart federal law enforcement and undermine national security.

### **Quick Take**

Apprehensions at the U.S. Southern border with Mexico surged to a 13-year high in May 2019.

Congress should act to give agencies the authority to withhold federal grants from airports which obstruct federal law enforcement.

## POLICY SOLUTIONS

Considering the Ninth Circuit ruling, Congress should act to give agencies the authority to withhold federal grants from airports which obstruct federal law enforcement. Congress must pass H.R. 2955, the Prohibiting Local Airports from Neglecting Enforcement (PLANE) Act. The PLANE Act would authorize the Secretary of the Department of Transportation to prohibit federal grant awards to an airport that refuses to cooperate with ICE.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> U.S. Customs and Border Protection, *Southwest Border Migration FY2019* (2019), <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

<sup>2</sup> Bryan Griffith and Jessica Vaughan, Center for Immigration Studies, *Map: Sanctuary Cities, Counties, and States*, March 2017. <http://cis.org/Sanctuary-Cities-Map>.

<sup>3</sup> Press Release, U.S. Immigration and Customs Enforcement, *ICE uses local airports to deport dangerous criminal aliens* (May 8, 2019), <https://www.ice.gov/news/releases/ice-uses-local-airports-deport-dangerous-criminal-aliens>.

<sup>4</sup> Nina Shapiro, *Over eight years, the government has deported about 34,000 people via Boeing Field. King County wants it stopped.*, The Seattle Times, Apr. 23, 2019, <https://www.seattletimes.com/seattle-news/politics/over-eight-years-the-government-has-deported-about-34000-people-via-boeing-field-king-county-wants-it-stopped/>.

<sup>5</sup> Griffith and Vaughan, *supra*, note 2.

<sup>6</sup> King County Executive Office, King County International Airport – Prohibition on immigrant deportations, PFC-7-1-EO (April 23, 2019), [https://www.kingcounty.gov/~media/elected/executive/constantine/news/documents/PFC-7-1-EO\\_Signed.ashx?la=en](https://www.kingcounty.gov/~media/elected/executive/constantine/news/documents/PFC-7-1-EO_Signed.ashx?la=en).

<sup>7</sup> Press Release, King County Executive Office, *Executive Constantine directs actions against ICE detainee flights from King County Airport* (Apr. 23, 2019), <https://www.kingcounty.gov/elected/executive/constantine/news/release/2019/April/23-ICE-KCIA.aspx>.

<sup>8</sup> Press Release, King County Executive Office, *Operators at King County Airport will not serve ICE flights, leaving no ground support for immigration transfers* (May 2, 2019), <https://kingcounty.gov/elected/executive/constantine/news/release/2019/May/1-KCIA-lease.aspx>.

<sup>9</sup> Shapiro, *supra*, note 4.

<sup>10</sup> Letter from Steven G. Bradbury, General Counsel, U.S. Dept. of Trans., to Dow Constantine, King County Executive, (May 1, 2019), <https://kuow-prod.imgix.net/store/9ced9bda708f52df50ecec46e527314d.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> Executive Order No. 13768, “Executive Order: Enhancing Public Safety in the Interior of the United States”, January 25, 2017, <https://www.whitehouse.gov/presidential-actions/executive-order-enhancing-public-safety-interior-united-states/>.

<sup>13</sup> *San Francisco v. Trump*, 897 F. 3d 1225 (9th Cir. 2018).

<sup>14</sup> U.S. Const. art. I, § 8, cl. 4.

## **SECURE AMERICA'S SOUTHWEST BORDER**

Immigrants violating federal law continue to flood across America's southwest border. The Federal Government must enforce existing law to ensure that America maintains a secure and orderly system of immigration.

### **BACKGROUND**

Illegal immigration generally refers to improper entry into the United States by a noncitizen. Federal law imposes both civil and criminal penalties for such an act, which can result in potential incarceration and monetary fines, depending on the scope of the violation.<sup>1</sup>

While attempts to illegally enter the U.S. occur across all border areas, apprehensions of deportable aliens along America's northern (4,408) and coastal borders (3,585) accounted for less than one percent of similar apprehensions along the southwest border (851,508) in Fiscal Year (FY) 2019.<sup>2</sup> From FY2015 to FY2019, U.S. Customs and Border Patrol (CBP) apprehended almost 2.3 million deportable aliens at the southwest border<sup>3</sup> – more than enough to replace the current population of New Mexico<sup>4</sup> and almost four times the population of Wyoming.<sup>5</sup> In fact, the number of deportable aliens apprehended at the southwest border from FY2015 to FY2019 exceeds the populations of 15 states.<sup>6</sup>

Processing such a volume of apprehensions imposes extreme pressure on America's overburdened immigration system. From FY2014 to FY2018, the Department of Homeland Security (DHS) compelled the removal of about 1.7 million deportable aliens and confirmed the departure of over 609,774 leaving voluntarily.<sup>7</sup> With an estimated 12 million aliens already in the United States without legal status, Congress must take action to restore order to the U.S. immigration system.<sup>8</sup>

According to the International Boundary & Water Commission, the border between Mexico and the United States extends 1,954 miles.<sup>9</sup> CBP data from September 2018 reports that 654 miles of the southwest border are protected by a mix of pedestrian (374 miles) and vehicle (280 miles) primary barrier sources,<sup>10</sup> costing taxpayers a reported \$7 billion to maintain from FY2007 to FY2017.<sup>11</sup>

### **Quick Take**

Efforts to secure America's southwest border have proven ineffective.

Congress must consider the facts regarding border security, build physical barriers, and deploy monitoring and surveillance technology.

## Map of the U.S.-Mexico Southern Border



Note: Due to the scale of the map, some gaps in the border fence may not be visible.

Sources: Reveal from The Center for Investigative Reporting and OpenStreetMap contributors (border fence); Oak Ridge National Laboratory's LandScan population data (population density); U.S. Customs and Border Protection (border patrol sectors)

Source: *Wall Street Journal*<sup>12</sup>

### CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The U.S. Constitution grants Congress the exclusive authority to “establish a uniform Rule of Naturalization.”<sup>13</sup> The Immigration and Nationality Act of 1952 and subsequent amendments<sup>14</sup> establish such rules. As a matter of principle, the Federal Government must enforce existing immigration laws and secure our national borders.

### POLICY SOLUTIONS

The United States must have a lawful system of immigration. Border security is paramount to this endeavor. Physical barriers should be funded and constructed at appropriate entry points. Congress must also provide adequate resources to support the use of technology at the border for surveillance and monitoring consistent with the constitutional rights and liberties of citizens living near the border.

Congress must ensure that individuals who violate immigration laws are apprehended and removed in a timely and humane manner. These efforts should include expedited removal of deportable aliens apprehended at the border who have not previously been detained or committed other criminal violations.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

<sup>1</sup> 8 U.S.C. § 1325.

<sup>2</sup> U.S. Border Patrol, *U.S. Border Patrol Nationwide Apprehensions by Citizenship and Sector FY2017-FY2019*, 37-39 (2020), <https://www.cbp.gov/sites/default/files/assets/documents/2020->

---

Jan/U.S.%20Border%20Patrol%20Nationwide%20Apprehensions%20by%20Citizenship%20and%20Sector%20%28FY2007%20-%20FY%202019%29\_1.pdf.

<sup>3</sup> *Id.* U.S. Border Patrol apprehended 2,292,206 deportable aliens from FY2015 to FY2019 at the Southwest Border.

<sup>4</sup> U.S. Census Bureau, Population Division, NST-EST2019-01, *Table 1. Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019*. The population of New Mexico was 2,096,829 in 2019.

<sup>5</sup> *Id.* The population of Wyoming was 578,759 in 2019.

<sup>6</sup> *Id.* The states are Alaska, Delaware, Hawaii, Idaho, Maine, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Vermont, West Virginia, and Wyoming.

<sup>7</sup> U.S. Department of Homeland Security, *The 2018 Yearbook of Immigration Statistics: Table 39. Aliens Removed or Returned: Fiscal Years 1892 to 2018* (2020), <https://www.dhs.gov/immigration-statistics/yearbook/2018/table39>.

<sup>8</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Population Estimates, Illegal Alien Population Residing in the United States: January 2015* (Dec. 2018),

[https://www.dhs.gov/sites/default/files/publications/18\\_1214\\_PLCY\\_pops-est-report.pdf](https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf)

<sup>9</sup> International Boundary & Water Commission, United States Section, *The International Boundary and Water Commission – Its Mission, Organization and Procures for Solution of Boundary and Water Problems*,

[https://www.ibwc.gov/about\\_us/about\\_us.html](https://www.ibwc.gov/about_us/about_us.html).

<sup>10</sup> U.S. Border Patrol, *Mileage of Pedestrian and Vehicle Barrier by State* (Sept. 30, 2018),

<https://www.cbp.gov/sites/default/files/assets/documents/2019-Mar/FY18%20Border%20Patrol%20Barrier%20Totals%20v3.pdf>.

<sup>11</sup> *The Border Wall: Strengthening Our National Security*: Hearing Before the Subcomm. on National Security, Comm. on Oversight and Government Reform, 115 Cong. 20 (2017), (Prepared statement of Brandon Judd, President, National Border Patrol Council).

<sup>12</sup> *A Look at the U.S.-Mexico Border Wall*, *The Wall Street Journal*, Jan. 5, 2019, <https://www.wsj.com/graphics/a-look-at-the-border-wall/>.

<sup>13</sup> U.S. Const. art. I, § 8, cl. 4.

<sup>14</sup> 8 U.S.C. §§ 1101-1537.



## **EXTEND 529 SAVINGS PLANS TO HOMESCHOOL EXPENSES**

Under current law, 529 savings plans allow parents and students to save and use money for college without the earnings being subject to federal taxes. The Tax Cuts and Jobs Act (TCJA)<sup>1</sup> expanded 529 plans to include K-12 private school tuition.

Parents should have maximum flexibility in choosing where their children are educated. As such, 529 plans should be expanded to also include homeschooling expenses.

### **Quick Take**

The Tax Cuts and Jobs Act expanded 529 plans to include K-12 private school tuition.

Democrats stripped out the expansion as applied to homeschool expenses. Congress should improve 529 plans to cover homeschooling expenses.

### **BACKGROUND**

529 college savings plans,<sup>2</sup> named after Section 529 of the Internal Revenue Code and considered a Qualified Tuition Program (QTP), were created in 1996 to encourage savings for future higher education costs. These plans are sponsored by states or educational institutions and enjoy federal tax-free earnings and withdrawals.

There are two types of 529 plans, prepaid tuition plans and education savings plans:

- **Prepaid tuition plans** are generally sponsored by state governments and have residency requirements.
- **Education savings plans** are investment accounts for the beneficiary's future qualified education expenses at any college or university.

All states and the District of Columbia have at least one type of 529 plan. Some states also allow taxpayers to deduct any contributions when they file their yearly taxes.

Because of the TCJA,<sup>3</sup> families can now use up to \$10,000 per year per child of their 529 savings plans for "tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school."<sup>4</sup>

During Senate consideration of TCJA, Sen. Ted Cruz (R-TX) offered an amendment to expand 529s to include K-12 public, private, and religious school tuition, as well as homeschool expenses. Vice President Pence cast the tiebreaking vote during adoption of the Cruz amendment. Ultimately, Senators Bernie Sanders (I-VT) and Ron Wyden (D-OR) challenged the homeschool portion of the amendment under the Byrd Rule<sup>5</sup> and succeeded, thus stripping out the 529 expansion for homeschool expenses.

530 savings plans<sup>6</sup>, also known as Coverdell Savings Accounts, do permit spending on homeschooling expenses, but they must be funded with after-tax dollars and contributions may not exceed \$2,000 annually. Further expanding 529s to cover homeschooling expenses would make 530 plans unnecessary.

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution authorizes Congress to tax and spend in a manner that promotes the general welfare of the United States.<sup>7</sup> Parents should decide what schools are best suited for their children. Congress should encourage parents to save for the future, while affording them more education options.

## **POLICY SOLUTIONS**

Congress should pass The Enhancing Educational Opportunities for Home School Students Act (H.R. 65) which would include expenses in connection with a homeschool as eligible expenses under a 529 plan.

Now that 529 accounts can be used for K-12 expenses, Congress should streamline the tax code by eliminating Coverdell Savings Accounts.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> The Tax Cuts and Jobs Act of 2017(TCJA), Pub.L. 115–97, 131 Stat. 2054 (2017).

<sup>2</sup> 26 U.S.C. § 529.

<sup>3</sup> TCJA, *supra*, note 1.

<sup>4</sup> *Id.*

<sup>5</sup> The Byrd Rule restricts elements of reconciliation legislation, the vehicle for TCJA, by prohibiting “extraneous” provisions. *See*, Bill Heniff Jr., Cong. Research Serv., RL30862, *The Budget Reconciliation Process: The Senate’s “Byrd Rule”* (2016).

<sup>6</sup> 26 U.S.C. § 530.

<sup>7</sup> U.S. Const. art. 1, § 8.

## **PROMOTE INCOME SHARING AGREEMENTS IN HIGHER EDUCATION**

With higher education debt at record levels, income sharing agreements (ISAs) protect students and incentivize higher education institutions to invest in students beyond their college years.

### **BACKGROUND**

Student loan debt in higher education has developed into a financial crisis for far too many American families. According to *Forbes*, “Student loan debt in 2019 is the highest ever,” with over 44 million borrowers owing over \$1.5 trillion in debt in the United States.<sup>1</sup> On average, Class of 2017 borrowers owe \$28,650.<sup>2</sup>

Higher education is a massive economic enterprise. Combined spending of all degree-granting institutions of higher education (IHE) for the 2016-2017 academic year reached \$608 billion or 3.1 percent of U.S. gross domestic product (GDP).<sup>3</sup> The Department of Education estimates that approximately 26 percent of federal undergraduate student loans in 2018 will default, nearly half of student borrowers will negatively amortize<sup>4</sup> within five years, and a plurality of student loan borrowers will never repay their loans.<sup>5</sup>

As student loan debt has exploded, so has federal spending on higher education. In Fiscal Year (FY) 2017, the Federal Government spent \$69.7 billion on postsecondary education, and an additional estimated \$35.9 billion on research at educational institutions.<sup>6</sup>

ISAs are increasingly common across states and universities. ISAs allow students to receive funds upfront to cover the cost of college. In return, students with an ISA contract agree to pay the investor a percentage of their future monthly earnings for a set number of years. The investor is only successful if the student is successful. ISAs are similar to federal income-driven repayment (IDR) plans offered to federal student loan borrowers, which tie monthly payments to the borrower’s monthly discretionary income. While approximately 7.8 million federal loan borrowers are enrolled in some type of income-driven repayment plan,<sup>7</sup> there is no federal ISA program.<sup>8</sup>

Under an ISA program, “the investor takes an ownership stake in the [asset, student or program participant], and [the investor’s] return rises and falls with the asset’s performance,” which transfers risk from the student to the investor. Unlike traditional student loans, where a student repays a fixed amount, the student’s payments to the investor are based on the student’s earnings over the course of their career.<sup>9</sup> This provides students and investors with a safety net, as high-earning students cross-subsidize investor losses to lower earning student recipients, and differs from traditional private student loans that “require the average student to pay a high interest rate.”<sup>10</sup>

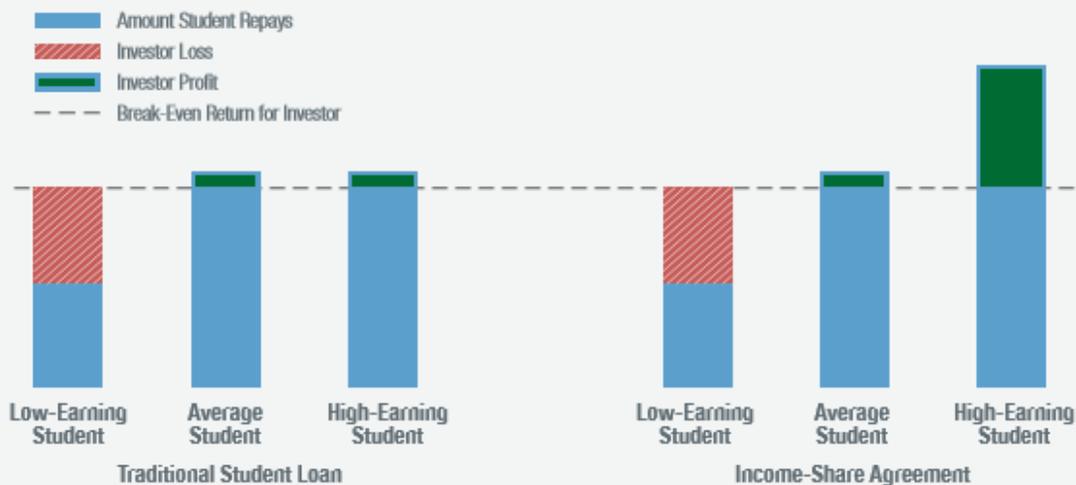
### **Quick Take**

Student loan debt in higher education is the highest in our nation’s history.

Congress should expect recipients of higher education dollars or federally guaranteed loans to offer financing options which ensure continued interest in student financial success.

FIGURE 1.

## Cross-Subsidization, Traditional Student Loans vs. ISAs



Source: Manhattan Institute<sup>11</sup>

These plans also provide borrowers with certainty about their payment window, the percentage of their income they must pay towards the loan, and, ideally, the maximum repayment amount. Because ISAs protect students whose postsecondary education bets do not pay off, students graduating with lower income levels may ultimately pay less than the cost of their degrees. Students with higher incomes may pay more if they find early financial success once leaving college.

### CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution gives Congress the authority to tax and spend for the general welfare.<sup>12</sup> IHEs receiving federal funds and disbursing federal student loans should offer financing options to students which ensure continued interest in the financial success of graduates. Congress should encourage alternative college financing options, such as ISAs, by creating the regulatory framework necessary for their continued existence.

### POLICY SOLUTIONS

The Institute for College Access and Success notes several areas of bipartisan consensus regarding the broader category of IDR plans which may also apply to ISAs:

- IDR is provided as an option to borrowers rather than mandated or universal;
- All borrowers in IDR make payments based on their income; and
- Married borrowers are treated consistently, regardless of how they file their taxes<sup>13</sup>

Transparency is critical to any loan program, especially with respect to more novel loan products such as ISA plans. The “Back a Boiler” program at Purdue University requires prospective student borrowers to “read about the ISA and take a quiz about the cap and the downsides so they fully understand [the program].”<sup>14</sup>

The President's FY2020 budget request for the U.S. Department of Education, contain options for streamlining IDR plans. One legislative solution to encourage ISAs is H.R. 1810, the "Kids to College" Act, which was introduced by Rep. Mark Green (R-TN).

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup>Zack Friedman, *Student Loan Debt Statistics in 2019: A \$1.5 Trillion Crisis*, Forbes (Feb. 25, 2019), <https://www.forbes.com/sites/zackfriedman/2019/02/25/student-loan-debt-statistics-2019/#75b0854b133f>.

<sup>2</sup>*Id.*

<sup>3</sup>National Center for Education Statistics, 2020-009, *Digest of Education Statistics 2018, Table 106.10* (December 2019), [https://nces.ed.gov/programs/digest/d18/tables/dt18\\_106.10.asp](https://nces.ed.gov/programs/digest/d18/tables/dt18_106.10.asp).

<sup>4</sup>Negative amortization occurs when the net loan balance increases during repayment due to interest charges larger than loan payments.

<sup>5</sup>Sheila Blair and Preston Cooper, *The Future of Income-Share Agreements Policy and Politics* 6, The Manhattan Institute (Mar. 2019), <https://www.manhattan-institute.org/future-income-share-agreements-to-finance-higher-education>.

<sup>6</sup>National Center for Education Statistics, *supra*, note 3.

<sup>7</sup>Federal Student Aid, *Federal Student Loan Portfolio: Income-Driven Portfolio by Borrower Age* (2019), <https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/IDRPortfolio-by-Age.xls>.

<sup>8</sup>Blair and Cooper, *supra*, note 5 at 9.

<sup>9</sup>Blair and Cooper, *supra*, note 5 at 7.

<sup>10</sup>*Id.*

<sup>11</sup>Blair and Cooper, *supra*, note 5 at 7.

<sup>12</sup>U.S. Const. art. I, sec 8, cl. 1.

<sup>13</sup>Lindsay Alhman, *The Debt is in the Details: A Review of Existing Proposals to Streamline Income-Driven Repayment*, The Institute for College Access and Success (July 2019), [https://ticas.org/sites/default/files/pub\\_files/debt\\_is\\_in\\_the\\_details.pdf](https://ticas.org/sites/default/files/pub_files/debt_is_in_the_details.pdf).

<sup>14</sup>Sydney Johnson, *So You Want to Offer an Income-Share Agreement? Here's How 5 Colleges Are Doing It.*, EdSurge, Feb. 15, 2019, <https://www.edsurge.com/news/2019-02-15-so-you-want-to-offer-an-income-share-agreement-here-s-how-5-colleges-are-doing-it>.



## SHARE THE RISK OF FEDERAL STUDENT LOAN DEFAULT

Record-high student loan debt impacts one in six adult Americans.<sup>1</sup> Colleges and universities benefitting from federal student loan programs should share the risk of student loan default with the American taxpayer.

### BACKGROUND

Colleges, universities, and other institutions of higher education (IHE) benefit tremendously from federal programs. In Fiscal Year (FY) 2018, the Federal Government spent \$69.7 billion on postsecondary education, and an additional estimated \$35.4 billion on research at educational institutions.<sup>2</sup> By any standard, higher education is a massive economic enterprise. Combined spending of all degree-granting institutions of higher education (IHE) for the 2016 to 2017 academic year reached \$608 billion or 3.1 percent of U.S. gross domestic product (GDP).<sup>3</sup>

Federal loan dollars represent a significant source of revenue for IHEs as students use them to pay for tuition, fees, room and board, and other expenses. According to Federal Student Aid, “approximately 6,000 postsecondary institutions...participate in the federal student aid programs.”<sup>4</sup>

The Department of Education estimates that approximately 26 percent of federal undergraduate student loans in 2018 will default, nearly half of student borrowers will negatively amortize within five years,<sup>5</sup> and a plurality of student loan borrowers will never repay their loans.<sup>6</sup>

Under federal law, “schools may lose their ability to participate in federal student aid programs if a significant percentage (thirty percent or more) of their borrowers default on their student loans within the first 3 years of repayment.”<sup>7</sup> However, the three-year cohort default rate measure of accountability has serious limitations. According to an April 2019 Government Accountability Office (GAO) report, “Schools are seldom held accountable for their students’ defaults, in part because of the high rate of borrowers in long-term forbearance.”<sup>8</sup> Loan forbearance helps borrowers avoid short-term default, but the result is frequently delayed default outside the three-year window where IHE’s are accountable.<sup>9</sup>

In the FY2020 budget proposal, the Trump administration proposed creating “an educational finance system that requires postsecondary institutions that accept taxpayer funds to have skin in the game through a student loan risk-sharing program.”<sup>10</sup>

### CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution gives Congress the authority to tax and spend for the general welfare.<sup>11</sup> IHE’s that benefit from federal loan programs should share in the risk of default facing American taxpayers.

#### Quick Take

Student loan debt is the highest in our nation’s history.

Colleges, universities, and other institutions of higher education who financially benefit from federal student loans should share a portion of the risk.

## POLICY SOLUTIONS

Congress may vote to reauthorize the Higher Education Act in the 116<sup>th</sup> Congress. S. 2124, the Skin in the Game Act, would hold IHEs participating in the student loan program liable to pay off half of defaulted student loans.<sup>12</sup>

Regardless of the exact percentage or the mechanisms for applying shared responsibility, IHEs must shoulder an increased amount of the risk for federal loan defaults. Doing so also requires Congress to address the underlying factors leading to high numbers of federal student loan defaults.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> David P. Smole, Cong. Research Serv., IF10158, A Snapshot of Federal Student Loan Debt (2019), <https://fas.org/sgp/crs/misc/IF10158.pdf>.

<sup>2</sup> National Center for Education Statistics, 2020-009, *Digest of Education Statistics 2018, Table 401.10* (December 2019), [https://nces.ed.gov/programs/digest/d18/tables/dt18\\_106.10.asp](https://nces.ed.gov/programs/digest/d18/tables/dt18_106.10.asp).

<sup>3</sup> National Center for Education Statistics, 2020-009, *Digest of Education Statistics 2018, Table 106.10* (December 2019), [https://nces.ed.gov/programs/digest/d18/tables/dt18\\_106.10.asp](https://nces.ed.gov/programs/digest/d18/tables/dt18_106.10.asp).

<sup>4</sup> Federal Student Aid, *Fiscal Year 2018 Annual Report* (2018), <https://www2.ed.gov/about/reports/annual/2018report/fsa-report.pdf>.

<sup>5</sup> Negative amortization occurs when the net loan balance increases during repayment due to interest charges larger than loan payments.

<sup>6</sup> Sheila Blair and Preston Cooper, *The Future of Income-Share Agreements Policy and Politics* 6, The Manhattan Institute (Mar. 2019), <https://www.manhattan-institute.org/future-income-share-agreements-to-finance-higher-education>.

<sup>7</sup> U.S. Gov't Accountability Off., GAO-18-163, *Federal Student Loans: Actions Needed to Improve Oversight of Schools' Default Rates* (2018), <https://www.gao.gov/products/GAO-18-163>.

<sup>8</sup> U.S. Gov't Accountability Off., GAO-19-484T, *Higher Education: Opportunities to Strengthen Federal Accountability* (2019), <https://www.gao.gov/assets/700/698170.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Office of Mgmt. & Budget, *A Budget for a Better America: Promises Kept. Taxpayers First 2* (2020), <https://www.whitehouse.gov/wp-content/uploads/2019/03/budget-fy2020.pdf>.

<sup>11</sup> U.S. Const. Art. I, Sec 8, Clause 1.

<sup>12</sup> S. 2124, 116th Cong. (2019).



### ADDRESS TAXATION OF SOCIAL SECURITY BENEFITS

Social Security beneficiaries who exceed statutory income thresholds are taxed on a portion of their benefits. The income thresholds are not indexed for inflation or income growth, resulting in a greater proportion of beneficiaries' income being subject to tax over time.

#### BACKGROUND

Social Security provides monthly cash benefits to retired or disabled workers. These benefits have historically not been taxed. However, acting on recommendations from the National Commission on Social Security Reform (also known as the Greenspan Commission), Congress began taxing up to 50 percent of benefits for beneficiaries whose income exceeds a certain threshold in 1983. Congress increased this limit to 85 percent in 1993 as part of the Omnibus Budget Reconciliation Act.<sup>1</sup> These benefits are taxed at the taxpayers' marginal tax rates. Because Congress did not index the income threshold for factors such as inflation, the law negatively impacts an increasing number of beneficiaries over time.

According to the Congressional Budget Office, approximately 49 percent of beneficiaries were taxed on a portion of their benefits in 2014.<sup>2</sup> This amounts to approximately 25.5 million Americans. Revenue from the tax on benefits flows to Social Security's trust funds and Medicare's Hospital Insurance Trust Fund.<sup>3</sup> In 2017, taxing Social Security benefits generated \$59.2 billion dollars in revenue.<sup>4</sup>

#### CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

Congress has the constitutional authority to lay and collect taxes, including the ability to repeal taxes.<sup>5</sup> As a matter of principle, the Federal Government should not tax benefits which are funded originally by taxes on a beneficiary's income.

#### POLICY SOLUTIONS

Congress should pass legislation raising the income threshold at which beneficiaries are subject to taxation, indexing it to inflation or income growth. Alternatively, Congress may consider repealing the tax outright. These changes should be considered as part of broader reforms to Social Security in order to bring financial stability to the program.

#### Quick Take

Nearly half of Social Security beneficiaries are taxed on a portion of their benefits. Taxes on these benefits are not indexed for inflation or income growth.

Congress should raise the income threshold at which beneficiaries are subject to taxation and index it to inflation or income growth.

Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.

<sup>1</sup> Julie Whittaker, Cong. Research Serv., RL32552, *Social Security: Calculation and History of Taxing Benefits* (2016).

<sup>2</sup> Joshua Shakin and Kurt Seibert, Cong. Budget Office, 49948, *The Taxation of Social Security Benefits* (2015).

---

<sup>3</sup> Whittaker, *supra*, note 1.

<sup>4</sup> Social Security and Medicare Boards of Trustees, Social Security Administration, *A Summary of the 2019 Annual Reports* (2019).

<sup>5</sup> U.S. Const. art. I, § 9, cl. 1.

### CREATE A SIMPLIFIED AVERAGE TAX

Filing taxes is unnecessarily complicated for most Americans. While higher income earners employ tax accountants to take advantage of every complicated provision in the tax code, most filers are left to fend for themselves. Developing a simplified tax filing system would reduce compliance burdens for most taxpayers while preserving the traditional filing process for those who prefer to utilize it.

#### BACKGROUND

The Federal Government forces most Americans to hunt for tax deductions and credits if they wish to pay the correct amount of taxes owed. If a taxpayer misses filing a provision he or she is legally entitled to take, the taxpayer may end up overpaying. Incorrect credit and deduction claims may result in substantial fines and penalties.

The internal revenue code currently requires higher-income earners to calculate their tax liability through a simplified tax filing system called the alternative minimum tax (AMT) as well as their traditional filing.<sup>1</sup> The AMT compels filers to pay the higher of the two resulting tax bills.

Tax simplification shouldn't be exclusive to the wealthiest Americans — either through the AMT or the employment of accountants. According to the Internal Revenue Service (IRS), the adjusted gross income (AGI) floor for the top 20 percent of individual income taxpayers was \$51,536 in 2016.<sup>2</sup> In other words, developing a tax simplification option for taxpayers with AGIs less than \$51,536, would cover roughly 80 percent of taxpayers.

From 2001 to 2016, the average tax rate<sup>3</sup> for the bottom 75 percent of AGIs was 5.84 percent.<sup>4</sup> The bottom 50 percent of AGIs pay an even lower average rate of 3.43 percent.<sup>5</sup> While the average tax rate appears much lower than the marginal rate brackets published by the IRS, it reflects the taxes Americans actually pay to the Federal Government when various income exclusions, deductions, and credits apply. Using these rates as a starting point for tax calculations could radically simplify taxes.

#### CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution gives Congress the ability to impose and collect income tax.<sup>6</sup> Taxation should be as minimally disruptive as possible while funding the constitutionally authorized functions of the Federal Government.

#### Quick Take

The Federal Government subjects most Americans to the process of hunting for tax deductions and credits to reduce their tax bill.

Taxpayers filing the simplified average tax would exchange the litany of below-the-line deductions and credits for a lower tax rate applied to their adjusted gross income.

## POLICY SOLUTIONS

Legions of lobbyists currently protect the myriad complexities of the current tax code. Rather than tinkering with the existing code, Congress should pass a simplified average tax (SAT) which would operate parallel to the traditional income tax system, much like the AMT, to make tax filing easier for most Americans.

Under a SAT, filers with AGIs below a certain threshold set by Congress (such as the \$51,536 mentioned previously) could calculate their tax liability by applying an IRS-published average tax for their AGI quartile to their current tax year AGI. Taxpayers filing the SAT would exchange the below-the-line deductions and credits for a significantly lower tax rate.

Unlike the AMT, which requires taxpayers to calculate tax bills under both systems and pay the higher amount, the SAT would serve as an optional simplified alternative for most taxpayers that would save time and might result in a lower tax bill as well.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Internal Revenue Service, *Topic No. 556 Alternative Minimum Tax* (Jan. 28, 2019), <https://www.irs.gov/taxtopics/tc556>.

<sup>2</sup> Internal Revenue Service, *SOI Tax Stats - Individual Statistical Tables by Tax Rate and Income Percentile* (Jun. 17, 2019), <https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-tax-rate-and-income-percentile>, Table 1, All Individual Returns Excluding Dependents: Number of Returns, Shares of Adjusted Gross Income (AGI) and Total Income Tax, AGI Floor on Percentiles in Current and Constant Dollars, and Average Tax Rates, by Selected Expanded Descending Cumulative Percentiles of Returns Based on Income Size Using the Definition of AGI for Each Year, Tax Years 2001-2016 (Oct. 2018), <https://www.irs.gov/pub/irs-soi/16in01etr.xls>.

<sup>3</sup> Total income tax divided by adjusted gross income.

<sup>4</sup> Internal Revenue Service, *SOI Tax Stats - Individual Statistical Tables by Tax Rate and Income Percentile* (Jun. 17, 2019), <https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-tax-rate-and-income-percentile>, Table 2. All Individual Returns Excluding Dependents: Number of Returns, Shares of Adjusted Gross Income (AGI) and Total Income Tax, and Average Tax Rates, by Selected Ascending Cumulative Percentiles of Returns Based on Income Size Using the Definition of AGI for Each Year, Tax Years 2001-2016, Total income tax divided by adjusted gross income (Oct. 2018), <https://www.irs.gov/pub/irs-soi/16in02etr.xls>.

<sup>5</sup> *Id.*

<sup>6</sup> U.S. Const. amend. XVI.

## **END ABUSE OF THE EARNED INCOME TAX CREDIT**

The Earned Income Tax Credit (EITC) serves as a tax credit for low-income individuals and families. While the credit incentivizes work, significant mismanagement and erroneous claims plague the program. Congress should combat abuse of the EITC.

### **BACKGROUND**

The EITC is one of the Federal Government's largest welfare assistance programs, with over 25 million households participating in 2019 and over \$60 billion in total program outlays.<sup>1</sup> The EITC operates as a refundable tax credit given to families and individuals whose income falls below 125 percent of the federal poverty level, depending on marital status and number of children.<sup>2</sup>

The EITC incentivizes employment by limiting benefits to filers with earned income. For example, in tax year 2020, a single individual filing as head of household making less than \$41,756 with one qualifying child could receive a credit of \$3,584. With three qualifying children, the credit increases to \$6,660. By comparison, a married couple filing jointly making less than \$53,330 with two children could receive a credit of \$5,920.<sup>3</sup>

### **Erroneous Claims and Mismanagement**

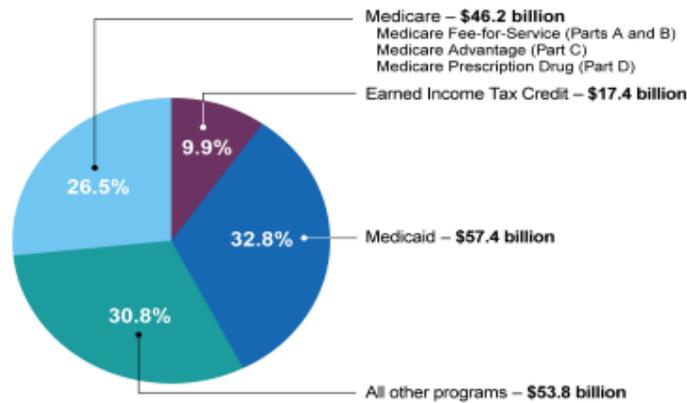
According to the Government Accountability Office (GAO), the EITC accounted for \$17.4 billion in improper payments or 9.9 percent of all federal improper payments in Fiscal Year (FY) 2019.<sup>4</sup> GAO has consistently designated the EITC as among the highest-risk federal programs since 2003, indicating it is among the top programs “where the government can achieve the greatest return on investment for the taxpayer by ensuring that improper payments are eliminated.”<sup>5</sup>

### **Quick Take**

The EITC is one of the Federal Government's largest welfare assistance programs, with over 25 million households claiming the EITC in 2019 and over \$60 billion in total program outlays.

The EITC accounted for \$17.4 billion in improper payments or 9.9 percent of all federal improper payments in FY2018.

**Figure 1: Programs with the Largest Percentage of Total Reported Government-Wide Estimates of Improper Payments for Fiscal Year 2019**



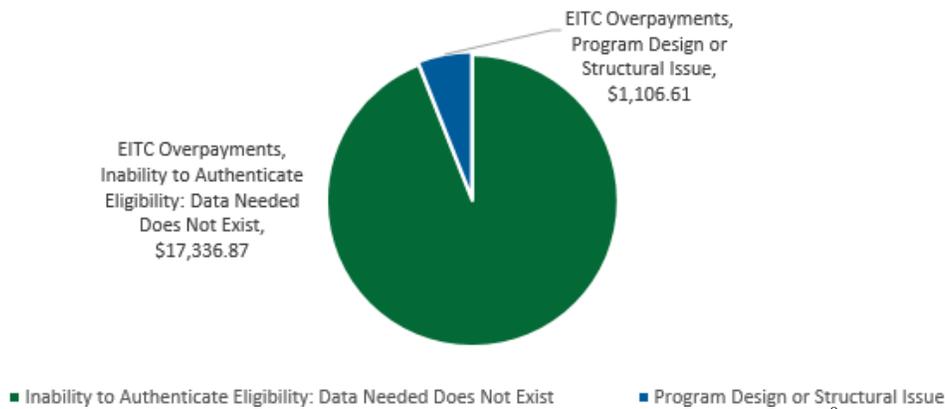
Source: GAO analysis of Office of Management and Budget data and fiscal year 2019 agency financial reports. | GAO-20-344

<sup>20</sup>The Department of Health and Human Services (HHS) estimates improper payments for the Medicaid program across three components: (1) fee-for-service, (2) managed care, and (3) eligibility. In fiscal year 2019, HHS reported improper payment rates for each of these components but did not report separate improper payment amounts.

Source: GAO-20-344<sup>6</sup>

The EITC program has longstanding issues with improper payments. In its most recent analysis of EITC compliance, the Internal Revenue Service (IRS) concluded that from 2006 to 2008, at least 43 percent of all EITC claims — or 28.5 percent of the dollar value of credits paid out — were erroneous.<sup>7</sup> The chart below illustrates the root causes of EITC improper payments:

**IMPROPER OVERPAYMENT ROOT CAUSE CATEGORY (\$ IN MILLIONS)**



Source: Treasury Department FY18 Annual Financial Statement<sup>8</sup>

EITC claim errors mostly result from the following:

- **Misreporting** - Misreporting, the most common error, occurs in two-thirds of returns and accounts for the second highest amount of overclaimed dollars. From 2006 to 2008, half of total EITC overclaims included income misreporting. In 2015, income misreporting was a factor in roughly \$9.4 billion in erroneous overclaimed EITC credits.<sup>9</sup>

- **Widening the Tax Gap** - The Tax Gap refers to the difference between the amount of taxes owed and the amount that taxpayers actually pay on time.<sup>10</sup> The Internal Revenue Service (IRS) develops estimates of the tax gap “to measure overall compliance with the current tax system,”<sup>11</sup> and designates three primary sources of noncompliance.<sup>12</sup> Underreporting accounts for the highest of the three primary sources for the estimated gross tax gap at \$352 billion, according to 2019 Treasury estimates of the 2011 to 2013 timeframe. Total tax credits accounted for 17 percent of the individual income tax underreporting tax gap, of which the EITC accounted for 11 percent.<sup>13</sup>
- **Inadequate Income Verification** - Currently, EITC payments are issued before the IRS has complete information necessary to verify income.<sup>14</sup> The Protecting Americans from Tax Hikes (PATH) Act of 2015<sup>15</sup> requires the IRS to wait to issue a tax credit of the EITC until after February 15.<sup>16</sup> The Department of Treasury’s 2018 annual financial report states that this bill does allow them to receive Form W-2 sooner, yet the payer information still may not be available until after the IRS filing season or even not at all.<sup>17</sup>

**INDIVIDUAL INCOME TAX UNDERREPORTING TAX GAP ESTIMATES FOR TAX CREDITS: TY 2011 – 2013**  
(\$ IN BILLIONS) <sup>(1)</sup>

Tax Return Line Items	Tax Gap	Share of Gross Tax Gap	Share of Individual Income Tax Underreporting Tax Gap
<b>Gross Tax Gap</b>	<b>\$441</b>	<b>100%</b>	<b>N/A</b>
<b>Individual Income Tax Underreporting Tax Gap</b>	<b>\$245</b>	<b>56%</b>	<b>100%</b>
<b>Total Credits</b>	<b>\$42</b>	<b>10%</b>	<b>17%</b>
Child Tax Credit and Additional Child Tax Credit	\$9	2%	3%
Earned Income Tax Credit	\$27	6%	11%
Education Credits (Including AOTC)	\$5	1%	2%
All Other Credits	\$1	<sup>(2)</sup>	1%

<sup>(1)</sup> The estimates are the annual averages for the TY 2011 – 2013 timeframe.

<sup>(2)</sup> Less than 0.5 percent.

Note: Individual amounts may not add to total due to rounding.

Source: Treasury OIG, FY 2019 Annual Financial Statement

- **Underestimated Improper Payments Rate** - A 2018 GAO report found that the IRS removed recovered overpayments when calculating its estimated improper payments for the EITC program.<sup>18</sup> The IRS previously subtracted *recovered* overpayments from the EITC improper payment estimate, which understated the estimate, misrepresented the efficacy of the program’s management, and limited the ability to prevent improper payments. To remedy this, GAO recommended the IRS revise its methodology to include recovered payments in its estimate for EITC improper payments, in accordance with OMB guidance.<sup>19</sup> Although the IRS concurred and the recommendation is considered closed, the total amount of EITC improper payments must be considered a conservative estimate.
- **Qualifying Child Errors** - Claims where a child failed to meet the program’s residency test accounted for 30 percent of overclaim errors between 2006 and 2008. These errors resulted in at least \$7.2 billion in improper payments and account for “by far” the most dollars of overclaims.<sup>20,21</sup> The relationship test represents the second-highest qualifying child error, with over 3 percent of erroneously claimed children.<sup>22</sup>
  - Each qualifying child must reside with the beneficiary for at least six months of the year and be younger than 19 or younger than 24 and a full-time student.<sup>23</sup> Currently, there is no

requirement to demonstrate that the beneficiary is financially responsible for the child and no opportunity to officially document or verify the six-month residency requirement.

- The following list of relatives are eligible to file for EITC benefits:<sup>24</sup>
  - Married couples;
  - Single parents with legal custody;
  - Parents without legal custody;
  - Stepparents;
  - Other adult relatives such as a child’s grandparent, aunt, uncle, and other siblings and/or stepsiblings.

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

Congress has the authority to lay and collect taxes, including the determination of individuals that may be exempt from paying taxes.<sup>25</sup> Congress also has the authority to address these issues as a matter of general welfare with many families living in poverty in the United States.<sup>26</sup>

Welfare programs are most effective to empower individuals and confer dignity to beneficiaries when they support intact families and incentivize work.

## **POLICY SOLUTIONS**

Congress should introduce legislation requiring the IRS to fully verify income before issuing any refundable EITC payment. Legislation should require individuals claiming self-employment income to provide a Form 1099 or be a licensed small business and provide invoices of payments received.<sup>27</sup>

Congress should also block residency fraud by limiting eligibility to parents with legal custody, adoptive parent(s), legal guardian(s), or foster parent(s). Adult relatives, stepsiblings, and non-custodial unmarried parents without direct financial or legal responsibility for a child should not receive the EITC.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> EITC Fast Facts, taken from the December 2019 Calendar Year Report, *Earned Income Tax Credit and Other Refundable Credits with the Internal Revenue Service* (Feb. 21, 2020), <https://www.eitc.irs.gov/partner-toolkit/basic-marketing-communication-materials/eitc-fast-facts/eitc-fast-facts>.

<sup>2</sup> Overview of EITC, *Earned Income Tax Credit and Other Refundable Credits with the Internal Revenue Service* (Dec. 14, 2018), <https://www.eitc.irs.gov/eitc-central/eitc-information-for-press/overview-of-eitc/overview-of-eitc>.

<sup>3</sup> *2020 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates*, Internal Revenue Service (Feb. 21, 2020), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-income-limits-maximum-credit-amounts>.

<sup>4</sup> Government Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies’ Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>5</sup> Report to Congressional Committees, *HIGH-RISK SERIES Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Mar. 2019), <https://www.gao.gov/assets/700/697245.pdf>.

<sup>6</sup> *Supra* at 4.

<sup>7</sup> Kara Leibel, *Taxpayer Compliance and Sources of Error for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (March 2014), Internal Revenue Service, <https://www.irs.gov/pub/irs-soi/15rpeitctaxpayercompliancetechnpaper.pdf>.

<sup>8</sup> *Annual Agency Financial Report FY2018*, Department of the Treasury, pg. 196 (2018), [https://home.treasury.gov/system/files/236/AFR\\_Full%20111518\\_clean\\_508.pdf](https://home.treasury.gov/system/files/236/AFR_Full%20111518_clean_508.pdf).

---

<sup>9</sup> Jamie Hall, Robert Rector, *Reforming the Earned Income Tax Credit and Additional Child Tax Credit to End Waste, Fraud, and Abuse and Strengthen Marriage*, The Heritage Foundation (Nov. 16, 2016), pg. 6, 9,

<https://www.heritage.org/welfare/report/reforming-the-earned-income-tax-credit-and-additional-child-tax-credit-end-waste>.

<sup>10</sup> Annual Agency Financial Report FY2019, Department of the Treasury, pg. 151

<https://home.treasury.gov/system/files/236/Treasury-FY-2019-AFR-Final-111519-508-FINALrevised.pdf>

<sup>11</sup> *Id.*

<sup>12</sup> Annual Agency Report FY2019 at 151 and 152. According to Treasury’s annual report, the three primary sources from 2011 to 2013 are: 1) *Non-filing tax gap*, or the tax not paid on time by those who do not file required returns on time (estimated \$39 billion); 2) *Underreporting tax gap*, or the net understatement of tax on timely filed returns (estimated \$352 billion); and 3) *Underpayment tax gap*, or the amount of tax reported on timely-filed returns that is not paid on time (estimated \$50 billion).

<sup>13</sup> Annual Agency Financial Report FY19 at 154.

<sup>14</sup> *Agency Financial Report FY2015*, Department of the Treasury, pg. 204 (Nov. 16, 2015),

<https://www.treasury.gov/about/budget-performance/annual-performance-plan/Documents/AFR%20FY15%20FINAL%20508.pdf>.

<sup>15</sup> Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, div. Q.

<sup>16</sup> *PATH Act Tax Related Provisions*, Internal Revenue Service (Jun. 28, 2019). <https://www.irs.gov/newsroom/path-act-tax-related-provisions>.

<sup>17</sup> Treasury, *supra*, note 8, at 197.

<sup>18</sup> *Improper Payments: Actions and Guidance Could Help Address Issues and Inconsistencies in Estimation Processes* (GAO-18-377), Government Accountability Office (May 31, 2018), <https://www.gao.gov/products/GAO-18-377>.

<sup>19</sup> *Id.*

<sup>20</sup> Leibel, *supra*, note 7, at iv.

<sup>21</sup> Additionally, in their updated Annual Financial Report for FY2019, the Treasury Department states that “‘qualifying child’ errors account for the most significant EITC overclaims in terms of dollars; failure to meet” eligibility requirements in “the ‘residency test’ and the ‘relationship test’ are the two primary factors that result in these overclaims.” Annual Agency Financial Report FY2019, Department of the Treasury, pg. 199, <https://home.treasury.gov/system/files/236/Treasury-FY-2019-AFR-Final-111519-508-FINALrevised.pdf>

<sup>22</sup> Leibel, *supra*, note 7, at 39.

<sup>23</sup> *Qualifying Child Rules*, Internal Revenue Service (Jul. 10, 2019), <https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/qualifying-child-rules>.

<sup>24</sup> Hall, *supra*, note 9, at 11.

<sup>25</sup> U.S. Const. art. 1, § 8.

<sup>26</sup> *Id.*

<sup>27</sup> Hall, *supra*, note 9, at 10.



## **IMPROVE SMALL BUSINESS ACCESS TO INTERNATIONAL MARKETS**

Greater small business access to global trade can improve international supply chains and increase United States economic competitiveness.<sup>1</sup> Congress must assert its role in negotiating and implementing free trade agreements including the U.S.-Mexico-Canada Agreement (USMCA) and advocate for small business needs throughout the lifecycle of all trade agreements. Additionally, Congress must also exercise oversight authority over multi-agency federal trade activities.

### **BACKGROUND**

Nearly 98 percent of exporting firms are small businesses; 287,835 small exporters generate \$440 billion of known export value.<sup>2</sup> However, small exporters represent only one percent of American small businesses and represent only 32.9 percent of total American export value.<sup>3</sup>

Public and private small business advocates have hailed the USMCA as a major win; The USMCA is the first U.S. trade agreement to include a chapter specifically for small and medium size exporters (SMEs). The chapter establishes a Committee on SME Issues comprised of government officials, and an annual SME Dialogue to facilitate stakeholder communication and participation.<sup>4</sup> American small businesses will rely on Congress to ensure implementation of SME provisions within USMCA.

The road to export markets is complex, and existing programs to reduce trade barriers for small businesses should not add to the confusion. The Trade Promotion Coordinating Committee (TPCC) is an interagency task force comprised of twenty agencies that administer and regulate federal trade promotion and financing programs. Six member agencies, the U.S. Small Business Administration (SBA), U.S. Department of Commerce (Commerce), Export-Import Bank (Ex-Im), U.S. Department of Agriculture (USDA), U.S. Trade and Development Agency (USTDA), and the U.S. Department of State provide direct assistance to small businesses exporting overseas.<sup>5</sup>

Streamlined cooperation between TPCC member agencies, state trade agencies, and private sector partners would improve service delivery and simplify processes for small business clients. Increased oversight of overlapping and duplicative trade promotion and financing activities would reassert congressional budget authority and conservative spending principles.

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution gives Congress the authority to regulate trade with foreign nations.<sup>6</sup> To ensure global access to American goods and services, the United States must facilitate free and fair trade. Congress must ensure that taxpayer dollars allocated to federal trade promotion and financing programs are responsibly utilized.

#### **Quick Take**

Congress must ensure that trade agreements provide paths to international markets for small businesses.

Streamlining regulation and providing clear information about available programs are critical to that effort.

## POLICY SOLUTIONS

To maximize global competitiveness, proactive trade policies and services should prioritize small business access to international markets. Congress may consider policies to alleviate trade burdens and barriers, which may include:

- Streamlining regulations to ensure that domestic industries experience as little operational disruption and additional costs as possible, while complying with various environmental, labor, and health safeguards.
- Clarifying authorities, resources, and services offered by trade promotion agencies to prevent duplication and overlap.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Congressional Research Service, *Small Business Administration Trade and Export Promotion Programs* 16 (2016), <https://www.crs.gov/reports/pdf/R43155>.

<sup>2</sup> Office of the Chief Counsel for Advocacy, *Small Business Administration, Frequently Asked Questions* 1 (2018), <https://www.sba.gov/sites/default/files/advocacy/Frequently-Asked-Questions-Small-Business-2018.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> Office of the U.S. Trade Representative, *United States-Mexico-Canada Agreement Fact Sheet Supporting America's Small and Medium-Sized Businesses* (Nov. 2018), <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/november/united-states%E2%80%93mexico%E2%80%93canada-agreement>.

<sup>5</sup> Government Accountability Office (GAO), *Export Promotion, Small Business Administration Needs to Improve Collaboration to Implement Its Expanded Role* 1 (2013), <http://www.gao.gov/assets/660/651685.pdf>.

<sup>6</sup> U.S. Const. art. 1, § 8.

## **HOLD CHINA ACCOUNTABLE FOR COVID-19**

As the United States continues to face the devastation caused by the novel coronavirus pandemic (COVID-19), Congress and the executive branch must act to hold China accountable for its failures and deceptions related to transmission of the disease.

### **BACKGROUND**

In late 2019, a novel coronavirus began significant human-to-human transmission in Wuhan, China.<sup>1</sup> Unfortunately, its origin theory has proven elusive.<sup>2</sup> Regardless, the Chinese government encountered viral clusters emerging in Wuhan before other governments, and possessed the best opportunity to respond, develop mitigation strategies, and coordinate with nations around the globe.

Rather than immediately alerting other nations to the gravity of the virus, Chinese officials were not forthcoming, ran narratives directly counter to medical evidence, and continued to allow travel outside of the country without necessary safeguards.<sup>3</sup> China further attempted to avoid accountability by spreading propaganda that COVID-19 originated from the U.S. military.<sup>4</sup>

While virtually every nation has been caught off-guard by this coronavirus, China's failure to communicate honestly and take appropriate measures has directly led to significant health and economic damages to the United States.

Chinese government-run press suggested that China might retaliate against adverse U.S. policies, such as travel bans, by cutting off medical products and prohibiting exports to the United States.<sup>5</sup> Unfortunately, the U.S. economy is so reliant on Chinese manufacturing that the threats carry significant weight. Of equal concern is the flood of lethal fentanyl that has entered the U.S. from China as trade relations have liberalized over the last few decades.<sup>6</sup> According to Customs and Border Patrol testimony, about 80 percent of fentanyl seized in FY2017 originated from China by international mail.<sup>7</sup>

China is one of the 196 countries legally-bound by the second edition of the World Health Organization's 2005 International Health Regulations.<sup>8</sup> As such, China has a duty to rapidly and clearly communicate with other nations about conditions that may constitute a potential public health emergency.<sup>9</sup> More importantly, China is also expected to work in a collaborative nature with other states in a very short time window.<sup>10</sup>

In 2001, the United Nations (UN) adopted a resolution noting the International Law Commission's (ILC) draft text on the responsibility of states for internationally wrongful acts.<sup>11</sup> While the UN has not formally considered a resolution regarding the ILC's recommendations, "they have been very widely approved and applied in practice, including by the International Court of Justice (ICJ)."<sup>12</sup>

### **Quick Take**

China's actions related to COVID-19 harmed the United States' health and economy.

Congress should consider available options to hold China's authoritarian regime accountable.

The UN Charter permits states to bring disputes before the ICJ or other international tribunals.<sup>13</sup> The U.S. is also a member of the Permanent Court of Arbitration at The Hague which was “established in 1899 to facilitate arbitration and other forms of dispute resolution between states.”<sup>14</sup>

Due to the principle of state sovereignty, China may not be forced to appear before these international bodies without their consent.

Domestically, the Foreign Sovereign Immunities Act<sup>15</sup> governs lawsuits against foreign states such as China related to the harms they cause. While there are a few exceptions ranging from economic activity to state sponsors of terrorism, there is currently no exception permitting lawsuits for negligent or intentional conduct of public officials related to a public health crisis.

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution gives Congress authority to “regulate Commerce with Foreign Nations.”<sup>16</sup> Trade agreements and trade promotion authority laws are among the most common mechanisms for addressing major international issues. Congress also has the authority to set jurisdiction for United States federal courts.<sup>17</sup>

## **POLICY SOLUTIONS**

The United States has several options to hold China accountable for direct actions resulting in health and economic harms to the United States. Because China will not likely consent to a normal judicial or dispute resolution process, the U.S. must independently ensure that its policy responses are proportional to actual harm caused. Congress may:

- **Redirect America’s Supply Chain Away from China** – The U.S. must strengthen its international alliances and diversify its global supply chain to reduce economic dependency on China. Congress should strengthen multilateral alliances with international partners, particularly with Pacific regional allies, as well as close geographical allies in Central and South America, by reducing and harmonizing trade barriers.<sup>18</sup>
- **Pursue Relief Before International Tribunals** – The U.S. should consider international remedies up to and including action at the ICJ. China is unlikely to consent to such resolutions and will be even less likely to transparently allow independent discovery or investigations into their handling of the COVID-19.
- **Apply Diplomatic Pressure for China to Take Responsibility** – As China fails to take accountability for the damage that its authoritarian regime has caused, the U.S. should consider efforts to remove China from leadership positions at the UN and examine China’s role at the World Health Organization.
- **Combat China’s Internet Firewall** – If China refuses to be transparent about public health issues through official government channels, Congress should evaluate measures to thwart China’s efforts to keep its information systems sealed from the rest of the world.<sup>19</sup>
- **Restrict Travel and Trade** – To avoid further health crises, Congress should consider appropriate travel restrictions, health screenings and trade limitations until China agrees to honor its international health obligations.

- 
- <sup>1</sup> Graham Readfearn, *How did coronavirus start and where did it come from? Was it really Wuhan's animal market?* The Guardian (Apr. 27, 2020) <https://www.theguardian.com/world/2020/apr/08/how-did-coronavirus-start-and-where-did-it-come-from-was-it-really-wuhans-animal-market>.
- <sup>2</sup> Andersen, K.G., Rambaut, A., Lipkin, W.I. *et al.* The proximal origin of SARS-CoV-2. *Nat Med* 26, 450–452 (2020). <https://doi.org/10.1038/s41591-020-0820-9>.
- <sup>3</sup> Jim Geraghty, *The Comprehensive Timeline of China's COVID-19 Lies*, National Review (Mar. 23, 2020) <https://www.nationalreview.com/the-morning-jolt/chinas-devastating-lies/>.
- <sup>4</sup> Steven Lee Myers, *New York Times*, *China Spins Tale that the U.S. Army Started the Coronavirus Epidemic*, Mar. 13, 2020, <https://www.nytimes.com/2020/03/13/world/asia/coronavirus-china-conspiracy-theory.html>
- <sup>5</sup> 理直气壮, 世界应该感谢中国, Xinhua (Mar. 4, 2020) [http://www.xinhuanet.com/2020-03/04/c\\_1125660473.htm](http://www.xinhuanet.com/2020-03/04/c_1125660473.htm).
- <sup>6</sup> Adriana Belmonte, *How China flooded the U.S. with lethal fentanyl, fueling the opioid crisis*, Yahoo Finance (Feb. 15, 2020) <https://finance.yahoo.com/news/chinas-role-in-the-us-fentanyl-epidemic-152338423.html>.
- <sup>7</sup> U.S. Senate, 2018; T. Owen, Executive Assistant Commissioner for Office of Field Operations, U.S. Customs and Border Protection, testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, January 25, 2018.
- <sup>8</sup> World Health Organization. (2008). *International Health Regulations (2005) Second Edition*. Geneva: World Health Organization, <https://www.who.int/ihr/publications/9789241596664/en/>.
- <sup>9</sup> *Id.* at art. 6.
- <sup>10</sup> *Id.* at art. 10.
- <sup>11</sup> G.A. Res. 56/83, U.N. Doc. A/RES/56/83 (Jan. 28, 2002) [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/res/56/83](https://www.un.org/ga/search/view_doc.asp?symbol=A/res/56/83).
- <sup>12</sup> James Crawford, *Articles on Responsibility of States for Internationally Wrongful Acts*, Office of Legal Affairs, United Nations, (2001) <https://legal.un.org/avl/ha/rsiwa/rsiwa.html>.
- <sup>13</sup> U.N. Charter ch. XIV, art. 92-96. <https://www.un.org/en/sections/un-charter/chapter-xiv/index.html>
- <sup>14</sup> About us, Permanent Court of Arbitration (2020) <https://pca-cpa.org/en/about/>.
- <sup>15</sup> 28 U.S.C. 1602-1611 (2020).
- <sup>16</sup> U.S. Const. art. I, § 8, cl. 3.
- <sup>17</sup> U.S. Const. art. III, § 1, cl. 2.
- <sup>18</sup> Collectively, the U.S., Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam represent about 40 percent of the world's GDP, as a start. The Republican Policy Committee has issued previous policy guides on trade with China: See guides entitled *Reroute China Supply Chain Dependency* and, *Respond to Chinese Trade Practices*.
- <sup>19</sup> See, *Reject Authoritarian Internet Control*, House Republican Policy Committee (Mar. 2020), <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/28%20-%20Reject%20Authoritarian%20Internet%20Control.pdf>.



# GUIDE TO THE ISSUES

## MAINTAIN PEACE THROUGH AMERICAN MILITARY STRENGTH

The United States faces the most diverse range of serious threats than at any point in our history.<sup>1</sup> Every domain of warfare poses new challenges to America’s military competitive advantage.<sup>2</sup> Protecting the country from these threats is the first duty of the government, and each requires the United States to maintain the most lethal, agile, and robust military in the world.

### BACKGROUND

Adversarial nations like Russia and China continue to intimidate their neighbors and rewrite international norms to America’s detriment. Iran and North Korea continue efforts to exert covert influence and destabilize operations in the Middle East and Asia. ISIS and al Qaeda are under pressure and, though they have lost most of their physical territory, they continue to pose a threat.<sup>3</sup>

In addition to these global threats, America’s defense capabilities face federal policy headwinds as well. Years of inadequate and delayed budgets during President Barack Obama’s tenure combined with increased deployments and operations created a military readiness crisis. During President Obama’s tenure in office (FY2010 to FY2016), Department of Defense spending adjusted for inflation declined by 23 percent.<sup>4</sup> According to Mackenzie Eaglen of the Marilyn Ware Center for Security Studies at the American Enterprise Institute, lack of military readiness due to funding constrictions explains the many years military training fatalities outpaced deaths in combat.<sup>5</sup> Despite efforts from the Trump administration and Republicans in Congress, defense spending as a percent of gross domestic product remains at historic lows.<sup>6</sup>

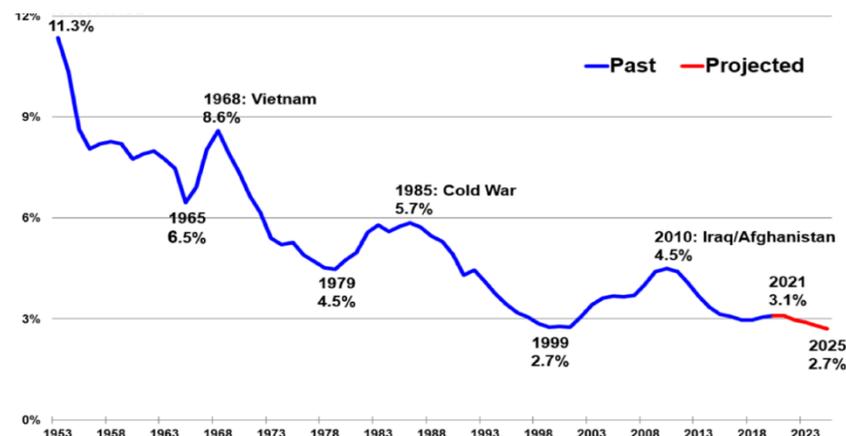
### Quick Take

America faces a broad array of threats on the global stage which challenge the competitive advantages enjoyed by America’s armed forces.

Increased activity and spending reductions have contributed to declines in military readiness.

Congress must address these concerns in a manner that maintains American military dominance while protecting taxpayer resources.

**DOD Outlays as a Percent of Gross Domestic Product (GDP) FY1953-FY2025**



Source: DoD spending as a percent of GDP compares DoD outlays, both discretionary and mandatory, from the National Defense Budget Estimates for FY 2020 (Table 7-7) and projected GDP from OMB’s Economic Assumptions for the FY 2021 Budget.

## **Peace Through Strength**

As President Ronald Reagan stated in March 1983, “We maintain our strength in order to deter and defend against aggression—to preserve freedom and peace.”<sup>7</sup> In that spirit, President Donald Trump released the National Defense Strategy in 2018 prioritizing competition with other global powers to address threats from Russia and China.<sup>8</sup> To restore military readiness and maintain our competitive edge, senior commanders have testified that the Pentagon budget must grow by 3 to 5 percent above inflation through 2025.<sup>9</sup>

With the support of Congressional Republicans, the administration is working to restore readiness and has begun making key investments in the 21<sup>st</sup> century capabilities, such hypersonics, 5G, Artificial Intelligence, missile defense, and a modernized nuclear deterrent, America will need to maintain its competitive edge.

Russia and China are aggressively modernizing their militaries. Russia plans to spend \$28 billion this year to modernize its nuclear triad in addition to investing in six new strategic weapons systems. China is on track to build a 420-ship navy by 2035 that will be the world’s largest.<sup>10</sup> According to former acting Secretary of Defense Patrick Shanahan, “Accounting for purchasing power and the significant portion of our military budget going to pay and benefits, today, China’s defense spending approaches that of the United States.”<sup>11</sup>

## **American Troops Deserve the Best**

Congressman Mac Thornberry (R-TX), ranking member of the House Armed Services Committee, has said, “It is morally wrong to send men and women out on missions, even routine patrols, without the best equipment, the best training, the best support that our country can provide.”<sup>12</sup> According to the Congressional Research Service (CRS), America’s military has begun thirteen of the past eighteen years under a continuing resolution (CR). Since 2010, our troops have had to contend with wasteful and inefficient stopgap funding for 39 months.<sup>13</sup> The Navy has calculated that they wasted \$4 billion between 2011 and 2017 as a result of the CRs.<sup>14</sup> This, together with successive years of addressing global threats with inadequate budgets, contributes to a fatal readiness crisis in America’s military.

The *Military Times* found that while total aviation accidents fell for the first time since 2013’s budget cuts, military aviation deaths hit a six year high in 2018.<sup>15</sup> While Congress may have arrested the readiness crisis, it “cannot undo decades of degradation in just a few years.”<sup>16</sup>

## **A Strong Economy Depends on a Strong Military**<sup>17</sup>

American economic prosperity and our national security are critically linked. A strong, vibrant economy is critical to produce the revenues necessary to fund our military. Economic growth and innovation ensure that our military technology stays ahead of authoritarian, directed economies like China’s that can force a whole-of-nation effort against us.

A strong military is also an essential prerequisite to a healthy economy and to our quality of life. Since World War II, the rules-based international order created and maintained by the United States has benefited peoples around the globe and none more so than Americans here at home.

American’s military power also to guarantees freedom of navigation in the sea and in the air for the United States and its allies. It also serves to maintain fair, enforceable international rules that give American companies and workers a fair chance to compete.

A deteriorating military adds fuel to China's narrative that America is a nation in decline so that Asian nations would do better to enlist in China's alternative economic and military order. If China sets the rules for much of the world's economy, America will feel the consequences in its pocketbook as well as to its security.

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

Under Article I Section 8, the Constitution requires Congress, "To raise and support Armies,; To provide and maintain a Navy" and to, "make Rules for the Government and Regulation of the land and naval Forces." Our troops and their families deserve the best America can provide, and our military strength and economic security demand it.

## **POLICY SOLUTIONS**

### **Provide Sufficient and Timely Funding**

To maintain our competitive edge, our military requires sufficient funding to execute the National Defense Strategy. Because of the outsized damage CRs can do to military readiness, Congress must return to regular order appropriations in both the House and the Senate.

### **Embrace Ongoing Fiscal Reforms**

Congress must conduct oversight of Pentagon processes and practices to ensure taxpayer resources are being used effectively and that the Department of Defense (DOD) is agile, maintains its competitive edge, and supports our troops and their families. Since 2014, Republicans have led the way in dozens of reforms including streamlining acquisition statutes and regulations, an updated military retirement system, and improved health care system, a sustainable commissary benefit, an overhaul of the UCMJ, and a major shakeup of the Pentagon's bureaucracy and business processes.

### **Audit the Department of Defense**

The Chief Financial Officers Act of 1990 requires annual financial audits of federal agencies' financial statements. This is a law the DOD has struggled to comply with until recently. Republicans held the DOD accountable, and the DOD completed its first-ever agency-wide financial audit in FY2018. It recently completed its FY2019 audit. While the DOD received an agency-wide *disclaimer of opinion*, DOD is on track to receive a clean audit opinion in the next 10 years. Congress should use the audits as the foundation to drive additional reforms across the DOD.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Kissinger, Henry, Opening Statement before the Senate Armed Services Committee, January 29, 2015.

<sup>2</sup> General James Mattis testimony before House Armed Services Committee (HASC), 6/12/17, <https://docs.house.gov/meetings/AS/AS00/20170612/106090/HHRG-115-AS00-Bio-MattisJ-20170612.pdf>.

<sup>3</sup> U.S. Department of Defense (DOD), *National Defense Strategy Summary*, <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>.

- 
- <sup>4</sup> Office of Management and Budget, *A Budget for America's Future – President's Budget, FY 2021, Table 4.1 – Outlays by Agency: 1962 – 2025* (2021).
- <sup>5</sup> Mackenzie Eaglin, *America's New Deadliest War is Hiding in Plain Sight*, RealClearPolitics, 9/7/17, [https://www.realcleardefense.com/articles/2017/09/07/americas\\_new\\_deadliest\\_war\\_is\\_hiding\\_in\\_plain\\_sight\\_112244.html](https://www.realcleardefense.com/articles/2017/09/07/americas_new_deadliest_war_is_hiding_in_plain_sight_112244.html).
- <sup>6</sup> DOD FY2020 Budget Slides, [https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021\\_Budget\\_Request\\_Overview\\_Book.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request_Overview_Book.pdf).
- <sup>7</sup> Ronald Reagan, *Address to the Nation, Ronald Reagan*, 3/23/83: <http://www.atomicarchive.com/Docs/Missile/Starwars.shtml>
- <sup>8</sup> DOD, *National Defense Strategy*, 2018, <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>.
- <sup>9</sup> General Joseph Dunford, Chairman of the Joint Chiefs of Staff, Brookings Institution, May 28, 2019 <https://www.brookings.edu/events/a-conversation-with-chairman-of-the-joint-chiefs-of-staff-general-dunford/>.
- <sup>10</sup> HASC hearing entitled *DOD's Role in Competing with China*, January 15, 2020.
- <sup>11</sup> Acting Secretary of Defense Patrick Shanahan, Testimony before HASC, March 26, 2019, <https://docs.house.gov/meetings/AS/AS00/20190326/109163/HHRG-116-AS00-Wstate-ShanahanP-20190326.pdf>.
- <sup>12</sup> Rep. Mac Thornberry, *Thornberry: Budget Control Act Limits on Defense Spending Could End Soon*, USNI News, September 6, 2017, <https://news.usni.org/2017/09/06/thornberry-budget-control-act-limits-defense-spending-end-soon>.
- <sup>13</sup> Congressional Research Service, *Defense Spending Under an Interim Continuing Resolution*, August 15, 2019, <https://crsreports.congress.gov/product/pdf/R/R45870>.
- <sup>14</sup> Lauren Williams, *Navy research funds could see scrutiny, secretary says*, Federal Computer Week, October 24, 2019, <https://fcw.com/articles/2019/10/24/navy-spencer-cr-williams.aspx>.
- <sup>15</sup> Tara Copp, *Is military aviation getting any safer? New mishap data shows mixed results*, Military Times, April 8, 2019, <https://www.militarytimes.com/news/your-military/2019/04/09/is-military-aviation-getting-any-safer-new-mishap-data-shows-mixed-results/>.
- <sup>16</sup> General Joseph Dunford, Chairman of the Joint Chiefs of Staff, Testimony before HASC, March 26, 2019, <https://docs.house.gov/meetings/AS/AS00/20190326/109163/HHRG-116-AS00-Wstate-DunfordJ-20190326.pdf>.
- <sup>17</sup> Rep. Mac Thornberry, *Rep. Mac Thornberry: We need a strong vibrant economy to fund our military*, Fox News, February 26, 2018, <https://www.foxnews.com/opinion/rep-mac-thornberry-we-need-a-strong-vibrant-economy-to-fund-our-military>.

# GUIDE TO THE ISSUES

## MODERNIZE AMERICA'S NUCLEAR TRIAD AND MISSILE DEFENSE SYSTEMS

Ensuring a safe, effective, and reliable nuclear deterrent is the military's top priority and the cornerstone of America's national security. However, Russia and China are making significant investments in developing and deploying new nuclear weapons, even as America's nuclear arsenal ages.<sup>1</sup>

### BACKGROUND

America's land-based intercontinental ballistic missiles (ICBMs), submarine-launched ballistic missiles, and bombers form America's nuclear deterrent also known as the "Nuclear Triad."<sup>2</sup> The Nuclear Triad ensures America's ability to deliver a "decisive response, anywhere, anytime" in the event of a catastrophic first strike by an adversary.<sup>3</sup>

The United States built most of these weapon systems in the 1980s. As such, many have been extended well beyond their service lives. Even with extensions, these systems will reach the end of their service lives between 2025 to 2035. This leaves little time to get modern replacement systems online, and no margin for error. The United States must make significant investments over the next 20 years to modernize the deterrent, but at no point is the cost expected to be greater than 7 percent of the DOD budget.<sup>4</sup> As Ash Carter, President Obama's Secretary of Defense said, "It's not an enormous part of our budget, but it is a critical part of our budget."<sup>5</sup> Former Secretary Mattis put it more succinctly, "America can afford survival."<sup>6</sup>

### China and Russia

China and Russia are rapidly modernizing their own nuclear arsenals. China is investing in long-range bombers that could make it one of three countries in the world with a nuclear triad. China is also building out a robust arsenal of missiles designed to deny the United States and our allies access in the Indo-Pacific. Russia spent more than 10 percent of its military budget on nuclear modernization every year since 2011.<sup>7</sup> In 2018, President Vladimir Putin announced six new strategic weapons systems. Five of them are nuclear capable.<sup>8</sup>

### Low-Yield Weapons

The U.S. recently deployed new low-yield nuclear weapons to reinforce America's nuclear deterrent. Opponents of these weapons, including many House Democrats, argue that they are destabilizing and increase the potential for nuclear war.<sup>9</sup> In reality, they are a deterrent to Russia's dangerous "escalate to de-escalate" theory that calls for the use of Russian low-yield weapons in a limited attack, betting that the United States would not respond disproportionately with one of our high-yield weapons. These new low-yield weapons deter the threat of limited first use because the United States would be able to respond proportionally.<sup>10</sup> President Obama's Defense Science Board recommended deploying new low-yield

### Quick Take

Nuclear deterrence is the cornerstone of our national security, but the nuclear triad and missile defense systems require significant modernization.

The President's budget request makes important investments to ensure a robust nuclear deterrent.

weapons because, according to Dr. Mark Schneider, “it plugs a major hole in our current deterrent capability at virtually no cost.”<sup>11</sup>

### **Missile Defense**

Republicans have championed strong missile defenses to protect the American homeland as well as to protect our partners and allies. While rogue nations like North Korea and Iran develop missiles capable of delivering nuclear weapons to the United States, robust layered missile defense capabilities are critical to our national security. For regional missile threats in Asia, Europe, and the Middle East, the United States has pursued capabilities that will protect our deployed troops, partners, and allies from near peer and rogue nations alike. The U.S. continues to work with Israel in the cooperative development of missile defense capabilities which are essential to their safety and security. In addition, a robust missile defense research and development effort must address emerging threats from hypersonic weapons, cruise missiles, and other novel systems under development. Missile defense is a critical part of America’s deterrence calculus.

### **Withdrawing From The INF Treaty**

The United States completed withdrawal from the Intermediate-Range Nuclear Forces (INF) Treaty in August of 2019. The INF Treaty was established in 1987 and led to the elimination of U.S. and Soviet ground-launched cruise missiles with ranges between 500 and 5,500 kilometers.<sup>12</sup> Beginning in 2008, the Obama Administration raised concerns that Russia was testing missiles that could fly to ranges banned by the treaty. By 2014, the Obama Administration concluded that Russia had violated the treaty, “the most serious allegation of an arms control treaty violation that the Obama administration... leveled against Russia.”<sup>13</sup> Congress took action repeatedly to hold Russia accountable, but Russia refused to return to compliance.<sup>14</sup>

While Russia was testing banned missiles, China was developing their own arsenal of missiles unconstrained by the INF treaty. According to the US-China Commission, “Over the last two decades Beijing has built up a formidable missile arsenal outside the limits of the [INF Treaty].”<sup>15</sup> Prior to INF Treaty withdrawal, the United States had no comparable capability due to INF restrictions, which put “the United States at a disadvantage and place[d] our forces at risk because China is not a signatory.”<sup>16</sup>

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

Under Article I Section 8, the Constitution requires Congress, “To raise and support Armies; To provide and maintain a Navy,” and to, “make Rules for the Government and Regulation of the land and naval Forces.” As President Reagan noted, Peace comes through strength. American troops and their families deserve the best deterrent to war our country can provide.

## **POLICY SOLUTIONS**

Congress must authorize sufficient funding to create effective deterrents to a catastrophic attack. In the 1960s, DOD spent approximately 17.1 percent of its budget on the Nuclear Triad. In 1984, during the peak of the last modernization effort, DOD spent 10.6 percent of its budget on the project. President Trump’s fiscal year (FY)2021 Budget Proposal calls for needed investments in America’s nuclear deterrent. The President proposes to spend \$28.9 billion, or 3.9 percent of the total national defense budget request, on nuclear modernization. The President’s nuclear modernization plan would spend 7 percent of the DOD budget at its peak.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

- 
- <sup>1</sup> Acting Secretary of Defense Patrick Shanahan, Testimony before HASC, March 26, 2019, <https://docs.house.gov/meetings/AS/AS00/20190326/109163/HHRG-116-AS00-Wstate-ShanahanP-20190326.pdf>.
- <sup>2</sup> Department of Defense, *America's Nuclear Triad*, <https://www.defense.gov/Experience/Americas-Nuclear-Triad/>
- <sup>3</sup> *Id.*
- <sup>4</sup> Department of Defense, FY21 Budget Overview, [https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021\\_Budget\\_Request\\_Overview\\_Book.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request_Overview_Book.pdf)
- <sup>5</sup> Secretary of Defense Ash Carter, Testimony before the Senate Armed Services Committee, March 2016.
- <sup>6</sup> Phil Steward, *Under Trump, future of U.S. nuclear arsenal slowly taking shape*, Reuters, Sept. 14, 2017, <https://www.reuters.com/article/us-usa-military-nuclear/under-trump-future-of-u-s-nuclear-arsenal-slowly-taking-shape-idUSKCN1BP04D>
- <sup>7</sup> Shanahan, *supra*, note 1.
- <sup>8</sup> *Id.*
- <sup>9</sup> Rep. Adam Smith, *Smith Criticizes the Administration's Deployment of W76-2 Low-Yield Nuclear Warheads*, February 4, 2020, <https://armedservices.house.gov/press-releases?ID=B4D7CA1E-45CB-4C0A-9D56-A8E832D48D15>.
- <sup>10</sup> Undersecretary of Defense for Policy John Rood, *Statement on the Fielding of the W76-2 Low-Yield Submarine Launched Ballistic Missile Warhead*, February 4, 2020, <https://www.defense.gov/Newsroom/Releases/Release/Article/2073532/statement-on-the-fielding-of-the-w76-2-low-yield-submarine-launched-ballistic-m/>.
- <sup>11</sup> Mark B. Schneider, *Deterring Russian First Use of Low-Yield Nuclear Weapons*, RealClearDefense, March 12, 2018, [https://www.realcleardefense.com/articles/2018/03/12/deterring\\_russian\\_first\\_use\\_of\\_low\\_yield\\_nuclear\\_weapons\\_113180.html](https://www.realcleardefense.com/articles/2018/03/12/deterring_russian_first_use_of_low_yield_nuclear_weapons_113180.html).
- <sup>12</sup> Arms Control Association, *U.S. Withdrawal from the INF Treaty: What You Need to Know*, <https://www.armscontrol.org/pressroom/2019-07/us-withdrawal-inf-treaty-what-you-need-know>.
- <sup>13</sup> Michael R. Gordon, *U.S. Says Russia Tested Cruise Missile, Violating Treaty*, New York Times, July 28, 2014, [https://www.nytimes.com/2014/07/29/world/europe/us-says-russia-tested-cruise-missile-in-violation-of-treaty.html?partner=rssnyt&emc=rss&\\_r=1](https://www.nytimes.com/2014/07/29/world/europe/us-says-russia-tested-cruise-missile-in-violation-of-treaty.html?partner=rssnyt&emc=rss&_r=1)
- <sup>14</sup> House Armed Services Committee Republicans, *INF Withdrawal a Long Time Coming*, October 25, 2018, <https://republicans-armedservices.house.gov/news/defense-drumbeat/hasc-fact-sheet-inf-withdrawal-long-time-coming>.
- <sup>15</sup> *Id.*
- <sup>16</sup> Admiral Philip Davidson, *Advance Policy Questions for Admiral Philip Davidson, USN Expected Nominee for Commander, U.S. Pacific Command*, Senate Armed Services Committee, April 17, 2018, [https://www.armed-services.senate.gov/imo/media/doc/Davidson\\_APQs\\_04-17-18.pdf](https://www.armed-services.senate.gov/imo/media/doc/Davidson_APQs_04-17-18.pdf),



### PROTECT AMERICA'S TECHNOLOGY AND ACCESS TO SPACE

Space is as important to 21<sup>st</sup> century warfare as the more traditional warfighting dimensions of air, land, sea, and cyberspace. Space-based technology touches nearly every aspect of American life and the American economy. Protecting that technology and ensuring critical access to space are significant national security priorities.

#### BACKGROUND

The U.S. Space Force was established on December 20, 2019 to “lead our Nation in preparing for emerging threats in an evolving space environment.”<sup>1</sup> Space Force will “help ensure we are postured to deter aggression, defend our national interests and outpace potential adversaries.”<sup>2</sup>

Adversarial nations such as China and Russia also recognize space as a war fighting domain. Russia has developed and tested robust anti-satellite capabilities in the past. In 2007, China demonstrated anti-satellite capability by blowing up a satellite in low-earth orbit. India demonstrated a similar capability just last year.<sup>3</sup>

U.S. Space Force will take responsibility for a variety of programs and policies that were previously under the purview of other military services.<sup>4</sup> Doing so allows greater oversight of these programs and gives them a higher priority. Space Force is part of the Air Force, just as the Marine Corps is part of the Department of the Navy.

Establishing a Space Force is not a new idea. In 1997, then Air Force Chief of Staff Ron Fogleman suggested the idea, and the Rumsfeld Space Commission made a similar recommendation in 2001.<sup>5</sup> The House included a bipartisan proposal for “Space Corps” in its version of the Fiscal Year (FY) 2018 National Defense Authorization Act (NDAA).

These efforts were a reaction to the Department of Defense’s (DOD) fragmented approach to space-related national security challenges such as defending critical satellites and ensuring access to GPS through a jamming environment. Because the space workforce was previously scattered across DOD, working on space was not considered an attractive career path for military officers. As a result, space-related programs were frequently perceived as lower priority by the services than other warfighting needs.<sup>6</sup>

#### CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

Under Article I Section 8, the Constitution requires Congress, “To raise and support Armies; To provide and maintain a Navy,” and to, “make Rules for the Government and Regulation of the land and naval Forces.” America’s ability to defend assets in space is critical to both national security and economic wellbeing.

#### Quick Take

Space is important to 21<sup>st</sup> century warfare and America’s economic security.

Congress must continue oversight of the U.S. Space Force and to ensure that America’s interests in space are adequately defended.

## **POLICY SOLUTIONS**

The FY2020 NDAA established Space Force with the understanding that it could expand over time as it acquired additional resources and capabilities. Congress must timely consider granting Space Force new authorities and resources as necessary in the future.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Mark Esper, Secretary of Defense, *Department of Defense Establishes U.S. Space Force*, December 20, 2019, <https://www.defense.gov/Newsroom/Releases/Release/Article/2045981/department-of-defense-establishes-us-space-force/>.

<sup>2</sup> *Id.*

<sup>3</sup> NPR, *The Reasons for a Space Force*, December 26, 2019, <https://www.npr.org/2019/12/26/791414989/the-reasons-for-a-space-force>

<sup>4</sup> *Id.*

<sup>5</sup> Todd Harrison, *Why We Need A Space Force*, CSIS, October 3, 2018: <https://www.csis.org/analysis/why-we-need-space-force>

<sup>6</sup> *Id.*

**REDUCE RELIANCE ON CHINESE SUPPLY CHAINS**

Congress must address U.S. dependency on goods and materials sourced from China that pose serious economic and national security risks.

**BACKGROUND**

Global economies are interconnected, interdependent, and complex.<sup>1</sup> Congressional review of the United States’ reliance on China for sourcing critical goods is overdue. In a historical context, China aims to quickly transition from the “World’s Factory” to the dominant global power.<sup>2</sup>

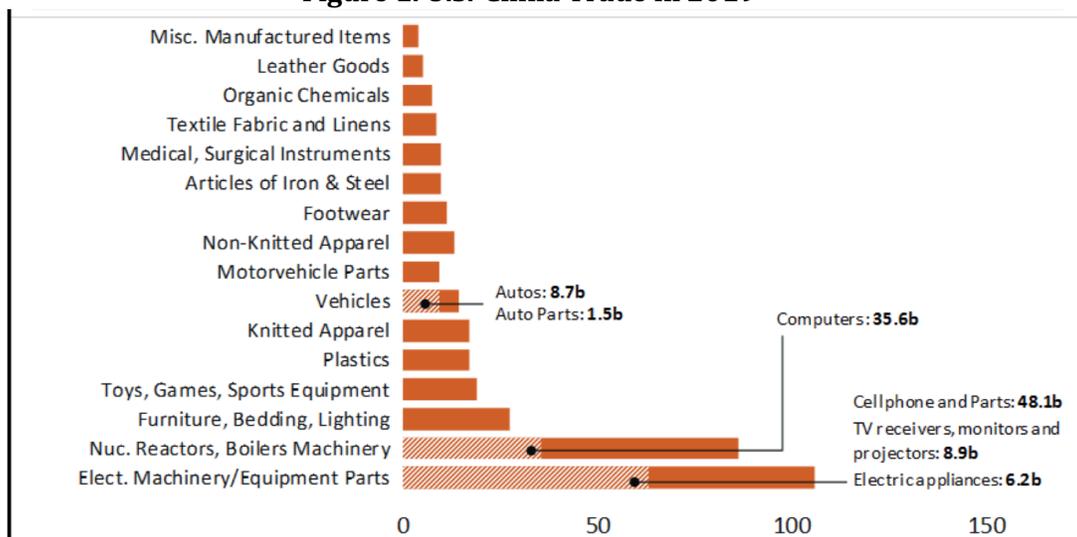
Since the U.S. supported China’s accession to the World Trade Organization (WTO) in 2001, China has emerged as the world’s second-largest economy.<sup>3</sup> The U.S. is currently a net importer from China. In 2019, China accounted for about \$452 billion in imports<sup>4</sup> (See Figure 1), representing the United States’ largest supplier of goods and our third-largest trading partner overall. Moreover, China is the second largest foreign holder of U.S. Treasury securities as of April 2020.<sup>5</sup>

**Quick Take**

As of 2019, China is the United States’ largest supplier of goods. The United States’ critical dependence on China undermines economic and national security.

Congress must assess U.S. overreliance on Chinese supply chains and consider options to reroute them domestically and to allied nations.

**Figure 1. U.S.-China Trade in 2019<sup>6</sup>**



**Source:** Congressional Research Service (CRS) with data from Global Trade Atlas.

**Note:** Dashed portion of the bar depicts a subset of the product category.

In 2017, the U.S. Trade Representative (USTR) published their 16<sup>th</sup> report on China's WTO compliance. The USTR report concluded the U.S. "erred" in supporting China's inclusion to the WTO in 2001, as "it is now clear that the WTO rules are not sufficient to constrain China's market-distorting behavior."<sup>7</sup>

Furthermore, the report found that China failed to revise "hundreds of laws, regulations, and other measures" to satisfy WTO compliance, focusing instead on leveraging WTO membership to become "a dominant player in international trade."<sup>8</sup>

China's trade weaponization poses a direct threat to national security. In 2018, FBI Director Christopher Wray stated, "No country presents a broader, more severe threat to our ideas, our innovation, and our economic security than China."<sup>9</sup> The 2017 National Security Strategy of the United States designated China as a strategic competitor engaged in "economic aggression."<sup>10</sup>

In recent years, the Trump administration has encouraged foreign allies to ban imports of certain products from Chinese-backed company Huawei based on security concerns.<sup>11</sup> Unfortunately, global partners have been reluctant to support such a ban. In response, a May 2019 editorial by state-run press agency Xinhua stated that by "waging a trade war against China, the United States risks losing the supply of materials that are vital to sustaining its technological strength."<sup>12</sup>

Rosemary Gibson, Senior Advisor at the Hastings Center, testified before a U.S.-China Economic and Security Review Commission hearing in 2019 that U.S. dependence on China for medicine posed security risks, stating, "The centralization of the global supply chain of medicines in a single country, whatever country it may be, makes it vulnerable to interruption, whether by mistake or design."<sup>13</sup> Following threats from China to restrict access to medical supplies during the COVID-19 pandemic in 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act which requires reporting and public disclosure of U.S. medical supply chain risks.<sup>14</sup>

In 2019, the USTR published a list of products of which China supplied 75 percent or more of U.S. imports in 2018. Top products in this list included "cell phones, laptop computers, video game consoles, certain toys, computer monitors, and certain items of footwear and clothing." Products, such as pharmaceuticals, select medical goods, rare earth materials, and critical minerals were not identified in the USTR lists.<sup>15</sup>

Other sources of potential supply chain vulnerability include:

- **Pharmaceuticals** - China is widely reported to supply an estimated 90 percent of U.S. antibiotics,<sup>16</sup> including about 80 percent of active pharmaceutical ingredients (APIs) and 70 percent of acetaminophen (Tylenol). Although India sources about 45 percent of the U.S.'s over-the-counter drugs, about 75 percent of its ingredients are sourced from China.<sup>17</sup>

Importantly, however, in October 2019, a Food and Drug Administration (FDA) official testified to Congress that the FDA "doesn't know whether Chinese facilities are actually producing APIs, how much they are producing, or where the APIs they are producing are being distributed...[nor] have information that would enable us to assess the resilience of the U.S. manufacturing base, should it be tested by China's withdrawal from supplying the U.S. market," due to insufficient data.<sup>18</sup>

- **Rare Earth Materials** - The U.S. Geological Survey (USGS) reports that China supplies about 80 percent of rare earth compounds and metals to the U.S.<sup>19</sup> After China, the U.S. is the second-largest producer of rare earth materials.<sup>20</sup> Rare earth materials are critical to the production of a wide range

of electronic components used in both consumer and national defense applications.<sup>21</sup> Scandium and yttrium, both which are used to make various metal alloys, are two examples of the 17 rare earth elements. According to USGS, the U.S. was 100 percent import-reliant on foreign nations for scandium and yttrium supplies. China was the largest source of yttrium to the U.S. in 2020 (87 percent of yttrium compounds), and one of the four highest-listed sources for scandium.<sup>22</sup>

- **Electronics and Information Technology (IT)** – China sourced an estimated 60 percent of U.S. imports of information, communication, and technology equipment in 2018.<sup>23</sup> Separately, much of America’s \$90 billion annual IT budget is spent on outdated, legacy technologies sourced from China. A report from the U.S.-China Economic and Security Review Commission found that the federal government’s top seven IT providers sourced over 51 percent of its materials from China since 2012, constituting a risk to national security.<sup>24</sup>
- **Personal Protective Equipment (PPE)** - China supplies about 48 percent of PPE to the U.S.<sup>25</sup>
- **Shoes and Apparel** - The U.S. relies on overseas sourcing for about 99 percent of shoes. China accounts for about 70 percent of that amount, according to the Footwear Distributors of America.<sup>26</sup> Furthermore, the American Apparel and Footwear Association estimates that China supplies about 40 percent of all U.S. clothing.<sup>27</sup> While U.S. imports from Vietnam continue to grow, Vietnam imports up to an estimated 60 percent of its raw materials for the garment industry from China.<sup>28</sup>
- **Other Products** - A 2019 Quartz report found, based on data from the U.S. Census Bureau, that China sources over 90 percent of the following supplies to the U.S.: electric blankets (99 percent); video game consoles and umbrellas with a telescopic shaft (98 percent each); plastic artificial flowers, non-plastic artificial flowers, electric toasters, thermoses, garden umbrellas, and iron or steel-based cooking appliances and plate warmers (97 percent each); portable radio players and tape recorders (96 percent); and baby carriages and strollers (95 percent).<sup>29</sup>

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution gives Congress authority to “regulate Commerce with Foreign Nations.”<sup>30</sup> The United States must protect its economic and strategic interests by facilitating free and fair trade worldwide.

## **POLICY SOLUTIONS**

- The U.S. must strengthen its international alliances and diversify its global supply chain to reduce economic dependency on China. U.S. leadership on the global stage will empower the United States and its allies, not China, to set the rules of the road.<sup>31</sup> Congress should strengthen multilateral alliances with international partners, particularly with Pacific regional allies, as well as close geographical allies in central and south America, by reducing and harmonizing trade barriers.<sup>32</sup>
- Currently, about one-third of global maritime trade flows through the South China Sea.<sup>33</sup> As territorial disputes over sea control between China and U.S. regional allies continue, Congress must recognize secure access to the South China Sea as a critical economic and national security priority.
- Congress may consider directing U.S. statistical agencies, such as the Census Bureau, the Department of Commerce, the U.S. International Trade Commission, and the Bureau of Economic Analysis “to

review methodologies for collecting and publishing...detailed supply chain data to better document the country of origin” for imported goods.<sup>34</sup>

As Congress considers implementing reporting requirements on sourcing and countries of origin, Congress must also recognize that imported goods from countries like India, Taiwan, Vietnam, and other partners may contain raw materials sourced from China.

- Congress must conduct oversight to assess whether the tax code may unintentionally penalize or discourage domestic production. In doing so, Congress must also support reforming costly labor laws that place U.S. manufacturing at an economic disadvantage.
- Congress should consider S. 3538, the Strengthening America’s Supply Chain and National Security Act of 2020. S. 3538 would direct the Department of Defense to report on its reliance to foreign entities for pharmaceutical drugs and API. Congress should also consider H.R. 6690, the BEAT CHINA Act of 2020. H.R. 6690 would establish certain tax incentives to reroute medical supply production to the U.S.
- Countering China’s ambitions to dominate the technology sector is essential to U.S. economic and security interests.<sup>35</sup> Congress should examine U.S. participation in existing multilateral arrangements to identify opportunities to reduce China’s international influence.

Currently, the U.S. is party to the Wassenaar Arrangement, a voluntary 42-member international export control agreement on conventional arms and dual-use goods and technologies.<sup>36</sup> The Arrangement seeks to mandate controls to prevent digital weaponization by repressive regimes. Notably, China is not a member to the Wassenaar Arrangement.

Unfortunately, the Wassenaar Arrangement contains certain problematic requirements which unintentionally undermine strategic interests. The “intrusion software” provision, for example, requires complex licensing approvals on cybersecurity information sharing and development. Congress must take action to reform the Wassenaar Arrangement, which has broad, bipartisan support.<sup>37</sup>

- Separately, Congress must conduct oversight of the WTO and consider opportunities to hold China accountable for its noncompliance with WTO requirements.<sup>38</sup> Currently, WTO membership enables China to impose trade sanctions on U.S. goods.<sup>39</sup>
- Congress may also consider establishing a National Supply Chain Risk Management (SCRM) Strategy to secure the federal government’s technology products and services.<sup>40</sup>
- Finally, western allies established a system to bar the sale of sensitive military technologies to the Soviet Union during the Cold War. Congress may consider a similar alliance to limit “key strategic imports” from China.<sup>41</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> The Economic Complexity Index lists the United States as “the 3rd largest export economy in the world and the 7th most complex [economy].” The Observatory of World Complexity, the Economic Complexity of the United States, last visited May 8, 2020, available at <https://oec.world/en/profile/country/usa/>.

<sup>2</sup> See, *Respond to Chinese Trade Practices; Hold China Accountable for COVID-19*; and also *Reject Authoritarian Internet Control*, House Republican Policy Committee (March 2020).

<sup>3</sup> The World Bank, “The World Bank in China,” March 28, 2017, available at <http://www.worldbank.org/en/country/china/overview> and *The China Trade Challenge: Phase II*, The Committee for Economic Development (2020), available at <https://www.ced.org/2020-solutions-briefs/the-china-trade-challenge-phase-ii>.

<sup>4</sup> *2019: U. S. Trade in Goods with China*, U.S. Census Bureau, (last visited May 15, 2020.), available at <https://www.census.gov/foreign-trade/balance/c5700.html>.

<sup>5</sup> U.S. Department of Treasury, Major Foreign Holders of Treasury Securities, (last visited July 13, 2020), available at <https://ticdata.treasury.gov/Publish/mfh.txt>.

<sup>6</sup> *COVID-19, China Medical Supply Chains and Broader Trade Issues*, CRS, R46304, (April 6, 2020), available at <https://crsreports.congress.gov/product/pdf/R/R46304>

<sup>7</sup> USTR, *2017 Report to Congress on China's WTO Compliance*, January 2018, <https://ustr.gov/sites/default/files/files/Press/Reports/China%202017%20WTO%20Report.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> Further, “U.S. Assistant Attorney General John C. Demers stated that, from 2011 to 2018, China was linked to more than 90% of the Justice Department’s cases involving economic espionage and two-thirds of its trade secrets cases.” Wayne M. Morrison, U.S.-China Trade Issues, CRS (June 23, 2019), <https://fas.org/sgp/crs/row/IF10030.pdf>.

<sup>10</sup> The White House, Executive Office of the President, *National Security Strategy of the United States of America, December 2017*, <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905-2.pdf>.

<sup>11</sup> In May 2019, President Trump issued Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain. The order stated the Administration's view that U.S. purchases of information, communications, and technology (ICT) goods and services from "foreign adversaries" posed a national security risk to the United States and authorized the Federal government to ban certain ICT transactions deemed to pose an "undue risk." On the same day, the U.S. Commerce Department announced that it would add Chinese telecommunications firm Huawei and 68 of its non-U.S. affiliates to the Department's Bureau of Industry and Security Entity List, which would require an export license for the sale or transfer of U.S. technology to such entities. CRS, *supra* at 9.

<sup>12</sup> Wayne M. Morrison, *Trade Dispute with China and Rare Earth Elements*, CRS, IF1125 (June 28, 2019) <https://fas.org/sgp/crs/row/IF11259.pdf>.

<sup>13</sup> *Exploring the Growing U.S. Reliance on China's Biotech and Pharmaceutical Products, Hearing Before the U.S.-China Economic and Security Review Commission [hereinafter USCC]*, 116th Cong. (July 31, 2019). <https://www.uscc.gov/sites/default/files/2019-10/July%202031,%202019%20Hearing%20Transcript.pdf>.

<sup>14</sup> CRS, *supra* at 9.

<sup>15</sup> USTR, *USTR Announces Next Steps on Proposed 10 Percent Tariff on Imports from China*, (Aug. 13, 2019), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/august/ustr-announces-next-steps-proposed>. The full list can be found at the following source, see Annexes C and D at 43450, [https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice\\_of\\_Modification\\_%28List\\_4A\\_and\\_List\\_4B%29.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Modification_%28List_4A_and_List_4B%29.pdf) and [https://ustr.gov/sites/default/files/enforcement/301Investigations/84\\_FR\\_22564.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_22564.pdf).

<sup>16</sup> Yanzhong Huang, *U.S. Dependence on Pharmaceutical Products from China*, Council on Foreign Relation (Aug. 14, 2019), <https://www.cfr.org/blog/us-dependence-pharmaceutical-products-china>.

<sup>17</sup> American Enterprise Institute, *We're too dependent on China for too many critical goods. Especially Medicine*. Mar. 21, 2020 <https://www.aei.org/op-eds/were-too-dependent-on-china-for-too-many-critical-goods-especially-medicine/>.

<sup>18</sup> FDA Director Woodcock attributed growth of foreign manufacturing of APIs to the U.S. in part to a lower labor cost advantage, with a 2011 FDA study estimating that API manufacturing in India could lower costs for U.S. and EU companies by 30 to 40 percent. *Safeguarding Pharmaceutical Supply Chains in a Global Economy, Hearing Before the House Cmte. On Energy and Commerce, Subcommittee on Health*, 116<sup>th</sup> Cong. (Oct. 30, 2019). <https://www.fda.gov/news-events/congressional-testimony/safeguarding-pharmaceutical-supply-chains-global-economy-10302019>.

<sup>19</sup> U.S. Geographical Survey [hereinafter USGS], Mineral Commodity Summaries, Rare Earths, 2020, <https://pubs.usgs.gov/periodicals/mcs2020/mcs2020-rare-earth.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> See *Combat America's Critical Mineral Dependency*, House Republican Policy Committee (March 2020), <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/10%20-%20Combat%20America%27s%20Critical%20Mineral%20Dependency%20NR.pdf>.

<sup>22</sup> According to USGS, “nearly all imports of yttrium metal and compounds are derived from mineral concentrates processed in

---

China.” USGS lists Europe, China, Japan, and Russia as top scandium suppliers to the U.S. The USGS also lists arsenic (90 percent); silicon carbide (crude, 80 percent); bismuth (76 percent); antimony (oxide, 64 percent, and metal, 52 percent); germanium (metal, 59 percent); barite (58 percent); magnesium sulfates (53 percent); gallium (metal, about 50 percent); indium (36 percent); graphite (33 percent); and mica (sheet, 48 percent, scrap and flake, 31 percent) as minerals for which China is a leading source to the U.S. Of these listed minerals, the U.S. is 100 percent import-dependent on foreign suppliers for arsenic, gallium, indium, and mica. The USGS figure for gallium (metal) includes Hong Kong in its sourcing from China. USGS, Mineral Commodity Summaries, 2020 <https://pubs.usgs.gov/periodicals/mcs2020/mcs2020.pdf>.

<sup>23</sup> Wayne M. Morrison, *U.S.-China Trade Issues*, CRS (June 23, 2019), <https://fas.org/sgp/crs/row/IF10030.pdf> and Hugh R. Morley, *The Journal of Commerce*, *China Dominates Growing US Electronics Imports*, (May 28, 2018), [https://www.joc.com/breakbulk/china-dominates-us-electronics-imports—big-and-small-screens\\_20180525.html](https://www.joc.com/breakbulk/china-dominates-us-electronics-imports—big-and-small-screens_20180525.html).

<sup>24</sup> *Supply Chain Vulnerabilities from China in U.S. Federal Information and Communications Technology, Hearing Before USCC*, (Written testimony of Tara Beeny, Senior Business Analyst, Interos Solutions, Inc.) April 2018 <https://docs.house.gov/meetings/IF/IF16/20180516/108301/HHRG-115-IF16-20180516-SD105-U105.pdf>.

<sup>25</sup> Chad P. Bown, Peterson Institute for International Economics, *COVID-19: China’s Exports of Medical Supplies Provide a Ray of Hope*, Mar. 26, 2020, <https://www.piie.com/blogs/trade-and-investment-policy-watch/covid-19-chinas-exports-medical-supplies-provide-ray-hope>.

<sup>26</sup> Andria Cheng, Forbes, statement from the Footwear Distributors of America, *P&G Says 17,600 Products Could Be Affected By Coronavirus in China, Highlighting Supply Chain Risk*, Feb. 20, 2020 <https://www.forbes.com/sites/andriacheng/2020/02/20/chinas-coronavirus-outbreak-threatens-to-send-global-supply-chain-into-a-tailspin-pg-alone-has-17600-items-that-could-be-affected/#5492d86a156f>.

<sup>27</sup> Esther Fung, Wall Street Journal, *Apparel Companies Fear Tariffs Could Squash Profits*, Aug. 22, 2019, <https://www.wsj.com/articles/u-s-apparel-industry-works-to-blunt-impact-of-tariffs-11566293401>.

<sup>28</sup> *From Section 301 to COVID-19: How a Volatile China Changed Supply Chains*, Supply Chain Dive, Mar. 31, 2020, <https://www.supplychaindive.com/news/coronavirus-china-tariff-trade-supply-chains/574702/>.

<sup>29</sup> Dan Kopf, Quartz, *The US will have a hard time not getting these products from China*, July 30, 2019, <https://qz.com/1654798/these-are-the-products-the-us-is-most-reliant-on-china-for/>.

<sup>30</sup> U.S. Const. art. I, § 8, cl. 3.

<sup>31</sup> China is aggressively pursuing a similar strategy to reduce its dependency on trade with the United States. China’s Belt and Road Initiative, or the “One Belt, One Road” initiative (BRI), commits a trillion-dollar infrastructure investment across 60 countries. The BRI is an attempt to rebuild the ancient Chinese trade infrastructure known as the Silk Road which established trade networks throughout Asia and into Europe. By issuing low-interest loans to help nations modernize various land and maritime infrastructure, China is creating a major trade network throughout Africa, India, and Asia. More importantly, it has the power to leverage indebtedness of BRI countries in exchange for trade concessions.

<sup>32</sup> Collectively, the U.S., Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam represent about 40 percent of the world’s GDP, as a start.

<sup>33</sup> *How much trade transits the South China Sea?*, Center for Strategic & International Studies, <https://chinapower.csis.org/much-trade-transits-south-china-sea/#easy-footnote-bottom-1-3073> and Pete Cobus, *Conflict and Diplomacy on the High Seas*, Voice of America, <https://projects.voanews.com/south-china-sea/>.

<sup>34</sup> USCC, 2019 Recommendations to Congress, <https://www.uscc.gov/sites/default/files/2019-11/2019%20Recommendations%20to%20Congress.pdf>.

<sup>35</sup> The China’s Made in China 2025 plan directs about \$300 billion into ten “strategic sectors,” with technology as a leading strategic sector. Brigitte Dekker, *The US-China trade-tech stand-off*, Clingendael Report, Aug. 2019, [https://www.clingendael.org/sites/default/files/2019-08/Report\\_US-China\\_stand-off.pdf](https://www.clingendael.org/sites/default/files/2019-08/Report_US-China_stand-off.pdf).

<sup>36</sup> *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Vol II, List of Dual-Use Goods and Technologies and Munitions List*, compiled by the Wassenaar Arrangement Secretariat, December 2018, <https://www.wassenaar.org/app/uploads/2019/consolidated/WA-DOC-18-PUB-001-Public-Docs-Vol-II-2018-List-of-DU-Goods-and-Technologies-and-Munitions-List-Dec-18-1.pdf>.

<sup>37</sup> Congressional letter to the Hon. Susan Rice, Assistant to the President for National Security Affairs, Dec. 16, 2015, [https://langevin.house.gov/sites/langevin.house.gov/files/documents/12-16-15\\_Langevin-McCaul\\_Wassenaar\\_Letter.pdf](https://langevin.house.gov/sites/langevin.house.gov/files/documents/12-16-15_Langevin-McCaul_Wassenaar_Letter.pdf).

<sup>38</sup> Committee for Economic Development, *supra* at 3.

<sup>39</sup> Ana Swanson, *W.T.O. Allows China to Impose Trade Sanctions on U.S. Goods*, New York Times, Nov. 1, 2019, <https://www.nytimes.com/2019/11/01/business/wto-china-us-trade.html>.

<sup>40</sup> *Supply Chain Vulnerabilities from China in U.S. Federal Information and Communications Technology, Hearing Before USCC*, (Written testimony of Tara Beeny, Senior Business Analyst, Interos Solutions, Inc.) April 2018 <https://docs.house.gov/meetings/IF/IF16/20180516/108301/HHRG-115-IF16-20180516-SD105-U105.pdf>.

<sup>41</sup> AEI, *supra* at 16.

## **REJECT AUTHORITARIAN INTERNET CONTROL**

In 2016, the Obama administration transferred remaining U.S. oversight of the Internet’s “address book” to the multistakeholder-led Internet Corporation for Assigned Names and Numbers (ICANN). Congress must ensure the U.S. preserves a free and open Internet as authoritarian nations pursue a censored, alternative Internet.

### **BACKGROUND**

The Internet is a complex system of decentralized, yet interconnected, networks.<sup>1</sup> The Internet is organized using Internet Protocol (IP) addresses, which are a series of numbers that identify the computers that house information and resources. The domain name system (DNS), often referred to as the Internet’s “address book,” provides Internet users with a simplified system that uses words rather than numeric IP addresses. To access the website of the U.S. House of Representatives ([www.house.gov](http://www.house.gov)), or the House Republican Policy Committee ([republicanpolicy.house.gov](http://republicanpolicy.house.gov)), for example, users search words, rather than a complex arrangement of numbers.

The United States created and developed the Internet and has supervised it since its inception. In 1998, pursuant to a directive from President Bill Clinton to privatize and internationalize the DNS, the U.S. Department of Commerce’s National Telecommunications and Information Administration (NTIA) delegated authority to ICANN under a contract to coordinate certain policies governing the DNS.<sup>2</sup> ICANN is a non-profit organization consisting of over 160 foreign countries, including Russia and China, as well as private organizations. ICANN is headquartered in Los Angeles and subject to California law.<sup>3</sup>

### **U.S. Transfer of Internet Oversight to ICANN**

The NTIA maintained its contract with ICANN until September 2015.<sup>4</sup> On September 30, 2016, the Obama administration transitioned full oversight and responsibility of Internet domains to ICANN.

Critics of the transfer argued that ceding the U.S. Government’s remaining oversight of ICANN would also cede First Amendment protections over the Internet.<sup>5</sup> In 2015, the House passed H.R. 805, the Domain Openness Through Continued Oversight Matters (DOTCOM) Act by a vote of 378-25.<sup>6</sup> The DOTCOM Act would have retained NTIA oversight until ICANN reported complying with certain certifications. In October 2016, a Texas judge blocked a last-minute attempt by four U.S. states to force NTIA to retain its ICANN oversight.<sup>7</sup>

Advocates of the transfer to the ICANN multistakeholder model countered that retaining limited U.S. oversight would exacerbate authoritarian nations’ attempts to seize Internet control.<sup>8</sup> In 2012, for example, Russia, China, and other adversarial nations supported transferring Internet control to the United Nations’ (UN) International Telecommunications Union (ITU), citing concerns over perceived U.S. control and influence. The vote

### **QuickTake**

Following the transfer of historic U.S. oversight of the Internet to ICANN, adversarial nations such as Russia and China are escalating their pursuit of censored alternatives to the Internet in the name of national sovereignty.

Congress must conduct rigorous oversight to ensure the protection of a free and open internet.

failed due to four dissenting nations comprised of the U.S., the U.K., Canada, and Australia.<sup>9</sup> In its dissenting opinion, the U.S.-led delegation asserted that “the United States continues to believe that internet policy must be multistakeholder-driven. Internet policy should not be determined by member states, but by citizens, communities, and broader society.”<sup>10</sup>

In September 2016, former NTIA Administrator Lawrence Strickling testified before Congress that blocking the U.S. to ICANN transition would be a “gift to Russia” and other authoritarian regimes.<sup>11</sup>

### **Authoritarian Nations Pursue Alternative “Independent Internet”**

Unfortunately, terminating the U.S. contract with ICANN has not deterred adversarial nations such as Russia and China from continuing to aggressively pursue alternatives to the Internet. According to Robert Knake who worked on the ICANN transfer, 2019 marks “the beginning of the end” for the open Internet, as China, Russia, and other authoritarian nations will continue to “establish a separate root system for their share of the internet.”<sup>12</sup> Mr. Knake notes that adversarial nations can “simply replicate the root zone file from the ICANN controlled root, providing the exact name resolution as the domain name system that ICANN manages.”<sup>13</sup>

Russia has particularly escalated efforts to counter the free and open Internet. In November 2017, one year after the full U.S.-ICANN transition, Kremlin press secretary Dmitry Peskov told state-sponsored propaganda news outlet *RT* that President Putin “had approved a plan” to create an “alternate” and “independent Internet” for BRICS nations – Brazil, Russia, India, China, and South Africa – by August 1, 2018 to “shield them from ‘possible external influence.’”

Referring to the U.S., Mr. Peskov stated, “We all know who the chief administrator of the global Internet is. And due to its volatility, we have to think about how to ensure our national security.”<sup>14</sup> If a separate and independent “BRICS Internet” is successfully developed, it poses an existential threat to the free and open Internet, as the U.S. and allies may be cut off from over half of the world’s Internet users.

In May 2019, Russia passed a broad internet censorship law, often referred to as the internet sovereignty law, or the “online Iron Curtain.”<sup>15</sup> The law requires Russian internet service providers (ISPs) to route information traffic through state-sponsored exchange points, effectively creating its own DNS.<sup>16</sup> It also authorizes the Kremlin to disconnect Russia from the world wide web “in an emergency.”<sup>17</sup> Russia’s internet sovereignty law builds off of previous internet censorship efforts, such as a March 2019 law authorizing Russia to impose fines on actors deemed by the government to be spreading “fake news” and demonstrating “blatant disrespect” toward state authorities.<sup>18</sup>

On December 29, 2019, Russia claimed it successfully disconnected from the global Internet and tested its own alternative “without ordinary users...noticing [the change].”<sup>19</sup>

Post-U.S. oversight attempts by ICANN to assuage Chinese government concerns have also yielded little results. China, ranked by Freedom House as the “worst offender of internet freedom” for the fourth year in a row in 2018,<sup>20</sup> has progressively implemented the world’s largest series of policies to enforce domestic seizure of Internet information flow, referred to as the “Great Firewall.”<sup>21</sup> According to Mr. Knake, ICANN’s efforts to establish “more instances of root servers [within China],” for example, has “done little to slow Chinese ambitions to break from the global internet. The reason is simple – a global internet that is open and free is not compatible with a Chinese state that views openness and freedom as a threat to its stability.”<sup>22</sup>

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution’s First Amendment provides protections against government censorship.<sup>23</sup> The government should not unconstitutionally infringe on the speech of private individuals and businesses. The Constitution also

gives Congress authority to “regulate Commerce with Foreign Nations,”<sup>24</sup> and to “make all laws which shall be necessary and proper” to provide for the general welfare. As a matter of principle, America must protect its economic and strategic interests by facilitating free and fair economic exchange around the globe.

## **POLICY SOLUTIONS**

Although the United States has no current statutory authority over the Internet’s DNS,<sup>25</sup> Congress may consider options to conduct oversight of ICANN’s governance of DNS that may have economic or national security implications.

Domestically, Congress must reject legislation and regulations which mirror those taken by authoritarian nations around the globe seeking to stifle individual speech and freedom of the press.

For example, Sen. Elizabeth Warren (D-MA), recently released a proposal to impose civil and criminal penalties on actors who “knowingly disseminat[e] false information about when and how to vote in U.S. elections” for the “explicit purpose of undermining” voter turnout.<sup>26</sup> The proposal directly marks government exercising control over private U.S. social media organizations over political disagreement about policing information disseminated by users on their platforms.

Congress must consider the similarities between Sen. Warren’s proposal and the recent Russian law passed in March 2019, which imposes punitive damages to punish what the government decrees to be considered “fake news.” Other laws which curb online freedoms, such as banning popular encrypted devices,<sup>27</sup> should similarly be viewed with skepticism.

Furthermore, the U.S. should aggressively seek to expand international access to U.S. goods and services. A globally competitive United States creates consumer pressure on authoritarian regimes for access to information, services, and products that reflect America’s values. This effort requires proactive trade policy measures such as:

- Streamlining regulations to empower private sector innovations in cybersecurity and encouraging technological dissemination across domestic and allied industries; and
- Accommodating domestic and allied industries seeking to move supply chains away from China and build them domestically or in allied countries.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> According to CRS, “The Internet is often described as a ‘network of networks’ because it is not a single physical entity, but hundreds of thousands of interconnected networks linking [millions] of computers around the world. AS such, the Internet is international, decentralized, and comprised of networks and infrastructure largely owned and operated by entities.” Lennard G. Kruger, Cong. Research Serv., R44042, *The Future of Internet Governance: Should the United States Relinquish its Authority over ICANN?* (2016),

<https://www.crs.gov/Reports/R44022?source=search&guid=bd9e9ef24eab4bf4ab023d328c5af21d&index=0>.

<sup>2</sup> Internet Corporation for Assigned Names and Numbers (ICANN), *History: ICANN’s Historical Relationship with the U.S. Government*, (last visited March 2, 2020), Available at <https://www.icann.org/en/history/icann-usg>. <sup>3</sup> ICANN, Bylaws for Internet Corporation for Assigned Names and Numbers, A California Nonprofit Public-Benefit Corporation (2019), last visited March 2, 2020, Available at <https://www.icann.org/resources/pages/governance/bylaws-en>.

<sup>4</sup> U.S. Dep’t of Commerce, National Telecommunications and Information Administration (NTIA), Press Release: NTIA Announces Intent to Transition Key Internet Domain Name Functions, (2014), <https://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>.

<sup>5</sup> Sen. Ted Cruz, Press Release: Don’t Let Obama Give Away the Internet (2016),

[https://www.cruz.senate.gov/?p=press\\_release&id=2782](https://www.cruz.senate.gov/?p=press_release&id=2782) and Rep. Greg Walden, Press Release: Greg Walden Leads Hearing on Global Internet Freedom, Administration’s Proposal to Transfer Domain Name Oversight (2014),

<https://walden.house.gov/media-center/press-releases/greg-walden-leads-hearing-global-internet-freedom-administrations>.

- 
- <sup>6</sup> L. Gordon Crovitz, Wall Street Journal, *The Battle Over Obama's Internet Surrender*, June 13, 2016 <https://www.wsj.com/articles/the-battle-over-obamas-internet-surrender-1465770111>.
- <sup>7</sup> Dave Lee, BBC, *Has the U.S. Just Given Away the Internet?*, Oct. 1, 2016, <https://www.bbc.com/news/technology-37527719> and Howard Fischer, Arizona Daily Star, *Arizona Joins Lawsuit Saying U.S. Giving Up Control of the Internet*, Sept. 29, 2016 [https://tucson.com/business/national-and-international/arizona-joins-lawsuit-saying-us-giving-up-control-of-internet/article\\_db390514-5cd4-5ef4-ad8e-2c75070e642f.html](https://tucson.com/business/national-and-international/arizona-joins-lawsuit-saying-us-giving-up-control-of-internet/article_db390514-5cd4-5ef4-ad8e-2c75070e642f.html).
- <sup>8</sup> Alan Fram, Associated Press, *GOP, Dems Clash Over Online Domain Name Oversight*, Apr. 10, 2014, <https://apnews.com/aef1f8d0a8b4a4b93bd9314b16ac56aeb>, and Robert K. Knake, Council on Foreign Relations, *Ted Cruz Wants to Shrink Government, Except When it Comes to the Internet*, May 18, 2016, <https://www.cfr.org/blog/ted-cruz-wants-shrink-government-except-when-it-comes-internet>, and Brendan Sasso, The Atlantic, *Obama Administration Denies 'Abandoning the Internet'*, Mar. 19, 2014, <https://www.theatlantic.com/politics/archive/2014/03/obama-administration-denies-abandoning-the-internet/457143/>.
- <sup>9</sup> The dissenting nations refused “to back a new treaty on the grounds it could be abused to affect internet governance, and by extension, content.” Dave Lee, BBC, *Has the U.S. Just Given Away the Internet?* Oct. 1, 2016, <https://www.bbc.com/news/technology-37527719>.
- <sup>10</sup> Jonathan Masters, Council on Foreign Relations, *What is Internet Governance?*, Apr. 23, 2014, <https://www.cfr.org/backgrounder/what-internet-governance>.
- <sup>11</sup> Dustin Volz, Reuters, *Blocking Internet Oversight Transition a 'gift to Russia': Obama Administration*, Sept. 14, 2016, <https://www.reuters.com/article/us-usa-cyber-congress-idUSKCN11K26F>.
- <sup>12</sup> Robert K. Knake, Council on Foreign Relations, *2019: The Beginning of the End of the Open Internet Era*, Jan. 6, 2020, <https://www.cfr.org/blog/2019-beginning-end-open-internet-era>.
- <sup>13</sup> *Id.*
- <sup>14</sup> Tracy Staedter, Institute of Electrical and Electronics Engineers, IEEE Spectrum, *Why Russia is Building its Own Internet*, Jan. 17, 2018, <https://spectrum.ieee.org/tech-talk/telecom/internet/could-russia-really-build-its-own-alternate-internet>.
- <sup>15</sup> CNN Business, *Russia Rolls Out its 'Sovereign Internet.' Is it Building a Digital Iron Curtain?* Nov. 1, 2019, <https://www.cnn.com/2019/11/01/tech/russia-internet-law/index.html>, and Ciara Nugent, TIME, *Russians Rally Against Plan for an 'Online Iron Curtain'*, Mar. 14, 2019, <https://time.com/5551323/russians-protest-online-iron-curtain/>.
- <sup>16</sup> Alexandra Ma, Business Insider, *Russia Officially Introduced a 'Sovereign Internet' Law to Let Putin Cut Off the Entire Country From the Rest of the Web*, Nov. 1, 2019, <https://www.businessinsider.com/russia-sovereign-internet-law-cut-web-access-censorship-2019-11>, and BBC News, *Russia Internet: Law Introducing New Controls Comes Into Force*, Nov. 1, 2019, <https://www.bbc.com/news/world-europe-50259597>.
- <sup>17</sup> *Id.*
- <sup>18</sup> Shannon Van Sant, Nat'l Public Radio, *Russia Criminalizes the Spread of Online News Which 'Disrespects' the Government*, Mar. 18, 2019, <https://www.npr.org/2019/03/18/704600310/russia-criminalizes-the-spread-of-online-news-which-disrespects-the-government>.
- <sup>19</sup> Brian Turner, TechRadar, *Russia Just Disconnected Itself From the Internet*, Dec. 26, 2019, <https://www.techradar.com/news/russia-just-disconnected-itself-from-the-internet>.
- <sup>20</sup> Freedom House, *Freedom on the Net 2018, China*, last visited Mar. 2, 2020, <https://freedomhouse.org/report/freedom-net/2018/china>.
- <sup>21</sup> Kieren McCarthy, The Register, *China's New Rules May Break the Internet Warns U.S. Government*, May 16, 2016, [https://www.theregister.co.uk/2016/05/16/chinas\\_new\\_rules\\_may\\_break\\_the\\_internet\\_warns\\_us\\_government/](https://www.theregister.co.uk/2016/05/16/chinas_new_rules_may_break_the_internet_warns_us_government/).
- <sup>22</sup> Robert K. Knake, Council on Foreign Relations, *2019: The Beginning of the End of the Open Internet Era*, Jan. 6, 2020, <https://www.cfr.org/blog/2019-beginning-end-open-internet-era>.
- <sup>23</sup> U.S. Const., amend. I.
- <sup>24</sup> U.S. Const. art. I, § 8, cl. 3.
- <sup>25</sup> Lennard G. Kruger, Cong. Research Serv., R44042, *The Future of Internet Governance: Should the United States Relinquish its Authority over ICANN?* (2016) <https://www.crs.gov/Reports/R44022?source=search&guid=bd9e9ef24eab4bf4ab023d328c5af21d&index=0>, and Lennard G. Kruger, Cong. Research Serv., R42351, *Internet Governance and the Domain Name System: Issues for Congress* (2016) <https://www.crs.gov/Reports/R42351?source=search&guid=4aa7e2b98f264cdd809052dbd1c7f22d&index=0> <https://www.crs.gov/Reports/R44022?source=search&guid=bd9e9ef24eab4bf4ab023d328c5af21d&index=0>.
- <sup>26</sup> Sen. Elizabeth Warren, *Plans: Fighting Digital Disinformation*, Jan. 29, 2020 (last visited Mar. 2, 2020), <https://elizabethwarren.com/plans/fighting-digital-disinformation?source=soc-WB-ew-tw-rollout-20200129>.
- <sup>27</sup> Holly Ellyatt, CNBC, *Russian Court Blocks Popular Messaging App in Privacy Row*, Apr. 13, 2018, <https://www.cnbc.com/2018/04/13/russian-court-blocks-popular-messaging-app-in-privacy-row.html>.

## **RESPOND TO CHINESE TRADE PRACTICES**

Amidst escalating trade tensions between the United States and China, Congress should engage in efforts to support businesses seeking alternatives to imports from China. The United States should actively engage global trading partners to quickly develop new international supply chains.

### **BACKGROUND**

According to World Bank data, average Chinese tariffs across all goods have fallen from more than 32 percent in 1992 to less than four percent in 2017.<sup>1</sup> Even with such a radical reduction, China's average tariff rate across all goods remains higher than that of top industrialized nations.<sup>2</sup>

China also remains the top source of U.S. imports (approximately \$452 billion in 2019) and third-largest export market (\$106 billion in 2019). More importantly, China is the second largest foreign holder of U.S. Treasury securities (at \$1 trillion as of April 2020), behind Japan.<sup>3</sup>

Tensions between the U.S. and China have increased due to several key issues: The U.S. trade deficit with China, theft of U.S. intellectual property, and Chinese industrial subsidization.

Following a United States Trade Representative (USTR) investigation<sup>4</sup> regarding Chinese policies on technology transfers and intellectual property, the U.S. imposed 25 percent tariffs on \$34 billion of Chinese goods<sup>5</sup> in one trade action and then \$16 billion of goods in a second action.<sup>6</sup> China responded with increased duties on U.S. goods, which prompted further U.S. tariffs.<sup>7</sup>

### **Chinese Trade Policy in a Historical Context**

To fully understand the current dispute between China and the U.S., Congress must view trade tensions between China and the United States as symptoms of a clash between a modern superpower and a nation seeking to reclaim its dominant global status. For most of modern history, the Chinese Empire (221 BC-1912 AD) governed by various dynasties was arguably the most powerful nation in the world. The ascendance of Western powers — particularly the United States — is a relative historical anomaly.

After Britain's defeat of China in the First Opium War at the end of the 19<sup>th</sup> century, China's self-described "century of humiliation" began.<sup>8</sup> The period would lead China into wars, subordination to Western powers, and political upheaval. The fall of China's standing in the world is central to the Communist People's Republic of China's founding narrative. Matt Schiavenza, a former contributing writer for *The Atlantic*, sums this mythology succinctly:

Long the world's pre-eminent civilization, China fell behind the superior technology of the West over

### **Quick Take**

Trade tensions between China and the United States are symptoms of a clash between a modern superpower and a nation seeking to reclaim that global role for itself.

The United States must enact policies to open new trading partnerships and support businesses shifting supply chains away from China.

the centuries, an imbalance that finally came to a head with the loss in the Opium Wars. This begun the most tumultuous century in the country's—or any country's—history, one that featured an incessant series of wars, occupations, and revolutions and one that did not end until the victory of the Communist Party in China's 1945-49 civil war.<sup>9</sup>

The “century of humiliation” fuels China’s ambition to reclaim its former glory. The China Dream “captures the intense yearning of a billion Chinese: to be rich, to be powerful, and to be respected.”<sup>10</sup>

### **The Modern Challenge**

Ambition to reclaim former glory led to the creation of the Made in China 2025 program.<sup>11</sup> The objectives of the program are unambiguous:<sup>12</sup>

China 2025 sets specific targets: by 2025, China aims to achieve 70 percent self-sufficiency in high-tech industries, and by 2049—the hundredth anniversary of the People’s Republic of China—it seeks a dominant position in global markets.

Chinese tactics to achieve these objectives do not—and will not—align with Western notions of free trade and open markets. China will use government subsidies, continue to heavily employ state-owned enterprises, and pursue intellectual property acquisition by any means necessary to catch up with—and ultimately overtake—Western technological and industrial advantages.

Because China views Western technology as a primary contributor to the “century of humiliation,” it will not likely act as a good-faith trading partner when it comes to intellectual property protections and competitive fairness.

As China depends on trade to accomplish its grander objectives, it must either trade with the United States or replace billions in American demand for Chinese products. China’s Belt and Road Initiative<sup>13</sup> (BRI), also referred to as China's "trillion dollar plan," seeks to do just that by dominating global trade. The BRI is an attempt to rebuild the ancient Chinese trade infrastructure known as the Silk Road which established trade networks throughout Asia and even reached into Europe.

By issuing low-interest loans to help nations modernize various land and maritime infrastructure, China is creating a major trade network throughout Africa, India, and Asia. More importantly, it has the power to leverage indebtedness of BRI countries in exchange for trade concessions.<sup>14</sup> According to the Council on Foreign Relations, “Overall debt to China has soared since 2013, surpassing 20 percent of GDP in some countries.”<sup>15</sup>

China has also taken action to militarize its trade routes through the South China Sea by conducting missile tests,<sup>16</sup> developing military bases, and engaging in island building in an attempt to lay claim to contested territory between six sovereign nations.<sup>17</sup> Approximately one-third of global maritime trade flows through the South China Sea.<sup>18</sup>

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution gives Congress authority to “regulate Commerce with Foreign Nations.”<sup>19</sup> Trade agreements and executive branch trade promotion authority laws are the most common mechanisms for addressing major trade issues.

As a matter of principle, America must protect its economic and strategic interests by facilitating free and fair trade around the globe.

## POLICY SOLUTIONS

Whether through multilateral or bilateral trade agreements, the United States should seek to aggressively open superior trade routes throughout the nations covered by the BRI. Rather than simply noting China's regional ambitions, the United States should seek to be as competitive as possible on the global stage. This will undoubtedly require measures beyond proactive trade policies such as:

- Streamline regulations to ensure that domestic industries experience as little operational disruption and additional costs as possible, while complying with various environmental, labor, and health safeguards.
- Provide strong incentives for private-sector innovations in cyber-security and encourage technological dissemination across domestic and allied industries.
- Accommodate domestic and allied industries seeking to move supply chains away from China and build them domestically or in allied countries.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> *Tariff rate, applied, weighted mean, all products (%)*, The World Bank (2019), <https://data.worldbank.org/indicator/TM.TAX.MRCH.WM.AR.ZS?end=2017&locations=CN&start=1992>.

<sup>2</sup> Patturaja Murugaboopathy, *U.S.-China trade: tariff and non-tariff barriers*, Reuters (Feb. 26, 2019), <https://www.reuters.com/article/us-usa-trade-china-graphic/u-s-china-trade-tariff-and-non-tariff-barriers-idUSKCN1QG0CF>.

<sup>3</sup> 2019: U. S. Trade in Goods with China, U.S. Census Bureau, (last visited May 15, 2020), available at <https://www.census.gov/foreign-trade/balance/c5700.html>. and U.S. Department of Treasury, Major Foreign Holders of Treasury Securities, (last visited July 13, 2020), available at <https://ticdata.treasury.gov/Publish/mfh.txt>.

<sup>4</sup> Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of The Trade Act Of 1974, Office of The United States Trade Representative Executive Office of The President (Mar. 22, 2018), <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>.

<sup>5</sup> *China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, regulations.gov, Office of United States Trade Representative (Mar. 22, 2018), <https://www.regulations.gov/document?D=USTR-2018-0005-0001>.

<sup>6</sup> *Requests for Comments: Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, regulations.gov, Office of United States Trade Representative (Jul. 31, 2018), <https://www.regulations.gov/document?D=USTR-2018-0018-0001>.

<sup>7</sup> *Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, regulations.gov, Office of United States Trade Representative (Sep. 6, 2018), <https://www.regulations.gov/document?D=USTR-2018-0026-0001>.

<sup>8</sup> Matt Schiavenza, *How Humiliation Drove Modern Chinese History*, The Atlantic (Oct. 25, 2013), <https://www.theatlantic.com/china/archive/2013/10/how-humiliation-drove-modern-chinese-history/280878/>.

<sup>9</sup> *Id.*

<sup>10</sup> Graham Allison, *What Xi Jinping Wants*, The Atlantic (May 31, 2017), <https://www.theatlantic.com/international/archive/2017/05/what-china-wants/528561/>.

<sup>11</sup> James McBride, Andrew Chatzky, *Is 'Made in China 2025' a Threat to Global Trade?*, Council on Foreign Relations (May 13, 2019), <https://www.cfr.org/backgrounder/made-china-2025-threat-global-trade>.

<sup>12</sup> *Id.*

<sup>13</sup> James McBride, Andrew Chatzky, *China's Massive Belt and Road Initiative*, Council on Foreign Relations (May 21, 2019), <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Amanda Macias, Courtney Kube, *Chinese military conducts anti-ship ballistic missile tests in the hotly contested South China Sea*, CNBC (July 1, 2019), <https://www.cnbc.com/2019/07/01/chinese-military-conducts-missile-tests-in-the-south-china-sea.html>.

---

<sup>17</sup> Council on Foreign Relations, *China's Maritime Disputes: A CFR InfoGuide Presentation* (July 31, 2019), [https://www.cfr.org/interactives/chinas-maritime-disputes?cid=otr-marketing\\_use-china\\_sea\\_InfoGuide#!/chinas-maritime-disputes?cid=otr-marketing\\_use-china\\_sea\\_InfoGuide](https://www.cfr.org/interactives/chinas-maritime-disputes?cid=otr-marketing_use-china_sea_InfoGuide#!/chinas-maritime-disputes?cid=otr-marketing_use-china_sea_InfoGuide).

<sup>18</sup> Roncevert Ganan Almond, *Trade, War, and the South China Sea*, *The Diplomat* (Sept. 1, 2018), <https://thediplomat.com/2018/09/trade-war-and-the-south-china-sea/>.

<sup>19</sup> U.S. Const. art. I, § 8, cl. 3.

## **ADDRESS POLITICAL BIAS IN SOCIAL MEDIA**

In the era of social media, private companies like Facebook, Google, and Twitter face charges of censoring platform users and imposing political biases. The Constitution's First Amendment provides important protections against government censorship and control. Congress should ensure that corporate political engagement complies with applicable campaign finance law.

### **BACKGROUND**

Twitter boasts about 330 million monthly active users (MAU).<sup>1</sup> Facebook dwarfs that number with 2.38 billion MAU.<sup>2</sup> Google receives approximately 63,000 searches per second.<sup>3</sup> As a result, these companies and other similar platforms wield tremendous influence in American society.

Each of these companies make business decisions about the content they permit on their platforms, the prominence they assign it, and how to monitor user interactions. Recently, these platforms have sparked allegations of censorship, viewpoint discrimination, and political bias.

In April 2018, Facebook CEO Mark Zuckerberg testified in front of the House Energy and Commerce Committee, the Senate Judiciary, and the Senate Commerce Committee regarding Facebook's use of data. Google CEO Sundar Pichai likewise testified on the issue before the House Judiciary Committee in December 2018. During those proceedings, the executives faced numerous questions about political bias.<sup>4</sup>

While allegations of censorship of conservative and other political viewpoints are troubling, the Supreme Court has affirmed that "a private entity...who opens its property for speech by others is not transformed by that fact alone into a state actor[, and]...therefore is not subject to First Amendment constraints on its editorial discretion."<sup>5</sup>

Since its holding in *Jackson v. Metro. Edison Co.*,<sup>6</sup> the Supreme Court has narrowly defined what constitutes state action deserving of constitutional regulation. Under the ruling, private companies are generally unrestrained by the First Amendment's limitations on government actors.

Republicans have historically opposed government efforts to combat political bias. In 1987, for example, President Ronald Reagan vetoed legislation to reestablish the FCC's Fairness Doctrine. "This type of content-based regulation by the Federal Government is, in my judgment, antagonistic to the freedom of expression guaranteed by the First Amendment," Reagan said in his veto message. "In any other medium besides broadcasting, such federal policing of the editorial judgment of journalists would be unthinkable."<sup>7</sup>

### **Quick Take**

Combating political bias from private individuals or businesses through legislation or regulation could run afoul of the First Amendment.

Congress should ensure that online platforms that support or oppose candidates for public office adhere to campaign finance laws and contribution limitations.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution's First Amendment provides protections against government censorship.<sup>8</sup> The government should not unconstitutionally infringe on the speech of private individuals and businesses.

## POLICY SOLUTIONS

Combatting political bias from individuals or businesses through legislation or regulation sets a dangerous precedent that arguably violates the principles of the First Amendment. In *Mills v. Alabama*, the Supreme Court noted that "a major purpose of that Amendment was to protect the free discussion of governmental affairs."<sup>9</sup> A private business that chooses to emphasize or prohibit certain perspectives on its online platform risks losing users who feel their views are limited. Moreover, Americans have no constitutional right of access to private online forums.

Even so, online businesses that use their platforms to support or oppose candidates for public office may be subject to campaign finance laws and contribution limitations. The Federal Election Commission must have sufficient authority and resources to confirm that social media companies do not contribute anything of value to candidates for office without complying with applicable laws and regulations.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Brandon Borrman, *Twitter Announces Third Quarter 2018 Results*, PR Newswire (Oct. 25, 2018), <https://www.prnewswire.com/news-releases/twitter-announces-third-quarter-2018-results-300737803.html>.

<sup>2</sup> Josh Constine, *Facebook reserves \$3B for FTC fine, but keeps growing with 2.38B users in Q1*, TechCrunch (April 2019), <https://techcrunch.com/2019/04/24/facebook-earnings-q1-2019/>.

<sup>3</sup> Aleksandra, *63 Fascinating Google Search Statistics*, SEO Tribunal (Sept. 26, 2018), <https://seotribunal.com/blog/google-stats-and-facts/>.

<sup>4</sup> Jessica Guynn, *Ted Cruz threatens to regulate Facebook, Google and Twitter over charges of anti-conservative bias*, USA Today (April 10, 2019), <https://www.usatoday.com/story/news/2019/04/10/ted-cruz-threatens-regulate-facebook-twitter-over-alleged-bias/3423095002/>.

<sup>5</sup> *Manhattan Community Access Corp. v. Halleck*, 139 S.Ct. 1921, 1926 (2019).

<sup>6</sup> 419 U.S. 345 (1974).

<sup>7</sup> Penny Pagano, *Reagan's Veto Kills Fairness Doctrine Bill*, Los Angeles Times (June 21, 1987), <https://www.latimes.com/archives/la-xpm-1987-06-21-mn-8908-story.html>.

<sup>8</sup> U.S. Const., amend. I.

<sup>9</sup> 384 U.S. 214 (1966).

## **REQUIRE ACCURATE NATIONAL ABORTION DATA**

Often-cited abortion data compiled by the Centers for Disease Control and Prevention (CDC) may be misleading, underreported, or incomplete. This leaves Congress and the public with inaccurate information about the current state of abortions in America.

### **BACKGROUND**

In recent years, states have enacted a wide array of new abortion laws.<sup>1</sup> CDC abortion data, which is often featured in press articles and used to justify the passage of such laws, may be misleading, underreported, or incomplete.

Currently, the CDC produces an annual Abortion Surveillance report comprised of abortion data requested from 52 “reporting areas,” which include all 50 states, the District of Columbia, and New York City.<sup>2</sup> According to the report, nine states and the District of Columbia have no absolute gestational age limit when abortions may be performed prior to birth.<sup>3</sup>

However, the figures featured in this report do not provide a full account of abortions in America. Currently, federal law does not require state data standardization or reporting to the Federal Government. As a result, some of the data, which could materially alter statistical information, is absent. For example, the CDC’s 2015 report states that about 1.3 percent of abortions occurred at or after 21 weeks of gestation.<sup>4</sup> This figure is regularly featured in news articles and media reports as a representation of late-term abortions nationwide.<sup>5,6,7</sup>

Those reports are misleading because the CDC report includes data from only 39 states and New York City.<sup>8</sup> At least 12 states, including the District of Columbia, either did not report statewide gestational age figures or did not meet reporting standards.<sup>9</sup> The CDC has largely attributed this gap in data to the existing system of voluntary disclosure by each individual state through “their independent surveillance systems.”<sup>10</sup>

According to the CDC, because the “collection and reporting of abortion data are not federally mandated,” many states have developed their own data collection forms, and “therefore do not collect or provide all of the information or level of detail” included in the CDC’s report.<sup>11</sup>

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

Congress has the authority to address these data inadequacies as a matter of interstate commerce<sup>12</sup> since many patients cross state lines for abortion procedures.<sup>13</sup> Congress also has the authority to condition federal appropriations on the receipt of information from the states.

### **Quick Take**

Currently, federal law does not require state abortion data standardization or reporting to the Federal Government.

At least 12 states, including the District of Columbia, either did not report statewide gestational age figures or did not meet reporting standards.

As a matter of principle, human life is worth protecting even in its earliest stages. Congress must base policy decisions on sound information and complete data.

## POLICY SOLUTIONS

Congress should pass legislation requiring state disclosure of abortion data—including information related to the gestational age of aborted fetuses and the number of children who survive an attempted abortion—in a standardized, machine-readable format as a condition of receiving certain federal awards.

H.R. 3580, the Ensuring Accurate and Complete Abortion Data Reporting Act of 2019,<sup>14</sup> would accomplish these objectives.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Anna North, *While some states try to ban abortion, these states are expanding access*, Vox, June 12, 2019, <https://www.vox.com/identities/2019/6/12/18662738/abortion-bill-illinois-maine-laws-new-york>.

<sup>2</sup> Tara C. Jatlaoui, Maegan E. Boutot, Michele G. Mandel, Maura K. Whiteman, Angeline Ti, Emily Petersen, and Karen Pazol, *Abortion Surveillance – United States, 2015*, Morbidity and Mortality Weekly Report, Surveillance Summaries, Nov. 23, 2018, <https://www.cdc.gov/mmwr/volumes/67/ss/ss6713a1.htm>.

<sup>3</sup> Nine states allow abortions in the third trimester under several exceptions: Alaska, Colorado, Illinois, New Hampshire, New Jersey, New Mexico, New York, Oregon and Vermont.

<sup>4</sup> See *supra*, note 2, at Table 7.

<sup>5</sup> Jen Gunter, *Dear Donald Trump: I'm an OB-GYN. There are no 9-month abortions*, Vox, Oct. 21, 2016, <https://www.vox.com/first-person/2016/10/21/13352872/donald-trump-abortion-wrong>.

<sup>6</sup> Vivian Wang, *Trump, Pence Lead G.O.P. Seizure of Late-Term Abortion as a Potent 2020 Issue*, New York Times, Jan. 31, 2019, <https://www.nytimes.com/2019/01/31/nyregion/late-term-abortion-pence-trump-republicans.html>.

<sup>7</sup> Kim Painter, *Ripped from the womb? Late-term abortion explained*, USA Today, Oct. 21, 2016, <https://www.usatoday.com/story/news/2016/10/21/doctors-trump-wrong-late-abortions/92515324/>.

<sup>8</sup> Jatlaoui, Boutot, Mandel, Whiteman, Ti, Petersen, and Pazol, *supra*, note 2.

<sup>9</sup> The 12 states, including the District of Columbia, are California, Connecticut, District of Columbia, Florida, Illinois, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Wisconsin and Wyoming.

<sup>10</sup> Jatlaoui, Boutot, Mandel, Whiteman, Ti, Petersen, and Pazol, *supra*, note 2.

<sup>11</sup> *Id.*

<sup>12</sup> U.S. Const. art. I, § 8, cl. 3.

<sup>13</sup> Henry J. Kaiser Family Foundation, *Percentage of Legal Abortions Obtained by Out-of-State Residents*, <https://www.kff.org/womens-health-policy/state-indicator/abortions-by-out-of-state-residents/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Jun. 18, 2019).

<sup>14</sup> H.R. 3580, 116th Cong. (2019).

**UNDERSTAND GUN VIOLENCE IN AMERICA**

Following multiple mass shooting tragedies in recent years, Democrats have called for federal policies which largely target gun ownership and, specifically, so-called “assault rifles.” Rather than stoking a partisan political narrative, Congress must respond to these tragedies by analyzing the facts about gun violence.

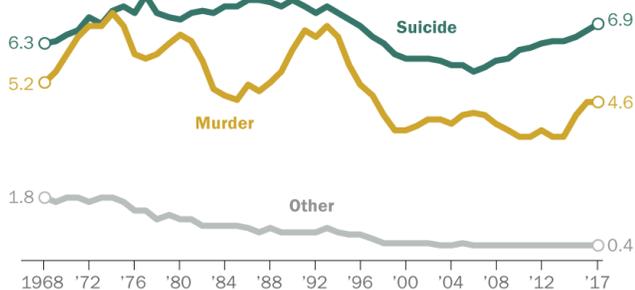
**BACKGROUND**

Democrats have long advocated for gun control policies ranging from expanded background checks<sup>1</sup> to buyback programs<sup>2</sup> and confiscation of certain firearms<sup>3</sup> in response to mass shooting fatalities. Many talking points and headlines supporting such policies offer an inaccurate portrayal of gun violence in America. The facts about gun violence tell a different story: the vast majority of gun homicides are neither perpetrated with so-called “assault rifles,”<sup>4</sup> nor do they occur as part of mass shootings.<sup>5</sup> From 2000 to 2014, mass shootings accounted for only 0.1 percent of total firearm-related deaths.<sup>6</sup>

According to 2017 data from the Centers for Disease Control and Prevention (CDC), “39,773 persons died from firearm-related injuries in the United States.”<sup>7</sup> Of that number, suicides took 23,854 lives while homicide accounted for 14,542 deaths.<sup>8</sup> In contrast, mass shootings, where three or more victims were killed, resulted in 117 deaths in 2017.<sup>9</sup> While gun suicide and homicide rates have edged up in recent years, they “are both lower today than in the mid-1970s,” as demonstrated by the chart below.<sup>10</sup>

**After declining in late 1990s, U.S. gun suicide and gun murder rates have edged higher in recent years**

*Gun death rate per 100,000 U.S. residents, by type*



Note: “Other” includes gun deaths that were unintentional, involved law enforcement or had undetermined circumstances.  
Source: Centers for Disease Control and Prevention.

**Quick Take**

Despite Democrats’ political narratives, the overwhelming number of gun homicides does not involve “assault rifles” or mass shootings.

Congress should analyze other factors that lead to mass shootings, such as observable indicators that may lead individuals to become active shooters. States should serve as the laboratories of democracy when addressing firearm policies.

Handguns were the most common weapon used in homicides during 2017, resulting in 7,032 deaths.<sup>11</sup> By contrast, rifles (403 deaths), shotguns (264 deaths), and other guns (187 deaths) accounted for a relatively small percentage of firearm-related homicides.<sup>12</sup> By comparison, knives claimed almost four times as many victims (1,591 deaths) as rifles. Personal weapons such as hands and feet resulted in 696 victims — almost twice the number killed with rifles.<sup>13</sup>

Members of Congress should also consider the motives and behaviors of shooters when analyzing factors contributing to gun violence. The Federal Bureau of Investigations (FBI) studied 63 active shooters from 2000 to 2013. The study’s main conclusion provides insight on disrupting future attacks:

What emerges is a complex and troubling picture of individuals who fail to successfully navigate multiple stressors in their lives while concurrently displaying four to five observable, concerning behaviors, engaging in planning and preparation, and frequently communicating threats or leaking indications of an intent to attack. As an active shooter progresses on a trajectory towards violence, these observable behaviors may represent critical opportunities for detection and disruption.<sup>14</sup>

The study also found that only two percent of assailants used illegally purchased firearms; only a quarter of the surveyed individuals had any history of mental illness; and very few had prior criminal convictions.<sup>15</sup>

“Assault weapons” defined as weapons capable of fully-automatic fire have been strictly regulated since the passage of the National Firearms Act of 1934.<sup>16</sup> Efforts to additionally control certain semi-automatic rifles such as the Public Safety and Recreational Firearms Use Protection Act<sup>17</sup> place a disproportionate emphasis on curtailing gun ownership of firearms infrequently used to commit homicides. Such efforts ignore the facts and circumstances of gun violence. Nevertheless, congressional Democrats continue to prioritize similar policies in the 116<sup>th</sup> Congress.<sup>18</sup>

The Second Amendment protects both individual and collective rights to bear arms, but the Supreme Court has recognized certain firearm restrictions as presumptively lawful. These include, but are not limited to:<sup>19</sup>

- Prohibitions on the possession of firearms by felons and the mentally ill;
- Laws forbidding the carrying of firearms in sensitive public areas, such as schools and government buildings; and
- Laws imposing condition and qualification on the commercial sale of firearms.

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution’s Second Amendment places clear limitations on government power to restrict lawful gun ownership.<sup>20</sup> Congress should recognize these limits and focus on other factors that may deter further acts of gun violence.

## **POLICY SOLUTIONS**

Federalism and civil liberties, including the right to keep and bear arms, are founding principles of the United States. As such, individual states are often best suited to address gun policy in their respective jurisdictions. Congress should not draft reactive, one-size-fits-all legislation that willfully ignores the facts about gun violence.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> H.R. 8, the Bipartisan Background Checks Act of 2019, passed the House of Representatives in February 2019.

<sup>2</sup> Every Democratic presidential candidate has expressed support for a voluntary or mandatory buyback program. See Maggie Astor, *We Surveyed the 2020 Democrats on Gun Control. Here Are the New Dividing Lines*. New York Times (Oct. 13, 2019), <https://www.nytimes.com/2019/10/13/us/politics/democrats-gun-control.html>.

<sup>3</sup> Former Democratic presidential candidate Beto O’Rourke has expressed support for a federal gun confiscation program. Virginia Governor Ralph Northam (D-VA) also stated he was “working on” a gun confiscation policy with the state secretary of public safety. See Zachary Steiber, *Virginia Governor Pushes Gun Control After Democrats Take State Houses, ‘Working’ on*

---

*Confiscation Plan*. The Epoch Times (November 8, 2019), [https://www.theepochtimes.com/virginia-governor-pushes-gun-control-after-democrats-take-state-houses-working-on-confiscation-plan\\_3141010.html](https://www.theepochtimes.com/virginia-governor-pushes-gun-control-after-democrats-take-state-houses-working-on-confiscation-plan_3141010.html).

<sup>4</sup> “Assault weapons” are defined as weapons capable of fully-automatic fire, which have been strictly regulated since the passage of the National Firearms Act of 1934.

<sup>5</sup> Federal Bureau of Investigation, *2017 Crime in the United States*, Expanded Homicide Data Table 8, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/tables/expanded-homicide-data-table-8.xls>.

<sup>6</sup> Michael Siegel and Clair Boine, What are the Most Effective Policies in Reducing Gun Homicides? Rockefeller Institute of Government (March 29, 2019), <https://rockinst.org/wp-content/uploads/2019/03/3-28-19-Firearm-Laws-Homicide-Deaths-Brief.pdf>.

<sup>7</sup> Centers for Disease Control and Prevention, *Deaths: Final Data for 2017*, National Vital Statistics Reports, Volume 68, Number 9, [https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68\\_09-508.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_09-508.pdf).

<sup>8</sup> *Id.*

<sup>9</sup> Mark Follman, Gavin Aronsen, and Deanna Pan, *US Mass Shootings, 1982-2019: Data from Mother Jones’ Investigation*, Mother Jones (Updated Aug. 31, 2019), <https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/>.

<sup>10</sup> John Gramlich, *What the data says about gun deaths in the U.S.*, Pew Research Center (August 16, 2019), <https://www.pewresearch.org/fact-tank/2019/08/16/what-the-data-says-about-gun-deaths-in-the-u-s/>.

<sup>11</sup> FBI, *supra*, note 5.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> James Silver, Andre Simons, and Sarah Craun, *A Study of the Pre-Attack Behaviors of Active Shooters in the United States Between 2000 and 2013*, Federal Bureau of Investigation (June 2018), <https://www.fbi.gov/file-repository/pre-attack-behaviors-of-active-shooters-in-us-2000-2013.pdf>

<sup>15</sup> *Id.*

<sup>16</sup> Pub.L. 73–474 (1934).

<sup>17</sup> Pub. L. 103-322 (1994) at Title XI.

<sup>18</sup> Most notably, the House passed H.R. 8, the Bipartisan Background Checks Act of 2019. House Democrats also introduced H.R. 1296, the Assault Weapons Ban of 2019, which has received 215 cosponsors.

<sup>19</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

<sup>20</sup> U.S. Const. amdt. II.



## **UPDATE SECTION FIVE OF THE VOTING RIGHTS ACT**

Section five of the Voting Rights Act of 1965 (VRA) was designed as a temporary provision to effectively freeze election laws in certain states until federal officials could review them for discriminatory purpose or effect.<sup>1</sup> In *Shelby County v. Holder*,<sup>2</sup> the Supreme Court held the coverage formula in section four<sup>3</sup> to be unconstitutional, rendering section five's "preclearance" unenforceable until Congress acts to update the formula.

### **Quick Take**

The Supreme Court in *Shelby County v. Holder* rendered section five's "preclearance" unenforceable until Congress updates the formula.

Congress should either expand the VRA to all states or repeal section five.

### **BACKGROUND**

The heart of the VRA is section two, which prohibits every state and local government from imposing any voting law that results in racial discrimination, including literacy tests and poll taxes.<sup>4</sup> Section four contains the coverage formula that determines which states and local governments may be subject to the other provisions of the act. Section five requires nine states to obtain preapproval, or "preclearance," from the U.S. Attorney General or the U.S. District Court for the District of Columbia before making any change with respect to voting.<sup>5</sup> This section was intended to be temporary, but since its initial five-year authorization, it has been extended four times. The most recent extension occurred in 2006 for 25 years.

In 2009, Chief Justice John Roberts wrote for the majority in *Northwest Austin Municipal Utility District Number One v. Holder*:<sup>6</sup>

The historic accomplishments of the Voting Rights Act are undeniable... Things have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels... The statute's coverage formula is based on data that is now more than 35 years old and there is considerable evidence that it fails to account for current political conditions.

In *Shelby County v. Holder*,<sup>7</sup> the Supreme Court struck down the coverage formula in section four of the Voting Rights Act, which determines the states subject to section five's preclearance requirement. The Court did not rule on the constitutionality of section five itself. However, without the formula, covered jurisdictions under section five are effectively no longer subject to federal oversight.

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Fifteenth Amendment states that the "right of citizens of the United States to vote shall not be denied or abridged ... on account of race, color, or previous condition of servitude."<sup>8</sup> Section two of this amendment empowers Congress to enforce this article by appropriate legislation.<sup>9</sup>

As a matter of principle, all states enjoy equal sovereignty and should be treated equally under the law.

## **POLICY SOLUTIONS**

Congress should pass legislation which either repeals section five of the VRA or expands the preclearance to all 50 states.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> 52 U.S.C. § 10304 (2012).

<sup>2</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>3</sup> 52 U.S.C. § 10304(b) (2012).

<sup>4</sup> 52 U.S.C. § 10302 (2012).

<sup>5</sup> Section five most recently applied to Texas, South Carolina, Arizona, Georgia, Louisiana, Mississippi, Alabama, Virginia and Alaska. It also applies to parts of Florida, California, New York, North Carolina, South Dakota, Michigan and New Hampshire.

<sup>6</sup> *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).

<sup>7</sup> *Shelby County v. Holder*, *supra*, note 1.

<sup>8</sup> U.S. Const. amend. XV.

<sup>9</sup> *Id.*, § 2.

# GUIDE TO THE ISSUES

## MINIMIZE FINANCIAL SECTOR REGULATORY OVERLOAD

Accumulation of federal regulations over the past 30 years is estimated to cost the United States economy trillions of dollars annually,<sup>1</sup> diverting resources from the financial industry and other regulated entities. The Federal Government must adopt open data and regulatory technology (RegTech) solutions to harmonize onerous requirements and reduce compliance costs.

### BACKGROUND

Federal regulations have accumulated over many decades, leading to “duplicative, obsolete, conflicting, and even contradictory rules.”<sup>2</sup> Less than one percent of federal rules receive a regulatory cost-benefit analysis,<sup>3, 4</sup> which serve as “the primary analytical tool to inform specific regulatory decisions.”<sup>5</sup>

In 2014, the former Director of Regulatory Policy at the American Action Forum stated, “The most significant regulatory burdens do not arise merely because of a single rule. Rather, businesses and individuals must confront the cumulative effects of a variety of regulations issued by different agencies across separate administrations.”<sup>6</sup>

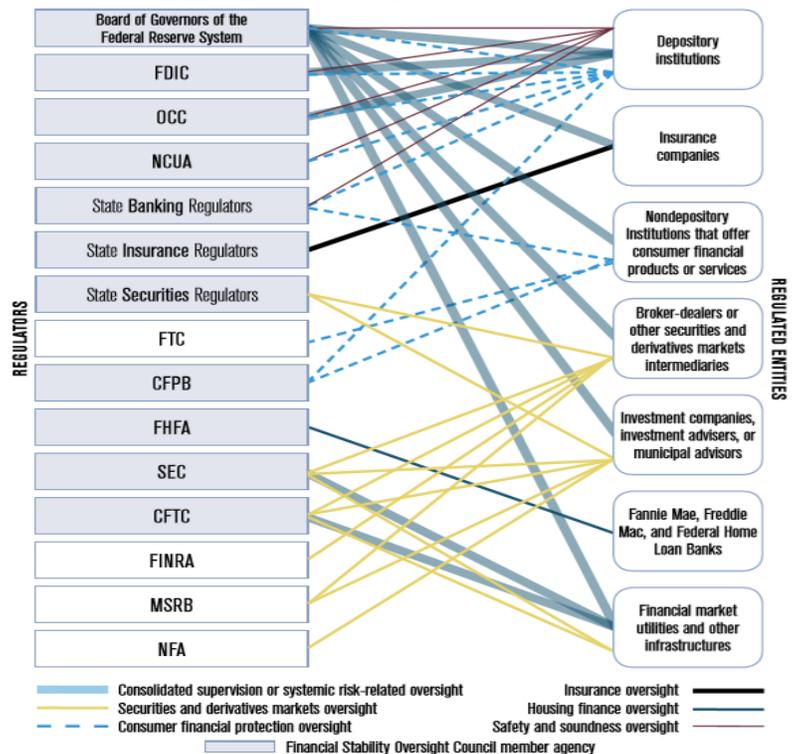
The 2008 recession demonstrated that fragmentation across the U.S. financial regulatory apparatus threatens the growth, stability, and oversight of the economy.<sup>7</sup> Consequently, the Government Accountability Office (GAO) has issued systemic modernization recommendations on its annual *High-Risk List* report every year since 2009.<sup>8</sup> Currently, the financial services industry consists of “more than 13,000 banks and credit unions, payment companies, insurance companies, wealth and asset managers and financial market utilities that process transactions, payments and move money across domestic and international markets.”<sup>9</sup> As Figure 1<sup>10</sup> shows, U.S. financial institutions must comply with multiple overlapping federal and state regulators.<sup>11,12</sup>

### Quick Take

Most financial regulators “do not use data standards to organize the information they collect from regulated entities,” and rely on antiquated, paper-based documentation and inconsistent reporting.

Congress should establish uniform data standards for regulatory reporting and ensure the information is accessible online.

**Figure 1: U.S. Financial Regulatory Structure, 2016**



Note: This figure depicts the primary regulators in the U.S. financial regulatory structure, as well as their primary oversight responsibilities. “Regulators” generally refers to entities that have rulemaking, supervisory, and enforcement authority over financial institutions or entities. There are additional agencies involved in regulating the financial markets and there may be other possible regulatory connections than those depicted in this figure. A list of agencies is available on page iv. Source: GAO GAO-16-175

Modernizing the financial regulatory structure requires reforming federal information management practices through open data policies. Currently, most financial regulators “do not use data standards to organize the information they collect from regulated entities,” and rely on antiquated, paper-based documentation and inconsistent reporting.<sup>13</sup> In a 2017 report to the President, the Department of Treasury recommended congressional and executive action to reduce “critical” regulatory overlap and duplication in the financial sector. The Treasury Department’s report called on financial agencies to adopt a standardized data field known as a Legal Entity Identifier in order to identify the regulated entities that report to them.<sup>14</sup>

Modernizing the Federal Government’s regulatory structure requires reforming federal information management practices through open data policies. The Data Foundation defines “open data” as “the idea that information should be both electronically-standardized and freely-available.”<sup>15</sup> Open data generally features three main pillars: 1) Standardize data in open formats; 2) Publish or share the data to ensure it is accessible; and 3) Use – or leverage – the data to inform public and private decision-making.<sup>16</sup>

In 2013, the Office of Management and Budget (OMB) released a memo recognizing open data as “a valuable natural resource and a strategic asset to the U.S. Government, its partners, and the public...[which] strengthens our democracy and promotes efficiency and effectiveness in government, but also has the potential to create economic opportunity and improve citizens’ quality of life.”<sup>17,18</sup> In 2018, the President’s Management Agenda featured open data under cross-agency priority (CAP) goal #2, “Leveraging Data As a Strategic Asset.”<sup>19</sup>

The U.S. Congress has continued efforts to modernize federal information management practices by enacting two major open data laws: The Digital Accountability and Transparency Act (DATA) of 2014,<sup>20</sup> and the Foundations for Evidence-Based Policymaking (or the “Evidence Act”) Act of 2018.<sup>21</sup>

- The DATA Act, the first national open data law, requires Treasury and OMB to establish government-wide data standards of federal spending data. This data is published in a public database at *USAspending.gov*.
- The Evidence Act required federal agencies to publish and provide public access to government data assets in a machine-readable format to the public. The law also established the role of Chief Data Officers (CDO) across federal agencies to implement and oversee data governance requirements.

In June 2019, OMB issued a draft “Year-1 Action Plan” of the first government-wide Federal Data Strategy. The Federal Data Strategy seeks to incorporate the goals and requirements of the Evidence Act and the President’s Management Agenda CAP #2.<sup>22</sup>

Australia’s experience in leveraging open data to reform its regulatory compliance regime may be instructive to the United States. A 2006 report found that, “regulatory compliance [requirements] cost Australian business tens of millions of dollars,” and diverted resources from core business activities.<sup>23</sup> In response, the Australian government established the Standard Business Reporting (SBR) system to ease regulatory compliance burdens.<sup>24</sup> SBR is administered on a voluntary basis and is considered by some to be the “gold standard” of regulatory modernization efforts.<sup>25</sup> Under the SBR system, multiple regulatory agencies operate under a streamlined reporting process with a similar taxonomy. To date, SBR has reduced the number of unique reporting terms across reporting forms “from almost 35,000 to less than 7,000 unique terms,”<sup>26</sup> saving regulated entities a projected \$1 billion (in Australian dollars) in compliance costs from 2016 to 2017.<sup>27</sup> 97 percent of the \$1 billion is estimated as savings to small businesses.<sup>28, 29</sup>

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

Congress has the authority to address data standards as a matter of interstate commerce<sup>30</sup> since many financial institutions operate across state lines.

Congress must modernize government operations and facilitate data-driven efforts to enable more informed public policy decisions.

## POLICY SOLUTIONS

To streamline reporting mandates and reduce compliance costs, Congress should consider policies supporting an open data framework like the Australian Standard Business Reporting model.<sup>31</sup>

Additionally, on September 24, 2019, Congress reintroduced the Financial Transparency Act with bipartisan lead sponsors.<sup>32</sup> If passed, the bill would likely become the first domestic U.S. RegTech law.<sup>33,34</sup> The Financial Transparency Act would, in part, encourage the modernization of financial regulatory filings in a similar manner to the DATA Act for federal spending data. The measure requires eight financial regulatory agencies to establish uniform data standards for regulatory reporting and to post the information online in a publicly accessible format.<sup>35</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

<sup>1</sup> Clyde W. Crews, *Ten Thousand Commandments*, Competitive Enterprise Institute, May 31, 2017, <https://cei.org/sites/default/files/Ten%20Thousand%20Commandments%202017.pdf>.

<sup>2</sup> Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, *The Cumulative Cost of Regulations* 8 (2016), Mercatus Center, <https://www.mercatus.org/system/files/Coffey-Cumulative-Cost-Regs-v3.pdf>.

<sup>3</sup> Clyde W. Crews, *Less Than 1 Percent of Federal Regulations Get Cost-Benefit Analysis*, Competitive Enterprise Institute, Nov. 15, 2015, <https://cei.org/blog/less-1-percent-federal-regulations-get-cost-benefit-analysis>.

<sup>4</sup> James Broughel, Richard Williams, *Government Report on Benefits and Costs of Federal Regulations Fails to Capture Full Impact of Rules* (2013), Mercatus Center, available at <https://www.mercatus.org/publication/government-report-benefits-and-costs-federal-regulations-fails-capture-full-impact-rules>.

<sup>5</sup> Office of Information and Regulatory Affairs, Office of Management and Budget, *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* 8 (2017), [https://www.whitehouse.gov/wp-content/uploads/2017/12/draft\\_2017\\_cost\\_benefit\\_report.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf).

<sup>6</sup> Sam Batkins, *It's Past Time to Address Regulatory Duplication*, *The Regulatory Rev.* (May 19, 2014), <https://www.theregreview.org/2014/05/19/19-batkins-regulatory-duplication/>.

<sup>7</sup> U.S. Gov't Accountability Office, GAO-16-175, *Financial Regulation: Complex and Fragmented Structure Could Be Streamlined to Improve Effectiveness* (2016), <https://www.gao.gov/assets/680/675400.pdf>.

<sup>8</sup> U.S. Gov't Accountability Office, *High-Risk Series: Modernizing the U.S. Financial Regulatory System* (2019), [https://www.gao.gov/highrisk/modernizing\\_financial\\_system/why\\_did\\_study](https://www.gao.gov/highrisk/modernizing_financial_system/why_did_study).

<sup>9</sup> *Cybersecurity Regulation Harmonization Before the S. Homeland Sec. and Gov't. Aff. Comm.*, 115th Cong. (2017) (statement of Chris Feeney, President, BITS).

<sup>10</sup> U.S. Dept. of the Treasury, *A Financial System That Creates Economic Opportunities Banks and Credit Unions* 29 (June 2017).

<sup>11</sup> U.S. Dept. of the Treasury, *A Financial System That Creates Economic Opportunities Banks and Credit Unions* (June 2017).

<sup>12</sup> In a 2018 hearing before the House Oversight & Government Reform Subcommittee on Intergovernmental Affairs, the President of BITS (the technology policy division of the Bank Policy Institute) testified that the financial services industry is “heavily regulated,” with “nine independent Federal regulators, three self-regulatory organizations, and 50 State banking, securities, and insurance agencies.” *Regulatory Divergence: Failure of the Administrative State Before the H. Oversight and Govt. Reform Comm., Subcomm. on Intergovernmental Affairs*, 115th Cong. (2018) (statement of Chris Feeney, President, BITS).

<sup>13</sup> *Issues: Financial Transparency Act*, The Data Coalition, available at <https://www.datacoalition.org/issues/financial-transparency-act/> (last visited Aug. 2019) [hereinafter Data Coalition FTA].

<sup>14</sup> Treasury, *supra*, note 11.

- 
- <sup>15</sup> Data Foundation, *State of the Union of Open Data*, Third Edition (January 2019), <https://www.datafoundation.org/the-state-of-the-union-of-open-data-ed-3>.
- <sup>16</sup> *Id.*
- <sup>17</sup> The CIO Council, *Project Open Data—Managing Information as an Asset* (last accessed August 28, 2019), <https://project-open-data.cio.gov/>.
- <sup>18</sup> U.S. Office of Management and Budget, *Memorandum M-13-13*, <https://project-open-data.cio.gov/policy-memo/>.
- <sup>19</sup> *The President’s Management Agenda*, U.S. Office of Management and Budget (Mar. 19, 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/04/ThePresidentsManagementAgenda.pdf>.
- <sup>20</sup> Pub. L. No. 113-101.
- <sup>21</sup> Pub. L. No. 115-435.
- <sup>22</sup> Federal Data Strategy, *What are the Principles?* (2018), <https://strategy.data.gov/principles/>.
- <sup>23</sup> Taskforce on Reducing Regulatory Burdens on Business, Government of Australia, *Rethinking Regulation* (Jan. 2006), <https://www.pc.gov.au/research/supporting/regulation-taskforce/report>.
- <sup>24</sup> *What is SBR?*, Standard Business Reporting: An Australian Government Initiative, <http://www.sbr.gov.au/about-sbr/what-is-sbr> (last visited Aug. 2019).
- <sup>25</sup> Andrew Luckett, *Exploring RegTech: The Intersection of Regulation, Data, and Technology*, Apr. 5, 2019, available at <https://www.datacoalition.org/exploring-regtech-the-intersection-of-regulation-data-and-technology/>
- <sup>26</sup> Hudson Hollister, Joseph Kull, Michael Middleton, and Michal Piechocki, *Standard Business Reporting: Open Data to Cut Compliance Costs* (Mar. 2017), Data Foundation and PWC, <https://www.datafoundation.org/standard-business-reporting-2017>.
- <sup>27</sup> Jessica Yabsley, *Standard Business Reporting: Congress’ Answer to Reducing Regulatory Compliance*, Data Coalition, Oct. 5, 2018, <https://www.datacoalition.org/standard-business-reporting-congress-answer-to-reducing-regulatory-compliance/>.
- <sup>28</sup> *The Benefits of a Deregulatory Agenda: Examples of Pioneering Governments Before the H. Oversight and Govt. Reform Comm., Subc. on Intergovernmental Affairs*, 115<sup>th</sup> Cong. (2018) (statement of Matt Vickers, Product Sales Manager, New Markets, Xero).
- <sup>29</sup> Yabsley, *supra*, note 27.
- <sup>30</sup> U.S. Const. art. I, § 8, cl. 3.
- <sup>31</sup> Hollister, *supra*, note 26.
- <sup>32</sup> H.R. 4476 in the 116<sup>th</sup> Congress; H.R. 1530 in the 115<sup>th</sup> Congress
- <sup>33</sup> Data Coalition FTA, *supra*, note 13.
- <sup>34</sup> DataTracks United States, Financial Transparency Act, <https://www.datatracks.com/us/fta/> (last accessed
- <sup>35</sup> The eight federal agencies are the Securities and Exchange Commission (SEC), CFTC, the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency, and the National Credit Union Administration.

## **CREATE CONGRESSIONAL ACCOUNTABILITY FOR MAJOR RULES**

Congress must reclaim authority delegated to executive agencies and be accountable for major federal regulations that impose significant compliance costs on Americans.

### **BACKGROUND**

The Constitution grants “all legislative powers” to a Congress of elected officials charged with representing the will of the people.<sup>1</sup> Over time, Congress has allocated “considerable power” to the executive branch by delegating rulemaking authority to implement statutes.<sup>2</sup> This shift of authority erodes the connection between federal lawmakers and the legal mandates imposed on Americans.

Today, federal regulations govern nearly every aspect of daily life.<sup>3</sup> In 2016, federal agencies published almost 39,000 pages of rules in the Federal Register — the highest annual number in our nation’s history.<sup>4</sup> According to the Competitive Enterprise Institute, regulatory agencies issued 11 rules for every law enacted by Congress in 2018, producing a total of 3,368 federal rules compared to 313 laws.<sup>5</sup>

Many of these rules carry significant economic implications. According to the Government Accountability Office (GAO), federal agencies crafted 72 major rules which took effect in 2019.<sup>6</sup> Under federal law, a “major rule” is a regulation with: 1) an annual economic effect of \$100 million or more; 2) a major increase in costs for consumers; or 3) significant negative economic impacts.<sup>7</sup> The George Washington University Regulatory Studies Center found that the Federal Government has published an average of 70 major rules per presidential year since 1996.<sup>8,9</sup>

Currently, the Congressional Review Act (CRA) is the most significant tool Congress has to counter agency rules which run afoul of congressional intent.<sup>10</sup> For a regulation to be invalidated by the CRA, the United States House of Representatives and Senate must pass a joint resolution of disapproval either signed by the president or override the president’s veto within 60 legislative working days.<sup>11</sup>

Historically, the CRA has had little success. Prior to the 115<sup>th</sup> Congress, the CRA resulted in the repeal of only one rule.<sup>12,13</sup> As such, the CRA is generally only effective to invalidate regulations when one political party takes control of both the White House and Congress and seeks to reverse rules promulgated towards the end of the prior administration.

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution grants lawmaking powers to the legislative branch.<sup>14</sup> Congress, not unelected bureaucrats, should be accountable for major rules imposed on the American people.

### **Quick Take**

Over time, Congress has allocated considerable power to the executive branch by delegating rulemaking authority to federal agencies.

The Regulations from the Executive in Need of Scrutiny (REINS) Act, would restore congressional accountability for most major rules by requiring a joint resolution of approval before major rules could take effect.

## POLICY SOLUTIONS

S.92, the Regulations from the Executive in Need of Scrutiny (REINS) Act,<sup>15</sup> would remove the congressional delegation of authority for most major rules. The REINS Act requires Congress to enact a joint resolution of approval which must either be signed by the president or passed over through a presidential veto. By modifying the CRA disapproval procedure for a small class of major rules, the REINS Act ensures that elected members of Congress are accountable for the most important regulations imposed on Americans. Versions of the REINS Act have passed the House of Representatives four times since the 112th Congress.<sup>16</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> U.S. Const. art. I, § 1.

<sup>2</sup> Congressional Research Service, IF10003, *An Overview of Federal Regulations and the Rulemaking Process* (2019) <https://fas.org/sgp/crs/misc/IF10003.pdf>.

<sup>3</sup> Calculating the comprehensive cost of federal regulations on the economy is difficult. Estimations provided by the Mercatus Center, the Competitive Enterprise Institute, and the American Action Forum range from hundreds of billions to trillions of dollars.

<sup>4</sup> *Federal Register Pages Published 1936-2017*, Fed. Reg. <https://www.federalregister.gov/uploads/2018/03/stats2017Fedreg.pdf>.

<sup>5</sup> Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*, CEI.org (2019), <https://cei.org/sites/default/files/10KC2019.pdf>.

<sup>6</sup> U.S. Gov't Accountability Office, *Database of Rules* (2020). <https://bit.ly/2L3D2Iu> (last accessed February 19, 2020).

<sup>7</sup> 5 U.S.C. § 804 (2012).

<sup>8</sup> George Washington University Regulatory Studies Center, *Reg Stats*, <https://regulatorystudies.columbian.gwu.edu/reg-stats> (last accessed June 20, 2019).

<sup>9</sup> For the purpose of this guide, presidential year refers to the period between February 1 through January 31.

<sup>10</sup> 5 U.S.C. § 801-808 (2012).

<sup>11</sup> Further, GAO reports that failure to submit a rule for congressional review as required by the CRA raises “legal uncertainty” over the enforceability of the regulation, as courts have differed in their interpretation of noncompliance with the CRA. Gov't Accountability Office, GAO-18-183, *Federal Rulemaking: OMB Should Work with Agencies to Improve Congressional Review Act Compliance During and at the End of Presidents' Terms* (2018), <https://www.gao.gov/assets/700/690624.pdf> [hereinafter GAO-18-183].

<sup>12</sup> GAO, *supra*, note 6. A total of 17 resolutions of disapproval have been enacted under the CRA. One was enacted in 2001, the only successful CRA enactment prior to the 115<sup>th</sup> Congress.

<sup>13</sup> According to a 2018 GAO report, 25 percent of “economically significant” regulations did not comply with the CRA, due primarily to agencies' failure to observe the 60-day effective date delay for congressional review. GAO states that “economically significant” rules are generally considered to be “major rules” under the CRA, although agencies use varying terminology to indicate whether regulations are economically significant or significant. Additionally, the definition of a “major rule” is similar but “not identical” to the definition of an “economically significant” rule as defined under Executive Order 12866. GAO-18-183, 20, *supra* at 11.

<sup>14</sup> U.S. Const. art. I, § 1.

<sup>15</sup> H.R. 3972, 116th Cong. (2019).

<sup>16</sup> The REINS Act passed the U.S. House of Representatives four times before. Those pieces of legislation were H.R. 26, 115 Cong. (2017), H.R. 427, 114 Cong. (2015), H.R. 367, 113 Cong. (2013), & H.R. 10, 112 Cong. (2011).

## **CURTAIN REGULATORY DELAYS FOR INFRASTRUCTURE PROJECTS**

Inefficiencies in the federal permitting process often delay U.S. infrastructure projects for decades and add billions of dollars to project development costs.

Congress must streamline permitting and provide reliable timelines and a predictable process for federal regulatory decisions.

### **BACKGROUND**

America's infrastructure is crumbling and in need of repair. In 2017, the American Society of Civil Engineers scored the nation's infrastructure with a "D plus" grade. They further estimated that failure to act would cause families to lose upwards of \$3,400 dollars each year at a cost of nearly \$4 trillion to the GDP and nearly 2.5 million jobs by 2025.<sup>1</sup>

Failure to address America's aging infrastructure on the federal level imposes costs on communities and families locally. Counties invest more than \$100 billion annually in roads, bridges, transit, water systems and other public infrastructure, according to the National Association of Counties.<sup>2</sup> America's counties also build and maintain 45 percent of public roads and 40 percent of bridges. They serve one-third of transit systems and airports across the country and spend \$23.3 billion on correctional facilities and another \$18.6 billion on sewage and waste management.<sup>3</sup>

Burdensome federal mandates impede progress in repairing failing infrastructure. The National Environmental Policy Act (NEPA) of 1970 requires federal agencies consider the environmental impacts of proposed projects prior to approving them.<sup>4</sup> NEPA applies to "programs entirely or partly funded, assisted, conducted, regulated, or approved by federal agencies."<sup>5</sup>

All federal agencies are required to follow NEPA. As NEPA does not mandate a lead agency oversee a project, many projects must meet duplicative requirements across multiple agencies to move forward.<sup>6</sup> The growth of the Federal Government over time exacerbates the permitting review process as more agencies and departments inevitably claim "jurisdiction over some aspect of an infrastructure project."<sup>7</sup> As one example of the extensive compliance process, *The NEPA Book: A Step-by-Step Guide on How to Comply With the National Environmental Policy Act* runs 475 pages long.<sup>8</sup>

### **Quick Take**

Delays for federal regulatory compliance may last for decades and cost billions of dollars.

Streamlining the regulatory review process to avoid these delays saves money without compromising the quality of necessary project oversight.

As the table below shows, there are three major levels of environmental review:<sup>9</sup>

NEPA Level	Description
Categorical Exclusion (CE)	This status is given to those projects that do not significantly impact the environment.
Environmental Assessment (EA)	An EA must be conducted when the environmental significance is unknown. The results of an EA can lead to one of the following: <ul style="list-style-type: none"> <li>• Finding of No Significant Impact (FONSI).</li> <li>• Environmental Impact Statement.</li> </ul>
Environmental Impact Statement (EIS)	An EIS is a more in-depth report that must include consideration of alternatives and public involvement. The EIS consists of four steps: <ol style="list-style-type: none"> <li>1. Notice of Intent (NOI).</li> <li>2. Draft EIS (DEIS).</li> <li>3. Final EIS (FEIS).</li> <li>4. Record of Decision (ROD).</li> </ol>

*Texas Transportation Institute, Texas A&M University System, 2011<sup>10</sup>*

Determining that a potential project will yield a “significant” environmental impact is made on a case-by-case basis and generally includes multiple factors, including broad interpretations over the location of the work, the scope of the work, and the societal impact.

A 2014 Government Accountability Office (GAO) report noted that the total financial costs of a NEPA analysis is unknown, since data reporting requirements varied across agencies.<sup>11</sup> According to the National Association of Environmental Professional’s (NAEP) annual NEPA report, “27 federal agencies made 144 final EISs available” as well as 175 draft EISs available to the public in 2018.<sup>12</sup>

According to the Council on Environmental Quality (CEQ), the average final impact statement took over 4.5 years and over 669 pages to complete from 2013 to 2017.<sup>13</sup> CEQ found that the average document length for draft EISs was 586 pages.<sup>14</sup> CEQ also noted that EISs vary widely in complexity within a single federal agency.<sup>15</sup>

Studies conducted for the Federal Highway Administration (FHWA) found that the average time to complete a NEPA study increased from 2.2 years in the 1970s to 6.6 years in 2011.<sup>16</sup> As of 2017, there were about 148 energy and transit projects with an estimated cost of \$229.4 billion in the NEPA review process.<sup>17</sup> According to the Western Energy Alliance, NEPA review can take over eight years for oil and gas development on federal lands.<sup>18</sup> Moreover, a 2017 Common Good report estimated that a six-year delay on major infrastructure projects cost the nation \$3.7 trillion,<sup>19</sup> while ASCE projects that the total cost to modernize infrastructure would reach \$1.7 trillion in five years.<sup>20</sup> In 2020, CEQ reported that EISs for federal highway projects averaged over seven years to complete, with many years taking over a decade or more.<sup>21</sup>

Lengthy permitting processes, multi-agency approvals, and tens of thousands of pages of environmental impact assessments can delay an infrastructure project for several decades. While there are many examples across the nation,<sup>22</sup> a select few include:

- Funding for the Northern Beltline project in Birmingham, Alabama, was approved in 1989.<sup>23</sup> The project would create a six-lane beltway around Birmingham. Nearly thirty years later, with only two miles built, Birmingham remains one of the largest cities in the country without a completed beltline. The FHWA recently predicted construction of the remaining 50 miles will take another 35 years, at a cost of over \$5 billion.<sup>24</sup>
- Construction to elevate the New Jersey Bayonne Bridge by 65 feet was delayed by five years due to a lengthy regulatory review process that required 47 permits from 19 federal agencies and a 20,000-page environmental review report.<sup>25</sup>

Federal delays in approvals shift costs onto project developers and communities.<sup>26</sup> Project developers often have to comply with duplicative and costly environmental reviews and permits on the same project at every level of government – federal, state, and local – with no guarantee a project will be approved.<sup>27</sup> Project managers “conservatively” estimate that project delays raises direct costs to construction by 5 percent, accounting for inflation.<sup>28</sup>

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution gives Congress the authority to “make all laws which shall be necessary and proper” for the purpose of “general welfare.”<sup>29</sup>

## **POLICY SOLUTIONS**

In August 2017, President Trump signed Executive Order 13807, which established a federal policy for major infrastructure projects known as the “One Federal Decision.”<sup>30</sup> E.O. 13807 directed federal agencies to develop plans to streamline the review process for major infrastructure projects with a stated goal of two years or less. It also authorizes a sole agency to lead these projects through the federal review process.

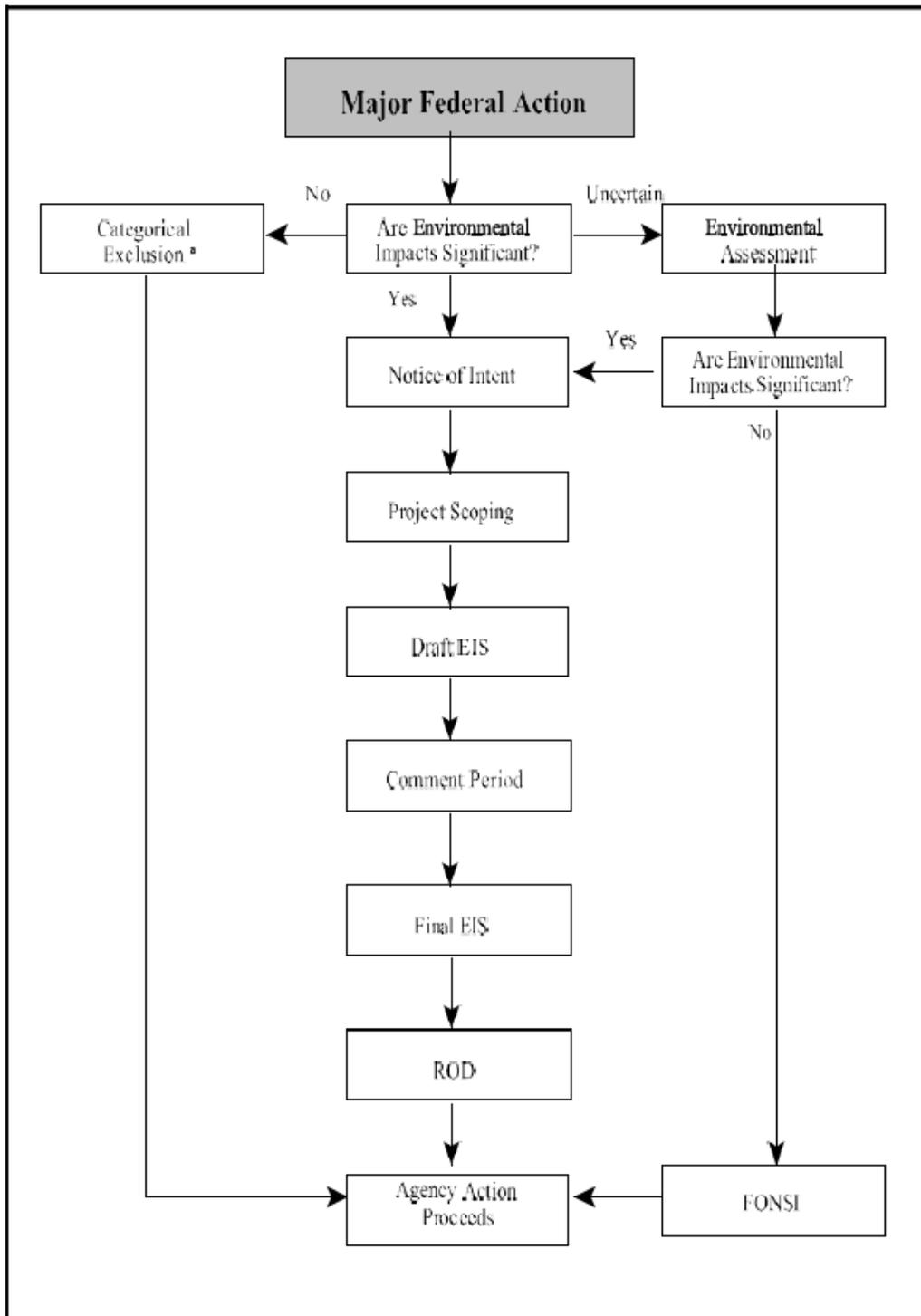
On September 26, 2018, the Office of Management and Budget (OMB) and CEQ issued a memorandum for heads of executive departments and agencies explaining the performance accountability system that will be used to track agencies’ compliance with the OFD policy.<sup>31</sup> OMB, in consultation with CEQ and the Federal Permitting Improvement Steering Council (FPISC), created a Federal Agency Portal of the Permitting Dashboard, where agencies will be required to provide information on six assessment areas. OMB will use that information to compile quarterly scorecards for agency performance and progress towards achieving the administration’s goals.

On January 9, 2020, the Council on Environmental Quality (CEQ) issued a Notice of Proposed Rulemaking building on the One Federal Decision. The public has 60 days to comment on the proposed rule. The American Wind Energy Association has endorsed the Trump administration’s proposed rule, noting the costly delays imposed by the NEPA permitting and environmental review process onto renewable energy projects.<sup>32</sup>

Modernizing the permitting process has bipartisan support. In 2015, President Obama signed the Fixing America’s Surface Transportation Act (FAST-41) into law which laid the groundwork to expedite the permitting review process. Additionally, the Obama administration granted over 179,000 categorical exclusions to expedite stimulus projects under the American Recovery and Reinvestment Act.

Congress should review public comments on the proposed rule to codify the common-sense streamlining reforms implemented by the Trump administration’s proposed One Federal Decision rule.

## APPENDIX I



*Congressional Research Service, 2011<sup>33</sup>*

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

- 
- <sup>1</sup> American Society of Civil Engineers, *2017 Infrastructure Report Card*, available at: <https://www.infrastructurereportcard.org/wp-content/uploads/2019/02/Full-2017-Report-Card-FINAL.pdf>
- <sup>2</sup> National Association of Counties, Transportation and Infrastructure page, <http://www.naco.org/topics/transportation-infrastructure> (Last visited Feb. 27, 2017).
- <sup>3</sup> *Id.*
- <sup>4</sup> 42 U.S.C. §§ 4321 *et seq.*
- <sup>5</sup> Examples of infrastructure projects requiring NEPA review include: Mining and timber operations on federal land; Federal permitting for dredge and fill operations in “Waters of the United States;” Oil and gas drilling on federal lands; Construction of certain housing projects; Highway and bridge construction, repair and maintenance; and airport construction and expansion. Linda Luther, Cong. Research Serv., (CRS), *The National Environmental Policy Act (NEPA): Background and Implementation*, RL33152 (Washington, D.C.: Jan. 10, 2011).
- <sup>6</sup> Daren Bakst, Senior Research Fellow in Agricultural Policy, The Heritage Foundation, Testimony before the U.S. House Comm. On Oversight and Gov’t Reform, Jt. Subcomm Hearing on the Subc. On Intergovernmental Affairs and Interior, Energy, and Environment, *Permitting: Finding A Path Forward*, (2018), <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Bakst%20Testimony%20-%20IGA%20IEE%20Permitting%20Hearing%20-%2009.06.2018.pdf>, and Philip K. Howard, Chair, Common Good, Testimony before the U.S. House Comm. On Oversight and Gov’t Reform, Jt. Subcomm Hearing on the Subc. On Intergovernmental Affairs and Interior, Energy, and Environment, *Permitting: Finding A Path Forward*, (2018), <https://docs.house.gov/meetings/GO/GO04/20180906/108656/HHRG-115-GO04-Wstate-HowardP-20180906.pdf>.
- <sup>7</sup> Philip K. Howard, *Two Years, Not Ten Years: Redesigning Infrastructure Approvals*, COMMON GOOD, (2017), [https://www.commongood.org/wp-content/uploads/2017/07/2YearsNot10Years.pdf?mod=article\\_inline](https://www.commongood.org/wp-content/uploads/2017/07/2YearsNot10Years.pdf?mod=article_inline)
- <sup>8</sup> Amazon.com, Ronald E. Bass, *The NEPA Book: A Step-by-Step Guide on How to Comply with the National Environmental Policy Act*, (2001), <https://www.amazon.com/Nepa-Book-Step-Step-Environmental/dp/0923956670>
- <sup>9</sup> See also Appendix 1 for a visual of the environmental review process.
- <sup>10</sup> Texas Transportation Institute, The Texas A&M University System, Report prepared in cooperation with the Texas Department of Transportation, *Assessing the Costs Attributed to Project Delays*, Sept. 2011, <https://ftp.dot.state.tx.us/pub/txdot-info/fed/project-delay-summary.pdf>.
- <sup>11</sup> U.S. Gov’t Accountability Off., GAO-14-369, *National Environmental Policy Act: Little Information Exists on NEPA Analyses* (2014) <https://www.gao.gov/assets/670/662543.pdf>.
- <sup>12</sup> Annual Report, The National Association of Environmental Professionals, NAEP Annual NEPA Report – 2018, [https://naep.memberclicks.net/assets/documents/2019/NEPA\\_Annual\\_Report\\_2018.pdf](https://naep.memberclicks.net/assets/documents/2019/NEPA_Annual_Report_2018.pdf).
- <sup>13</sup> Executive Office of the President, Council on Environmental Quality (heretofore CEQ), *Length of Environmental Impact Statements (2013-2017)*, July 22, 2019, available at [https://ceq.doe.gov/docs/nepa-practice/CEQ\\_EIS\\_Length\\_Report\\_2019-7-22.pdf?mod=article\\_inline](https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2019-7-22.pdf?mod=article_inline).
- <sup>14</sup> One-quarter of draft EISs was 288 pages or shorter, and one-quarter reached 630 pages or longer. Executive Office of the President, Council on Environmental Quality (heretofore CEQ), *Length of Environmental Impact Statements (2013-2017)*, July 22, 2019, [https://ceq.doe.gov/docs/nepa-practice/CEQ\\_EIS\\_Length\\_Report\\_2019-7-22.pdf?mod=article\\_inline](https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2019-7-22.pdf?mod=article_inline).
- <sup>15</sup> Executive Office of the President, Council on Environmental Quality (heretofore CEQ), *Length of Environmental Impact Statements (2013-2017)*, July 22, 2019, available at [https://ceq.doe.gov/docs/nepa-practice/CEQ\\_EIS\\_Length\\_Report\\_2019-7-22.pdf?mod=article\\_inline](https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Length_Report_2019-7-22.pdf?mod=article_inline).
- <sup>16</sup> Chris Edwards, “Removing Barriers to Infrastructure Investment”, CATO Institute: CATO at Liberty (Jan. 9, 2017) <https://www.cato.org/blog/removing-barriers-infrastructure-investment>
- <sup>17</sup> Curtis Arndt, “Regulatory Burdens And The Supply of Infrastructure Projects”, American Action Forum: Research (Feb. 23, 2017) <https://www.americanactionforum.org/research/infrastructure-regulatory-burdens/>.
- <sup>18</sup> Western Energy Alliance, *National Environmental Policy Act*, <https://www.westernenergyalliance.org/national-environmental-policy-act-nepa>.
- <sup>19</sup> Howard, *supra* at 7.
- <sup>20</sup> 2013 Report Card for America’s Infrastructure, American Society of Civil Engineers, March 2013, Executive Summary, <http://www.infrastructurereportcard.org/a/#p/overview/executive-summary>.
- <sup>21</sup> CEQ, *Fact Sheet: CEQ’s Proposal to Modernize its NEPA Implementing Regulations*, Jan. 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/01/20200109FINAL-FACT-SHEET-v3-1.pdf>.
- <sup>22</sup> WhiteHouse.gov, *Remarks by President Trump on Proposed National Environmental Policy Act Regulations*, Jan. 9, 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-proposed-national-environmental-policy-act-regulations/>, and CEQ, *What They Are Saying: Support for CEQ’s Proposal to Modernize its NEPA Regulations*, January 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/01/20200116-FINAL-NPRM-WTAS-1.pdf>.
- <sup>23</sup> The Appalachian Highway Development System (AHDS) Act of 1964 authorized funding for the Northern Beltline project in Alabama. The Environmental Impact Statement for the Northern Beltline was originally approved in 1997. However, the DOT failed to advance the project within the appropriate window of time. The EIS reevaluation took three years to receive approval, creating significant delays and duplicating previous efforts. The state of Alabama was required to fly in a Chief from a Native

---

American tribe in Oklahoma to reevaluate potential impact to tribal lands, despite having already satisfied this requirement in the original evaluation.

<sup>24</sup>John Archibald, AL.com, “The 7<sup>th</sup> Biggest Boondoggle in the U.S. is Alabama’s,” Nov. 25, 2015, [https://www.al.com/opinion/2015/11/the\\_7th\\_biggest\\_boondoggle\\_in.html](https://www.al.com/opinion/2015/11/the_7th_biggest_boondoggle_in.html), and Dilip Vishwanat, Birmingham Business Journal, “Funding Secured to Resume Northern Beltline Construction,” (2019), <https://www.bizjournals.com/birmingham/news/2019/12/20/funding-secured-to-resume-northern-beltline.html>.

<sup>25</sup> Howard, *supra* at 7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> U.S. CONST. art. 1, § 8.

<sup>30</sup> Executive Order 13707, *Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure*, Aug. 15, 2017, at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-establishing-discipline-accountability-environmental-review-permitting-process-infrastructure/>.

<sup>31</sup> Memorandum for Heads of Executive Departments and Agencies, *Modernize Infrastructure Permitting Cross-Agency Priority Goal Performance Accountability System*, M-18-25, From Mick Mulvaney, Director, Off. of Mgm’t and Budget (Sept. 26, 2018), *available at* <https://www.whitehouse.gov/wp-content/uploads/2018/09/M-18-25.pdf>.

<sup>32</sup> Kelsey Brugger, E&E News, “NEPA Rewrite Reveals Tensions Between Greens, Renewables,” Jan. 13, 2020, *available at* <https://www.eenews.net/stories/1062071569>.

<sup>33</sup> *Supra* at 5.



### INVEST IN AMERICA'S ENTREPRENEURS

Statutory and regulatory barriers prevent investors from supporting startups, small businesses, and entrepreneurs across the United States. Congress must support legislation creating greater access to open capital markets.

#### BACKGROUND

Capital markets are segments of the financial system which provide funding through equity or debt instruments that companies need to fund their growth. They are “considered the largest source of financing for U.S. nonfinancial companies,” significantly outpacing “bank loans and other forms of financing.”<sup>1</sup> The U.S. Securities Exchange Commission (SEC) serves as the primary regulator of capital markets.

Small businesses and startups are the engine of the U.S. economy. 2016 Census Bureau data found that small employer enterprises, or businesses with less than 500 employees, provided 47.3 percent, or nearly half, of all jobs.<sup>2</sup>

According to FreshBooks’s annual 2019 report on self-employment, an estimated 24 million U.S. workers considered leaving full-time jobs in favor of self-employment, yet only about 2 million followed through. Survey respondents cited numerous barriers discouraging their entrepreneurial ambitions, such as inconsistent income and earnings, access to capital and investment, burdensome debt, and costs of education and training.<sup>3</sup> A 2019 report by the Congressional Research Service (CRS) found that less than half of all “high-impact” startups remain in business after five years.<sup>4</sup>

Unfortunately, entrepreneurs across the U.S. experience disproportionately high barriers to capital funding. Statutory limitations in securities laws prohibit many average Americans from investing in private market funding opportunities. These markets are limited to “accredited investors,” those who have made over \$250,000 for the last two years or have net worth of over \$1 million. These limits prevent hard-working, enterprising families from securing financing opportunities to fund growth and innovation for their businesses.

Currently, three states – California, Massachusetts, and New York – consistently receive nearly 80 percent of all financing for venture-capital backed companies.<sup>5</sup> Comparatively, only about four percent of venture capital investment made it to the Midwest.<sup>6</sup>

In 2012, the Jumpstart Our Business Startups (“JOBS”) Act was signed into law, creating a streamlined regulatory framework for America’s small businesses to seek capital from average investors.<sup>7</sup> As a result, small businesses have more options to reach investors through fundraising mechanisms like investment

#### Quick Take

Small businesses and startups represent the engine of the U.S. economy. Unfortunately, securities laws currently favor investment opportunities for the elite, preventing many U.S. entrepreneurs from accessing necessary capital.

Congress must support legislation that ensures greater access to investment opportunities.

crowdfunding. Since Regulation Crowdfunding was finalized by the SEC, small businesses have conducted over 900 offerings that reported raising more than \$90 million in investment.<sup>8</sup>

In 2019, the SEC issued a concept release on harmonizing private market activity with the public markets to allow for greater small business capital investment from Main Street investors.<sup>9</sup>

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution authorizes Congress to modernize our securities laws as a matter of interstate commerce<sup>10</sup> since many investment offerings operate across state lines. Republicans should support legislation that empowers consumers to have more control over their personal finances.

## POLICY SOLUTIONS

Congress should pass H.R. 4860, the Crowdfunding Amendment Act, which would expand permissible uses of crowdfunding to allow more Americans to invest in small businesses. Congress should also pass H.R. 4762, the Fair Investment Opportunities for Professional Experts Act, which would expand the definition of eligible “accredited investors” to allow more Americans to participate in the private capital markets.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Eva Su, Congressional Research Service, (R45308), *JOBS and Investor Confidence Act (House-Amended S. 4888): Capital Markets Provisions*, Sept. 7, 2018, available at

<https://www.crs.gov/Reports/R45308?source=search&guid=0c37bc7eba574e33891bd587b0a7d1c4&index=0>

<sup>2</sup> U.S. Census Bureau, “Statistics of U.S. Businesses: U.S. & States, totals,” at

<https://www.census.gov/data/tables/2016/econ/susb/2016-susb-annual.html>; and U.S. Census Bureau, “Nonemployer Statistics: Geographic Area Series: Nonemployer Statistics by Legal Form of Organization for the U.S. and States: 2016,” at <https://www.census.gov/data/tables/2016/econ/nonemployer-statistics/2016-nonemployer.html>.

<sup>3</sup> FreshBooks, 2019: FreshBooks Third Annual Self-Employment in America Report, Apr. 10, 2019, at <https://www.freshbooks.com/press/annualreport>

<sup>4</sup> Congressional Research Service, *Small Business Administration and Job Creation*, (R41523), Sept. 11, 2019, available at <https://fas.org/sgp/crs/misc/R41523.pdf>

<sup>5</sup> MoneyTree Report Q1 2018, PwC/CB Insights, at

[https://www.pwc.com/us/en/technology/assets/MoneyTree\\_Report\\_2018\\_Q1\\_FINAL.pdf](https://www.pwc.com/us/en/technology/assets/MoneyTree_Report_2018_Q1_FINAL.pdf).

<sup>6</sup> Representatives Tim Ryan and Ro Khanna, Vox, “A whopping 80 percent of all venture capital investment goes to just three states. That has to change.” Mar. 20, 2018, <https://www.vox.com/2018/3/20/17136652/comeback-cities-tour-bus-midwest-investment-incubation-local-youngstown-detroit-flint-ryan-khanna>

<sup>7</sup> Pub. L. No. 112-106

<sup>8</sup> Remarks by SEC Chairman Jay Clayton, based on data from the Electronic Data, Gathering, Analysis, and Retrieval (EDGAR) system as of June 30, 2018. U.S. Securities and Exchange Commission, *Remarks on Capital Formation at the Nashville 36/86 Entrepreneurship Festival*, Aug. 29, 2018, available at [https://www.sec.gov/news/speech/speech-clayton-082918#\\_ftn29](https://www.sec.gov/news/speech/speech-clayton-082918#_ftn29)

<sup>9</sup> U.S. Securities and Exchange Commission, *Press Release: SEC Proposes to Update Accredited Investor Definition to Increase Access to Investments*, Dec. 18, 2019, available at <https://www.sec.gov/news/press-release/2019-265> and Federal Register, 17 CFR, *Concept Release on Harmonization of Securities Offering*, available at <https://www.sec.gov/rules/concept/2019/33-10649.pdf>

<sup>10</sup> U.S. Const. art. I, § 8, cl. 3.

## **SUPPORT INNOVATION AS A PATH TOWARD FINANCIAL INCLUSION**

The U.S. is experiencing a growing number of “banking deserts,” or communities where consumers do not have access to financial institutions. Congress should support legislation that enables innovative financial products to reach these populations.

### **BACKGROUND**

According to the Federal Reserve, most counties in the United States lost bank branches in recent years. Rural communities with poorer residents have been hit the hardest.<sup>1</sup> Of America’s 1,980 rural counties, 625 have no locally owned community bank—double the number in 1994.<sup>2</sup> At least 35 counties have no bank, while about 115 are now served by just one branch.<sup>3</sup>

Fortunately, technology is enabling banks to reach consumers wherever they are. Digital banking has led to financial technology, often referred to as “fintech,” companies offering new ways for consumers and small businesses to bank. The emergence of blockchain technology and digital assets means that in the future more Americans can have access to our financial system. The wave of technology in financial services, in other words, leads to greater financial inclusion.

However, America’s financial regulatory framework has not kept up with the demands of technology. A core legal doctrine that supports the bank-fintech partnership is in jeopardy based on an outlier court decision from the United States Court of Appeals for the Second Circuit.<sup>4</sup> The ability for regulators to encourage innovation and test new products remains challenging within the current administrative law framework. Other countries like the United Kingdom have adopted so-called “regulatory sandboxes” to allow more financial innovative products to go to market, leaving the United States behind.<sup>5</sup>

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution authorizes Congress to regulate financial products as a matter of interstate commerce<sup>6</sup> because financial products are used across state lines.

### **Quick Take**

The U.S. is experiencing a growing number of “banking deserts,” or communities where consumers do not have access to financial institutions.

Congress should support legislation that enables innovative financial reforms.

## **POLICY SOLUTIONS**

Congress should support efforts to provide legal certainty to the bank-fintech partnerships by the regulators. If legal foundation remains unclear, Congress should reintroduce and pass the Protecting Consumers' Access to Credit Act. Additionally, Congress should authorize pilot programs that allow for more financial innovations to go to market domestically by passing H.R. 4767, the Financial Services Innovation Act.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Yuka Hayashi, Wall Street Journal, *Bank Branch Closings Weigh on Rural Communities, Fed Finds*, Nov. 25, 2019, <https://www.wsj.com/articles/bank-branch-closings-weigh-on-rural-communities-fed-finds-11574722948>.

<sup>2</sup> Ruth Simon and Coulter Jones, Wall Street Journal, *Goodbye, George Bailey: Decline of Rural Lending Crimps Small-Town Business*, Dec. 25, 2017, <https://www.wsj.com/articles/goodbye-george-bailey-decline-of-rural-lending-crimps-small-town-business-1514219515>.

<sup>3</sup> *Id.*

<sup>4</sup> See *Madden v. Midland funding, LLC*, 786 f.3d 246 (2nd Cir. 2015).

<sup>5</sup> Mekebeb Tesfaye, Business Insider, *The FCA's fintech sandbox is already delivering value*, Oct. 11, 2018, <https://www.businessinsider.com/fca-fintech-sandbox-delivers-value-2018-10>

<sup>6</sup> U.S. Const. art. I, § 8, cl. 3.

## **ADDRESS SMALL BUSINESS RESOURCE DUPLICATION**

With more than 30 million<sup>1</sup> small businesses operating in the United States, the nation's smallest firms play an outsized role in the economy. To safeguard taxpayer dollars, federal small business programs must reduce duplication and streamline resources for small businesses.

### **BACKGROUND**

Small businesses represent a major driver of our nation's economy. Currently, over 30 million small businesses operate within the U.S.,<sup>2</sup> and over 47 percent of America's employees work for small businesses.<sup>3</sup> From coordinated federal programs to private sector solutions, small businesses, entrepreneurs, and startups have a wide range of available resources. The Small Business Administration (SBA) serves as the lead agency to promote small business access to capital, counseling, and contracting. However, duplication among various federal programs is costly and counterproductive.

Private sector businesses represent the hallmark of our nation's market-based economy. Federal Government programs should therefore complement rather than duplicate private sector resources for small businesses. For example, the SBA's 7(a) Loan Program addresses the lending gap that exists in the marketplace for the nation's smallest firms by offering government guaranteed loans. A small business that wants to obtain a 7(a) loan through the program must not be able to acquire capital through traditional means. The "Credit Elsewhere Test"<sup>4</sup> requires lenders to verify that a small business is not able to receive credit on reasonable terms from non-federal sources.<sup>5</sup> Federal programs that seek to replicate proven private sector resources are unnecessary and add to the national debt.

When circumstances do create a need for government small business resources, too often federal agencies fail to coordinate internally. The SBA, for example, offers counseling services through its Entrepreneurial Development programs to small businesses, entrepreneurs, and startups. In Fiscal Year 2018, the Small Business Development Center, Women's Business Center, and the SCORE Program advised and mentored over 300,000 clients.<sup>6</sup> While each program is distinct, the Women's Business Center program requires reforms in order to avoid duplicating efforts of the Small Business Development Center program.<sup>7</sup>

Another issue is duplication in services and lack of coordination across agencies. According to a recent Government Accountability Office (GAO) report, three separate agencies offer microlending programs.<sup>8</sup> The SBA offers the Microloan Program, the Treasury Department administers the Community Development Financial Institutions (CDFI) Program, and the Department of Agriculture administers the Farm Service Agency Microloan Program and the Rural Microentrepreneurial Assistance Program.<sup>9</sup> According to GAO, each of these various programs were included within the SBA Microloan report "based on their similarity in purpose to SBA's Microloan Program, use of funds, loan amount, and use of technical assistance grants."<sup>10</sup>

### **Quick Take**

With more than 30 million small businesses in America, Congress must ensure that federal programs complement rather than duplicate existing resources.

Where duplication appears, Congress should either clearly explain the need for distinct programs or consolidate them.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution gives Congress the authority to “make all laws which shall be necessary and proper” for the purpose of “general welfare.”<sup>11</sup> With millions of small businesses operating within the United States, comprehensive oversight is imperative to ensure federal small business programs are running effectively and efficiently.

## POLICY SOLUTIONS

Across the board, legislation within the House Committee on Small Business’ jurisdiction must include comprehensive and robust oversight benchmarks. These strong provisions will assure Congress that the programs available to small businesses, entrepreneurs, and startups are operating in a manner that best stewards taxpayer dollars. Moreover, rigorous oversight protections reduce duplication, so programs are uniquely tailored to meet the needs of the nation’s 30 million small businesses.<sup>12</sup>

Legislation amending the 7(a) Loan Program should consider including language strengthening the “Credit Elsewhere Test.” Additionally, legislation reforming the Microloan Program and the Women’s Business Center Program should consider language that clearly delineates the programs from other federal programs or consolidates them.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> SBA Office of Advocacy, *Small Business Profile (2019)*, available at <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/04/23142719/2019-Small-Business-Profiles-US.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 15 U.S.C. § 632(h).

<sup>5</sup> 13 C.F.R. § 120.101.

<sup>6</sup> FY 2020 CONGRESSIONAL BUDGET JUSTIFICATION AND FY 2018 ANNUAL PERFORMANCE REPORT at 86 - 91.

<sup>7</sup> Views and Estimates of the Committee on Small Business on Matters to be set forth in the Concurrent Resolution on the Budget for Fiscal Year 2019 available at [https://republicans-smallbusiness.house.gov/uploadedfiles/fy2019\\_sbc\\_budget\\_views\\_and\\_estimates.pdf](https://republicans-smallbusiness.house.gov/uploadedfiles/fy2019_sbc_budget_views_and_estimates.pdf).

<sup>8</sup> GAO, SBA MICROLOAN PROGRAM: OPPORTUNITIES EXIST TO STRENGTHEN PROGRAM PERFORMANCE MEASUREMENT, COLLABORATION, AND REPORTING, 31 (GAO-20-49) (2019).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 30.

<sup>11</sup> U.S. CONST. art. 1, § 8.

<sup>12</sup> *Supra*, note 1.

## COMBAT IMPROPER MEDICAID PAYMENTS

Medicaid provides health services and support to lower-income Americans. Medicaid is also a significant source of improper federal payments and program fraud. Congress must ensure that Medicaid program dollars are spent on vulnerable populations instead of being wasted or stolen.

### BACKGROUND

Medicaid is funded jointly by the state and federal governments. The program has traditionally served children, pregnant women, parents of dependent children, the elderly, and individuals with disabilities.<sup>1</sup> Enacted in 1965, Medicaid is the single largest source of health coverage in the United States, representing one-sixth of the national health care economy.<sup>2</sup>

Due to the Affordable Care Act (ACA) expansion, Medicaid represents one of the largest and fastest-growing programs and sources of federal erroneous payments, growing from \$177.5 billion to \$385 billion since Fiscal Year (FY) 2008.<sup>3</sup> State participation in the program is voluntary, but all states, including the District of Columbia, participate in the program.<sup>4</sup> In FY2018, Medicaid served 75 million individuals and spending totaled approximately \$616 billion, with the Federal Government's portion accounting for about \$386 billion.<sup>5</sup>

States must follow federal rules in order to receive matching federal funding.<sup>6</sup> The federal share is referred to as the federal medical assistance percentage (FMAP), which varies from state-to-state based on per capita incomes relative to the national average. In FY2019, FMAP rates ranged from 50 percent to 76.4 percent.<sup>7,8</sup>

The Government Accountability Office (GAO) has placed Medicaid on its biannual *High-Risk List* since 2003, with about 35 priority recommendations remaining open as of March 2018.<sup>9</sup> From FY2015 to FY2019, improper payments government-wide increased from \$137 billion to about \$175 billion.<sup>10</sup> Improper payments at the Department of Health and Human Services (HHS) accounted for nearly two-thirds of all federal improper payments in 2017, with Medicaid contributing about \$36 billion, or 26 percent, of the total.<sup>11,12,13</sup>

HHS Office of Inspector General (OIG) has also identified Medicaid program integrity and improper payments as top management and performance challenges.<sup>14</sup>

The Centers for Medicare and Medicaid Services' (CMS) Payment Error Rate Measurement (PERM) program measures Medicaid improper payments across all 50 States and the D.C. using a 17-state approach over a three-year rotation.<sup>15</sup> In FY2019, the improper payment rate for the Medicaid program soared to 14.9 percent, representing over \$57 billion in improper payments<sup>16</sup> at an increase from 9.8 percent in FY2018.<sup>17</sup>

### Quick Take

GAO has placed Medicaid on the biannual *High-Risk List* since 2003 and suggested about 35 program reforms. In FY2019, Medicaid reported \$57 billion in improper payments, representing one-third of the total.

Congress must consider GAO's recommendations to ensure that Medicaid dollars are spent on vulnerable populations instead of being wasted.

According to CMS, the rise in improper payments is not comparable between FY2018 and FY2019, due to the agency's "reintegration of the PERM eligibility component for the first cycle of 17 states," which HHS did not conduct between FY2015 and FY2018.<sup>18</sup> CMS states it will "complete the review of the remaining 33 states and [D.C.] over the next two years" to measure all states under the renewed requirements.<sup>19</sup>

According to data released by the Office of Management and Budget, the Federal Government reported a total of about \$175 billion in improper payments in FY2019. Medicaid reported over \$57 billion, representing about one-third of total improper payments.<sup>20</sup>

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

Congress has the authority to "make all laws which shall be necessary and proper" to carry out its mandate "to ... provide for the ... general welfare."<sup>21</sup> As a matter of principle, taxpayer resources should be efficiently used for their intended purposes.

## **POLICY SOLUTIONS**

Congress may consider introducing legislation granting state auditors access to appropriate data necessary for audits and evaluations of Medicaid on the state level.<sup>22,23</sup> Additionally, Congress must continue oversight of Medicaid program integrity. GAO's recommendations for addressing Medicaid's internal weaknesses include, but are not limited to:

- CMS should identify opportunities to address barriers that limit states' participation in collaborative audits;
- CMS should conduct reviews of federal Medicaid eligibility determinations to ascertain the accuracy of these determinations and institute corrective action plans where necessary;
- CMS should establish a firm deadline requiring all states to submit complete and accurate Medicaid data to the Transformational Medicaid Statistical Information System (T-MSIS), a claims processing database run by CMS. CMS extended the deadline about six times since the original July 2014 deadline, delaying the efficient use of a national Medicaid database;<sup>24</sup>
- CMS should conduct fraud risk assessments for Medicare and Medicaid that include respective fraud risk profiles and plans for regularly updating the assessments and profiles; and
- Congress should consider amending the Social Security Act to explicitly allow the Social Security Administration to share its full death file with Treasury for use through the Do Not Pay working system.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

<sup>1</sup> Alison Mitchell, Cong. Research Serv., IF10322, *Medicaid Primer*, (2018).

<sup>2</sup> U.S. Gov't Accountability Office (GAO), GAO-18-70, *Medicaid: Further Action Needed to Expedite Use of National Data for Program Oversight* (2017), <https://www.gao.gov/assets/690/688857.pdf>.

<sup>3</sup> *Payment Accuracy 2019 Dataset*, PAYMENTACCURACY.GOV (last visited Feb. 19, 2020), [paymentaccuracy.gov/resources/](http://paymentaccuracy.gov/resources/).

<sup>4</sup> Alison Mitchell, Cong. Research Serv., R43357, *Medicaid: An Overview* (2019) <http://www.crs.gov/Reports/R43357>.

---

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier*, The Kaiser Foundation, <https://www.kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last viewed Mar. 6, 2018).

<sup>8</sup> Mitchell, *supra* note 1.

<sup>9</sup> U.S. Gov't Accountability Office (GAO), GAO-18-444t, *Medicaid: Opportunities for Improving Program Oversight Appendix 1* (2018), <https://www.gao.gov/products/GAO-18-444T>.

<sup>10</sup> Angie Petty, *Federal Improper Payments Show Slight Decline in FY 2017*, Deltek (Feb. 6, 2018), <https://www.deltek.com/en/learn/blogs/b2g-essentials/2018/02/federal-improper-payments-show-slight-decline-in-fy-2017> and *Payment Accuracy 2019 Dataset*, PAYMENTACCURACY.GOV (last visited Feb. 19, 2020), [paymentaccuracy.gov/resources](http://paymentaccuracy.gov/resources)

<sup>11</sup> U.S. Gov't Accountability Office (GAO), GAO-18-444t, *Medicaid: Opportunities for Improving Program Oversight* (2018), at 1, House Comm. On Gov't Reform, Joint Hearing of the Subcomm. on Gov't Operations & the Subcomm. on Intergovernmental Affairs, *Improper Payments in State-Administered Programs: Medicaid*, April 12, 2018, <https://republicans-oversight.house.gov/wp-content/uploads/2018/04/d18444T-Errata.pdf>

<sup>12</sup> U.S. Gov't Accountability Office (GAO), GAO-18-598T, *Medicaid: Actions Needed to Mitigate Billions in Improper Payments and Program Integrity Risks* (2018), <https://www.gao.gov/assets/700/692821.pdf>.

<sup>13</sup> U.S. Gov't Accountability Office (GAO), GAO-17-386T, *Medicaid: CMS Has Taken Steps, But Further Efforts Are Needed to Control Improper Payments* (2017), <https://www.gao.gov/assets/690/682375.pdf>.

<sup>14</sup> U.S. Dep't of Health and Human Services, Office of the Inspector General, <https://oig.hhs.gov/reports-and-publications/top-challenges/2019/2019-tmc.pdf#page=6>.

<sup>15</sup> U.S. Centers for Medicare & Medicaid Services (heretofore CMS), *2018 PERM Medicaid Improper Payment Rates* (last visited Feb. 26, 2020). Available at <https://www.cms.gov/Research-StatisticsData-and-Systems/Monitoring-Programs/Medicaid-and-CHIPCompliance/PERM/PERMErrorRateFindingsandReport.html>.

<sup>16</sup> CMS, *Fact Sheet: 2019 Estimated Improper Payment Rates for Centers for Medicare & Medicaid Services (CMS) Programs*, (2019), <https://www.cms.gov/newsroom/fact-sheets/2019-estimated-improper-payment-rates-centers-medicare-medicicaid-services-cms-programs>.

<sup>17</sup> CMS, *2018 PERM Medicaid Improper Payment Rates*, (last visited Feb. 26, 2020), available at <https://www.cms.gov/Research-StatisticsData-and-Systems/Monitoring-Programs/Medicaid-and-CHIPCompliance/PERM/PERMErrorRateFindingsandReport.html>.

<sup>18</sup> U.S. Gov't Accountability Office (GAO), GAO-20-147t, *Medicaid Eligibility: Accurate Beneficiary Enrollment Requires Improvements in Oversight, Data, and Collaboration*, (2019), <https://www.gao.gov/assets/gao-20-147t.pdf>.

<sup>19</sup> CMS, *Fact Sheet: 2019 Estimated Improper Payment Rates for Centers for Medicare & Medicaid Services (CMS) Programs*, (2019), [https://www.cms.gov/newsroom/fact-sheets/2019-estimated-improper-payment-rates-centers-medicare-medicicaid-services-cms-programs#\\_ftn1](https://www.cms.gov/newsroom/fact-sheets/2019-estimated-improper-payment-rates-centers-medicare-medicicaid-services-cms-programs#_ftn1).

<sup>20</sup> U.S. Off. of Mgm't and Budget, PaymentAccuracy, *Payment Accuracy 2019 Data Set*, <https://paymentaccuracy.gov/the-numbers/>.

<sup>21</sup> U.S. Const. art. 1, § 8.

<sup>22</sup> Testimony by Louisiana Legislative Auditor Daryl Purpera, CPA, CFE, House Comm. On Gov't Reform, Joint Hearing of the Subcomm. on Gov't Operations & the Subcomm. on Intergovernmental Affairs, *Improper Payments in State-Administered Programs: Medicaid*, April 12, 2018, <https://republicans-oversight.house.gov/wp-content/uploads/2018/04/Purpera-LA-Auditor-Statement-Medicaid-IP-4-12.pdf>.

<sup>23</sup> GAO, *supra*, note 11.

<sup>24</sup> Federal law requires states to operate a claims processing system and report Medicaid data to CMS.



## CONFRONT THE FEDERAL DEBT

Federal spending is on an unsustainable path with debt service alone crowding out other important national priorities. Congress must take immediate action to address the federal debt.

### BACKGROUND

As of February 21, 2020, the current U.S. national debt outstanding is more than \$23.4 trillion.<sup>1</sup> Interest payments on the national debt exceeded \$574 billion in Fiscal Year (FY) 2019, and the U.S. has paid more than \$194 billion in interest payments through the first four months of FY2020.<sup>2</sup> To put this in context, the U.S. spent almost ten times as much money on servicing Treasury debt securities in FY2019 (\$573 billion) as it did on funding the Department of Homeland Security (\$58 billion).<sup>3</sup> As of 2020, the Congressional Budget Office (CBO) projects \$382 billion in outlays for net interest – an increase from \$376 billion in 2019 – and about \$17.85 trillion in debt held by the public.<sup>4</sup> Total U.S. debt also includes intragovernmental holdings such as:

- Social Security Administration, Federal Old-Age and Survivors Insurance Trust Fund – \$2.801 trillion;
- Office of Personnel Management, Civil Service Retirement and Disability Fund – \$923 billion;
- Department of Defense, Military Retirement Fund – \$743.4 billion; and
- Medicare, which includes the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund – \$301 billion.<sup>5</sup>

Although intragovernmental transactions do not contribute to budget deficits, each of these accounts may need to redeem intragovernmental “IOUs” to pay necessary benefits. Combined with Social Security’s total cost exceeding its total income (including interest) in 2020 for the first time since 1982,<sup>6</sup> the emerging budgetary strain is too great for Congress to simply ignore.

### CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution grants Congress the power to tax and spend.<sup>7</sup> The Federal Government should spend within the limits of its revenues.

### POLICY SOLUTIONS

Fundamentally, fiscal reforms resulting in deficit reduction are a matter of basic mathematics. Congress must either reduce spending to meet revenue levels or raise revenues to meet desired spending. Doing both simultaneously will yield the greatest impact on reducing the deficit. Congress should, at a minimum, consider a few achievable reforms:

#### Quick Take

Current outstanding U.S. national debt is more than \$22 trillion. Interest payments on the national debt exceeded \$574 billion in FY2019.

Congress must reduce the federal deficit before it can even begin to address the extreme amount of federal debt.

- **Address Infrastructure Concerns with Existing Resources** - Increase revenues for the Highway Trust Fund (HTF) with reforms to federal oil and gas leases and royalties. Make HTF contract authority and outlays mandatory. Limit spending to actual revenues collected in the prior year.
- **Devote HTF exclusively to necessary infrastructure priorities such as highways, rather than parks, bike paths, and scenic projects** - Reintroduce the Roads Not Roses Act, which was introduced in the 114<sup>th</sup> Congress by Rep. Vicky Hartzler (R-MO).<sup>8</sup> The Roads Not Roses Act would repeal the Secretary of Transportation’s authority to approve federal funds for landscape and roadside development.
- **Reform Pentagon Bureaucracy** - 16 percent of the Department of Defense’s budget – \$116.6 billion in FY2020 – is consumed by 30 “Defense-wide” agencies and field activities which are not part of any military service, nor do they report directly to the Secretary of Defense. Reforming these agencies, often referred to as the *4th Estate*, is critical to increasing military agility and prioritizing taxpayer dollars spent on national defense.<sup>9</sup>
- **Streamline Laws Related to Sale of Federal Real Property**<sup>10</sup> - The Federal Government is the largest real property owner in America. Holding and maintaining unused property wastes fiscal resources. Consolidating the numerous overlapping, duplicative, and obsolete federal statutes involved in selling federal real property to expedite the process while respecting historical, environmental, and efficiency considerations is urgently needed.
- **Require Agencies to Suggest Spending Reductions**<sup>11</sup> - As part of their annual budget submissions and Congressional Budget Justifications, all agency heads should identify at least three percent of their budget recommended for cancellation and identify more efficient investment priorities as well.
- **Establish and Fund Congressional Budget Office (CBO) Bureau of Fiscal Stability (BFS)** - CBO already produces a study entitled “Options for Reducing the Deficit: 2019 to 2028.”<sup>12</sup> The report includes recommendations for mandatory and discretionary spending and revenue savings. Building off this work, BFS would annually identify up to three percent of discretionary spending that is low priority or providing low returns for taxpayer. BFS would also provide recommendations for reinvesting up to one percent of identified savings into higher priority investments such as research and development, repairing aging infrastructure, or improving government utilization of modern technology.
- **Reduce Federal Improper Payments** - Federal improper payments rose from \$151 billion<sup>13</sup> to about \$175 billion annually from FY18 to FY19.<sup>14</sup> Major offenders are Medicare, Medicaid, the Earned Income Tax Credit, and the Department of Defense.<sup>15</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

<sup>1</sup>TreasuryDirect, *The Debt to the Penny and Who Holds It* (Feb. 21, 2020), <https://treasurydirect.gov/NP/debt/current>.

<sup>2</sup>TreasuryDirect, *Interest Expense on the Debt Outstanding* (2020), [https://www.treasurydirect.gov/govt/reports/ir/ir\\_expense.htm](https://www.treasurydirect.gov/govt/reports/ir/ir_expense.htm).

<sup>3</sup> Office of Management and Budget, *A Budget for America’s Future – President’s Budget, FY 2021*, Table 3.2 – Outlays by Function and Subfunction: 1962 – 2025 and Table 4.1 Outlays by Agency: 1962 – 2025 (2021).

- 
- <sup>4</sup> Cong. Budget Office, 56020, *The Budget and Economic Outlook: 2020 to 2030* 3 and Table 1-1 at 7 (2020), <https://www.cbo.gov/publication/54667>.Pg 3 and Table 1-1 at 7 <https://www.cbo.gov/system/files/2020-01/56020-CBO-Outlook.pdf>
- <sup>5</sup>Bureau of the Fiscal Service, *FY 2018 Financial Report of the United States Government: Note 11. Federal Debt Securities Held by the Public and Accrued Interest* (2019), <https://www.fiscal.treasury.gov/files/reports-statements/financial-report/2018/notes-to-the-financial-statements11.pdf>.
- <sup>6</sup>Social Security and Medicare Boards of Trustees, *A Summary of the 2019 Annual Reports* (2019), <https://www.ssa.gov/oact/TRSUM/>.
- <sup>7</sup> U.S. Const. art. I, § 8, cl. 1.
- <sup>8</sup> H.R. 2606, 114th Cong. (2015).
- <sup>9</sup> U.S. Department of Defense, *Fiscal Year 2020 Budget Request* (March 2019) at slide 18, [https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020\\_Budget\\_Request.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2020/fy2020_Budget_Request.pdf).
- <sup>10</sup>Executive Office of the President, *Delivering Government Solutions in the 21<sup>st</sup> Century: Reform Plan and Reorganization Recommendations* (2018), 87-89, <https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf>.
- <sup>11</sup> The National Commission on Fiscal Responsibility and Reform, *supra*, note 7 at 24.
- <sup>12</sup> Cong. Budget Office, 54667, *Options for Reducing the Deficit: 2019 to 2028* (2018), <https://www.cbo.gov/publication/54667>.
- <sup>13</sup> U.S. Gov't Accountability Off., GAO-19-314, *The Nation's Fiscal Health Action Is Needed to Address the Federal Government's Fiscal Future* (2019), <https://www.gao.gov/assets/700/698368.pdf>.
- <sup>14</sup> Off. of Mgm't and Budget, Payment Accuracy, *Payment Accuracy 2019 Data Set*, <https://paymentaccuracy.gov/the-numbers/>
- <sup>15</sup>DOD accounts for about 20 percent of GAO's open priority recommendations. U.S. Gov't Accountability Office, *Recommendations Database*, [https://www.gao.gov/reports-testimonies/recommendations-database/?q=%22Improper+payments%22&field=thesaurus\\_ss&list=1&rec\\_type=priority#results](https://www.gao.gov/reports-testimonies/recommendations-database/?q=%22Improper+payments%22&field=thesaurus_ss&list=1&rec_type=priority#results) (last accessed August 28, 2019).



**CONNECT FEDERAL CIVILIAN PAY TO PRIVATE SECTOR PAY**

Federal pay for civilian employees should be performance-based and comparable to the compensation earned by private sector counterparts.

**BACKGROUND**

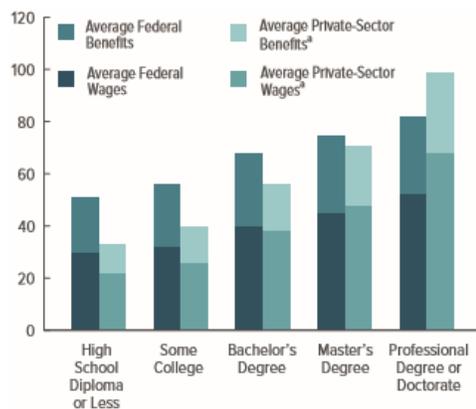
In Fiscal Year (FY) 2016, the government spent about \$215 billion on federal civilian employee compensation.<sup>1</sup> Federal employee compensation, in multiple categories, exceeds the compensation of their private sector counterparts.

In 2017, the House Committee on Oversight and Government Reform held a hearing to examine federal employee compensation.<sup>2</sup> According to hearing testimony from the

Summary Figure 1.

**Average Compensation of Federal and Private-Sector Workers, by Educational Attainment**

2015 Dollars per Hour



Source: Congressional Budget Office, using data for 2011 through 2015 from the March Current Population Survey, the Office of Personnel Management, and the National Compensation Survey.

The wages shown here include overtime pay, tips, commissions, and bonuses. The benefits shown here are measured as the average cost, per hour worked, that an employer incurs in providing noncash compensation.

a. Average wages and benefits for private-sector workers who resemble federal workers in occupation, years of work experience, and certain other observable characteristics that are likely to affect compensation.

Congressional Budget Office (CBO), federal employees are compensated at a rate 17 percent higher than private sector counterparts. Federal civilian employee benefits at all levels of education, during the 2011 to 2015 period, were 47 percent higher than benefits for private sector employees similarly situated.<sup>3</sup>

As shown in Figure 1, federal employees with a bachelor's degree averaged 21 percent more in total compensation cost. Those with only a high school diploma averaged 53 percent more in total compensation cost.<sup>4</sup>

**CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution grants spending authority to Congress.<sup>5</sup> Compensation for government employees should be competitive with the private sector.

**POLICY SOLUTIONS**

Congress should base federal civilian employee compensation to comparable ranges of their counterpart employees in the private sector. CBO regularly studies the comparative pay structure and may offer suggestions as to an appropriate benchmark to compare federal civilian pay to private sector pay.

**Quick Take**

Federal employees are compensated at a rate of 17 percent higher than private sector counterparts.

From 2011 to 2015, federal civilian employee benefits at all levels of education were 47 percent higher than benefits for private sector employees.

Congress should benchmark federal employee compensation to the private sector.

Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.

---

<sup>1</sup> Cong. Budget Office, 52637, *Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015* (2017).

<sup>2</sup> *Federal Employee Compensation: An Update*: Hearing Before the Comm. on Oversight and Government Reform, 115 Cong. (2017).

<sup>3</sup> *Id.* at 100 (Response of Mr. Joseph Kile, Assistant Director for Microeconomic Studies, CBO).

<sup>4</sup> CBO, *supra*, note 1.

<sup>5</sup> U.S. Const. art. I, § 9.

## **CREATE FAIRNESS AND ACCOUNTABILITY FOR SNAP BENEFITS**

After years of uneven application of the Supplemental Nutrition Assistance Program (SNAP) in the states, Congress must ensure that SNAP resources provide benefits in times of need while encouraging program participants to actively pursue long-term independence from government support.

### **BACKGROUND**

In December 2019, the Trump administration finalized a rule modifying “conditions under which USDA would waive, when requested by States, the able-bodied adult without dependents (ABAWD)” work requirements, which is set to take effect on April 1, 2020.<sup>1,2</sup> ABAWD recipients are SNAP participants who meet the criteria of a non-disabled adult aged 18 through 49 who live in childless households.<sup>3</sup>

SNAP is the largest food assistance program for low-income individuals and families. Federal law generally limits an ABAWD to three months of SNAP benefits in a 36-month period, unless the individual meets a range of eligible work requirements.<sup>4</sup> States may petition the U.S. Department of Agriculture (USDA) for authority to temporarily waive that time limit in certain areas with an acute unemployment level.<sup>5</sup> The new Trump administration rule essentially tightens the criteria for waiving existing SNAP work requirements.<sup>6</sup>

SNAP work requirements include reasonable criteria and compliance standards that are designed to encourage ABAWDs to move towards increased self-sufficiency. According to the USDA, the work requirements for ABAWDs may be met by any one of the following activities:

- Work at least 80 hours a month. Work can be for pay, for goods or services (or something other than money), unpaid, or as a volunteer;
- Participate in a work program at least 80 hours a month. A work program could be SNAP Employment and Training or another federal, state, or local work program;
- Participate in a combination of work and work program hours for a total of at least 80 hours a month; or
- Participate in workfare for the number of hours assigned to each month.<sup>7</sup>

### **Quick Take**

Reasonable work requirements encourage childless, able-bodied SNAP recipients to move toward increased self-sufficiency without onerous standards.

Taxpayers should not be compelled to provide indefinite welfare benefits to adults without dependents who are able to work and actively choose not to work, pursue education, or even volunteer in their respective communities.

According to the Center on Budget and Policy Priorities, “states requested waivers that covered 37.8% of the [American] population.”<sup>8</sup> The need to waive the time limits on SNAP benefits for ABAWDs consistently fails to reflect the reality of readily available unemployment information. For example, the entire State of California waived work requirements for ABAWDs in the first quarter of 2018,<sup>9</sup> while unemployment in the state was less than 4.3 percent over that same period.<sup>10</sup>

Despite the fact that the unemployment rate has radically decreased since the 2009 Recession<sup>11</sup> (reaching as low as 3.6 percent in October 2019),<sup>12</sup> the average number of ABAWDs participating in SNAP each month nearly tripled from 1.7 million<sup>13</sup> to 4.6 million participants between 2007 and 2015.<sup>14</sup> Federal SNAP spending more than doubled from 2007 to 2017, with over 42 million recipients receiving \$68 billion in SNAP benefits in 2017. Nationally, 44 percent, or about half, of ABAWD recipients receiving SNAP benefits live in waived areas, according to the USDA.<sup>15</sup> The Trump administration’s SNAP rule is projected to save over \$5 billion from 2020-2024.<sup>16</sup>

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

Congress has the authority to spend resources to address the general welfare of the nation. Generally, Republicans believe that welfare programs most effectively empower individuals and confer dignity to beneficiaries when they support intact families and incentivize work.

## POLICY SOLUTIONS

Congress should codify the Trump administration’s SNAP rule to clarify that waivers to ABAWD work requirements must be limited to significantly acute areas of unemployment.<sup>17</sup> Taxpayers should not be compelled to provide indefinite welfare benefits to adults without dependents who are able to work and actively choose not to work, pursue education, or even volunteer in their respective communities.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> 7 CFR 273 (2019).

<sup>2</sup> ABAWD recipients represent about 3.8 million SNAP participants, or about 8.8 percent of all participants. FNS, Characteristics of ABAWDs, 2016, <https://fns-prod.azureedge.net/sites/default/files/snap/nondisabled-adults.pdf>.

<sup>3</sup> FNS, Characteristics of ABAWDs, 2016, <https://fns-prod.azureedge.net/sites/default/files/snap/nondisabled-adults.pdf>

<sup>4</sup> *Id.*

<sup>5</sup> In the fourth quarter of Fiscal Year 2019, six states had a statewide waiver, 30 states had a waiver for part of the state, and 17 states had no ABAWD waivers. U.S. Dept. of Agriculture. *Supplemental Nutrition Assistance Program (SNAP): Status of State Able Bodied Adult without Dependents (ABAWD) Time Limit Waivers – Fiscal Year 2019 – 4th Quarter*, Last updates 8/12/2019. Available at: <https://fns-prod.azureedge.net/sites/default/files/media/file/FY19-Quarter4-ABAWD-Waiver-Status.pdf>

<sup>6</sup> The new SNAP rule requires states seeking waivers to demonstrate a “floor” unemployment rate of 6 percent, a decrease from the former 10 percent rate. For reference, the national unemployment rate was 3.6 percent in October 2019, according to the Bureau of Labor Statistics. [https://www.bls.gov/opub/ted/2019/unemployment-rate-was-3-point-6-percent-in-october-2019.htm?view\\_full](https://www.bls.gov/opub/ted/2019/unemployment-rate-was-3-point-6-percent-in-october-2019.htm?view_full).

<sup>7</sup> U.S. Dept. of Agriculture, Food and Nutrition Service, *SNAP Work Requirements*, <https://www.fns.usda.gov/snap/work-requirements> (last visited March 4, 2020).

<sup>8</sup> Ctr. on Budget & Pol’y Priorities, *States Have Requested Waivers from Snap’s Time Limit in High Unemployment Areas for the Past Two Decades*, Dec. 5, 2019, <https://www.cbpp.org/research/food-assistance/states-have-requested-waivers-from-snaps-time-limit-in-high-unemployment>.

<sup>9</sup> U.S. Dept. of Agriculture, *Status of State Able-Bodied Adult without Dependents (ABAWD) Time Limit Waivers Fiscal Year 2018 – 1st Quarter (2018)*, <https://fns-prod.azureedge.net/sites/default/files/snap/FY-2018-Quarter-1-ABAWD-Waiver-Status.pdf>.

<sup>10</sup> U.S. Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject*,

[https://data.bls.gov/timeseries/LASST060000000000003?amp%253bdata\\_tool=XGtable&output\\_view=data&include\\_graphs=true](https://data.bls.gov/timeseries/LASST060000000000003?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true)

---

<sup>11</sup>The Great Recession unemployment rate reached about 10 percent in 2009, while the January 2019 unemployment rate was about 4 percent. *See*, BLS Spotlight on Statistics: The Recession of 2007-2009 (2012), [https://www.bls.gov/spotlight/2012/recession/pdf/recession\\_bls\\_spotlight.pdf](https://www.bls.gov/spotlight/2012/recession/pdf/recession_bls_spotlight.pdf).

<sup>12</sup> U.S. Bureau of Labor Statistics, TED: The Economics Daily, Unemployment rate was 3.6 percent in October 2019, November 6, 2019, [https://www.bls.gov/opub/ted/2019/unemployment-rate-was-3-point-6-percent-in-october-2019.htm?view\\_full](https://www.bls.gov/opub/ted/2019/unemployment-rate-was-3-point-6-percent-in-october-2019.htm?view_full).

<sup>13</sup> Memorandum from Cong. Research Serv. to Gene Falk Specialists in Social Policy & Randy Alison Aussenberg, Specialist in Nutrition Assistance Policy, *Supplemental Nutrition Assistance Program (SNAP) Participants Who Are Non-Disabled, Age 18-49, and Without Dependents (ABAWDs)*, (Nov. 3, 2017) [hereinafter CRS Memo].

<sup>14</sup> *Foundation for Gov't Accountability, Work Requirements: Solving the Dependency Crisis*, <https://thefga.org/research/work-requirements-solving-the-dependency-crisis/> (last visited May 4, 2018) [hereinafter Dependency Crisis]; *Dep't of Health & Human Serv., Prior HHS Guidelines and Federal Register References*, <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references> (last visited May 5, 2018).

<sup>15</sup> 7 CFR 273 (2019).

<sup>16</sup> *Id.*

<sup>17</sup> President Trump signed the Agriculture and Nutrition Act (Pub. L. No. 115-334), commonly known as the Farm Bill, into law on December 20, 2018. Earlier drafts of the Farm Bill originally included language enforcing the SNAP proposed rule that were not included in the final text of the law.



## **DECOUPLE MEDICARE HOSPITAL INSURANCE FROM SOCIAL SECURITY**

Due to an administrative guidance by the Social Security Administration (SSA), senior citizens may not refuse Medicare Part A coverage without compromising their eligibility for monthly Social Security benefits.

### **BACKGROUND**

According to the SSA, individuals may not waive entitlement to Medicare Part A hospital insurance coverage (HI coverage) and remain eligible for monthly benefits.<sup>1</sup> This policy stems from an administrative update to the Programs Operations Manual System (POMS) issued during the Clinton administration. The change was made outside the formal rulemaking process and was not subject to public notice-and-comment.

Retirees seeking to maintain their existing private coverage, including former House Majority Leader Dick Armey, mounted a legal challenge to reject HI coverage and retain their other Social Security benefits. Ultimately, the U.S. Court of Appeals for the D.C. Circuit upheld the SSA's policy in *Hall v. Sebelius*.<sup>2</sup>

Writing for the majority, Judge Brett Kavanaugh noted, "Because plaintiffs are entitled to Social Security benefits and are 65 or older, they are automatically entitled to Medicare Part A benefits. The statute offers no path to disclaim their legal entitlement to Medicare Part A benefits."<sup>3</sup>

Most seniors meeting age requirements and filing for Social Security are entitled to receive Social Security benefits.<sup>4</sup> Entitlement to Social Security benefits results in automatic enrollment in HI coverage.<sup>5</sup> While enrollment in Social Security is a precondition to receiving HI coverage, relevant statutes do not require HI coverage to maintain Social Security benefits. The SSA has exceeded its authority in effectively establishing this requirement. Given the Medicare program's fiscal challenges, individuals should be able to both retain private healthcare plans and save the government money.

Since most Medicare beneficiaries pay no additional premiums,<sup>6</sup> allowing beneficiaries to refuse HI coverage should result in a net savings for Medicare.

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

Congress has the authority to "make all laws which shall be necessary and proper" to carry out its mandate "to ... provide for the ... general welfare."<sup>7</sup> Federal social safety nets should operate consistent with authorizing legislation, and agencies charged with administering them should not usurp congressional authority.

### **Quick Take**

The Social Security Administration's operations manual currently prevents seniors from rejecting hospital insurance coverage without losing Social Security benefits.

Congress should pass legislation which allows seniors to keep their private insurance without losing monthly Social Security payments.

## POLICY SOLUTIONS

In October 2019, President Trump issued an executive order directing the Department of Health and Human Services Secretary to revise current rules “to preserve the Social Security retirement insurance benefits of seniors who choose not to receive benefits under Medicare Part A.”<sup>8</sup> H.R. 2108, the Retirement Freedom Act of 2019, would codify the proposal to restore seniors’ freedom to choose the health insurance plan that meets their unique needs without losing entitlement to Social Security.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> U.S. Social Security Administration, *Program Operations Manual System, Waiver of HI Entitlement by Monthly Beneficiary*, (2010), <https://secure.ssa.gov/poms.nsf/lnx/0600801002>

<sup>2</sup> 667 F.3d 1293 (D.C. Cir. 2012)

<sup>3</sup> *Id.* at 1297.

<sup>4</sup> 42 U.S.C. § 402(a) (2012).

<sup>5</sup> 42 U.S.C. § 426(a) (2012).

<sup>6</sup> U.S. Centers for Medicare & Medicaid Services, *Part A costs: How much does Part A cost*, <https://www.medicare.gov/your-medicare-costs/part-a-costs> (last visited July 5, 2019).

<sup>7</sup> U.S. Const. art. 1, § 8.

<sup>8</sup> Exec. Order No. 13,890, 84 Fed. Reg. 53573 (Oct. 8, 2019).

## LIMIT AUTOPILOT FEDERAL SPENDING

Federal agency spending is not limited to the annual appropriations process. With multiple types of budgetary authority, Congress must reassert its budget authority and oversight over all aspects of federal spending.

### BACKGROUND

Federal spending is on an unsustainable fiscal path. As of February 21, 2020, the current U.S. national debt outstanding is more than \$23.4 trillion.<sup>1</sup> Interest payments on the national debt exceeded \$574 billion in Fiscal Year (FY) 2019, and the U.S. has paid more than \$194 billion in interest payments through the first four months of FY2020.<sup>2</sup> Absent significant reforms, the Congressional Budget Office (CBO) estimates spending will reach almost \$7.5 trillion by 2030,<sup>3</sup> which would represent almost 24 percent of U.S. gross domestic product (GDP).<sup>4</sup> Conversely, CBO estimates federal revenues will only increase to \$5.2 trillion (about 18.5 percent of GDP) in the same time period.

Under the Constitution, budget authority originates with Congress. Congress generally sets the terms of federal expenditures through the annual appropriations process.<sup>5</sup> Prior Congresses have chosen to cede some of this authority by passing laws allowing federal agencies and programs to incur expenditures “without further congressional action.”<sup>6</sup> As a result, federal agencies currently spend trillions of dollars outside of the annual appropriations process.

Congressional oversight is necessary to ensure that federal financial decisions align with the priorities of the electorate. Spending outside of the appropriations process, sometimes referred to as “backdoor” spending,<sup>7</sup> undermines congressional oversight by allowing agencies to fund operations and unappropriated programs on “autopilot” without annual approval by Congress.

On December 11, 2018, the Government Accountability Office (GAO) issued a report examining federal agency use of backdoor spending.<sup>8</sup> According to GAO:

- Federal agencies reported \$3.2 trillion in backdoor spending outside of the annual appropriations process in 2015, an 88 percent increase since 1994, adjusted for inflation.<sup>9</sup>
  - Permanent appropriations and offsetting collections make up most of this spending.
  - Backdoor spending is growing faster than total federal spending. The Federal Government reported \$3.7 trillion in 2015, a 69 percent increase from 1994, adjusted for inflation.<sup>10</sup>

### Quick Take

Federal spending is on an unsustainable trajectory with current national debt exceeding \$22 trillion.

Currently, federal agencies spend trillions of dollars outside the annual appropriations process.

Congress should reassert its budget authority over all federal spending.

- Permanent appropriations are budget authorities to incur obligations and make payments permanently available in law without further congressional action.<sup>11</sup> This accounts for the majority of spending outside the appropriations process:
  - Permanent appropriations account for \$2.6 trillion of backdoor spending.<sup>12</sup>
  - Permanent appropriations generally fund mandatory spending on entitlement programs such as Medicare, Social Security, and the Treasury Department’s interest payments on federal debt.
- Offsetting collections are monies (such as fines, fees, penalties, and other collections) Congress permits to be credited to agency accounts that can be obligated without further congressional action.<sup>13</sup>
  - Offsetting collections account for the second-largest portion of backdoor spending. Federal agencies reported \$421 billion in offsetting collections in 2015.

The remaining portion of backdoor spending consists of \$165 billion in contracting authority<sup>14</sup> and \$13 billion in borrowing authority.<sup>15</sup>

**Table 1: Amount of Reported Spending Authority and Permanent Appropriations, by Budget Authority Type, Fiscal Years 1994 and 2015**

Type of authority	1994 actual budget authority (in billions) <sup>a</sup>	1994 adjusted budget authority (2015 dollars in billions) <sup>b</sup>	2015 actual budget authority (in billions)	Percent change from 1994 to 2015 (inflation adjusted)
Permanent appropriations	\$ 982	\$1,467	\$2,648	81
Offsetting collections	124	186	421	126
Contract authority	42	62	165	166
Borrowing authority	16	24	13	-46
Monetary credits or bartering <sup>c</sup>	N/A	N/A	0	N/A
<b>Total</b>	<b>1,165</b>	<b>1,739</b>	<b>3,247</b>	<b>87</b>

Source: GAO analysis of Office of Management and Budget data and information from federal agencies. | GAO-19-38

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution grants spending authority to Congress.<sup>16</sup> Congress must be accountable for federal spending rather than allowing certain federal agencies and programs to spend on autopilot.

## POLICY SOLUTIONS

As a starting point, Congress should enact H.R. 850, the Agency Accountability Act (AAA) of 2019. The bill would direct certain fines, fees, penalties, and settlements collected by federal agencies into the General Fund. Congress, not the agencies, would decide whether to appropriate those collections to the respective agencies or make different spending decisions. In the 115<sup>th</sup> Congress, H.R. 850 amassed over 158 cosponsors.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup>TreasuryDirect, *The Debt to the Penny and Who Holds It* (Feb. 21, 2020), <https://treasurydirect.gov/NP/debt/current>.

<sup>2</sup>TreasuryDirect, *Interest Expense on the Debt Outstanding* (2020), [https://www.treasurydirect.gov/govt/reports/ir/ir\\_expense.htm](https://www.treasurydirect.gov/govt/reports/ir/ir_expense.htm).

<sup>3</sup> Cong. Budget Office, 56020, *The Budget and Economic Outlook: 2020 to 2030*, Table 1-1 (2020).

<sup>4</sup> Grant Driessen, Cong. Research Serv., R45202, *The Federal Budget: Overview and Issues for FY2019 and Beyond* (2018).

<sup>5</sup> U.S. Gov't. Accountability Office, GAO-19-36, *Federal Budget: Government-Wide Inventory of Accounts with Spending Authority and Permanent Appropriations, Fiscal Years 1995 to 2015* (2018).

<sup>6</sup> *Id.*

<sup>7</sup> GAO defines backdoor spending as: “Backdoor authority and backdoor spending are [similar but not identical] colloquial phrases for budget authority that Congress has provided in laws other than appropriations acts...The terms backdoor authority and backdoor spending refer to the process by which federal money ‘goes out the door.’ Annual appropriations are said to go out the ‘front door’...where Congress may exercise oversight over spending. Other appropriations are said to go out the ‘back door’ as they do not go through the annual appropriations process.”

<sup>8</sup> GAO-19-36, *supra* note 6.

<sup>9</sup> As a comparison, the federal government spent \$3.7 trillion in total in 2015, according to the Congressional Budget Office.

<sup>10</sup> GAO-19-36, *supra* note 6.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Contract authority is authority to commit to spending funds before receiving appropriations.

<sup>15</sup> Borrowing authority is authority permitting agencies to borrow and then spend funds.

<sup>16</sup> U.S. Const. art. I, § 9.



## **MODERNIZE FEDERAL GRANT REPORTING**

The Federal Government awards over \$700 billion in grants each year. To ensure federal tax dollars are spent effectively, Congress must support thorough and transparent reporting of grant funding and results.

### **BACKGROUND**

Of the \$700 billion in federal grants awarded each year,<sup>1</sup> about \$550 billion is given to state and local governments.<sup>2</sup> Federal grants fund various policies or projects, including first responder equipment, low-income housing projects, disaster recovery assistance, infrastructure, and educational activities.<sup>3</sup> Due to the Federal Government's complex management structure and outdated recordkeeping practices, comprehensive and effective grant tracking is nearly impossible.

Federal grant reporting is separately administered by hundreds of grant programs, governed by hundreds of laws, and fulfilled using outdated documents.<sup>4</sup> Grant reporting forms are often highly duplicative with over half of data elements matching another form. The Office of Management and Budget (OMB) and Health and Human Services (HHS) have identified at least 15 different forms required for grant reporting that are entirely duplicative.<sup>5</sup>

A lack of data standardization hinders efforts to harmonize and consolidate offices and technology systems. Currently, award recipients submit different forms, at different times, and with different data requirements.<sup>6</sup> Often, agencies fail to define their terms or describe their data fields.<sup>7,8</sup>

### **Complexity of the Federal Grant Administration Structure**

Currently, more than 1,800 federal grant programs<sup>9</sup> are administered by 34 different agencies.<sup>10</sup> Federal grant managers reportedly spend 40 percent of their time using outdated processes to monitor compliance, rather than monitoring results.<sup>11</sup>

Federal agencies separate the grant management structure into two categories, which are assigned to separate divisions within each agency:<sup>12</sup>

- **Financial Management** - Assigned to Chief Financial Officers or Financial Managers; administered through cash management systems.

### **Quick Take**

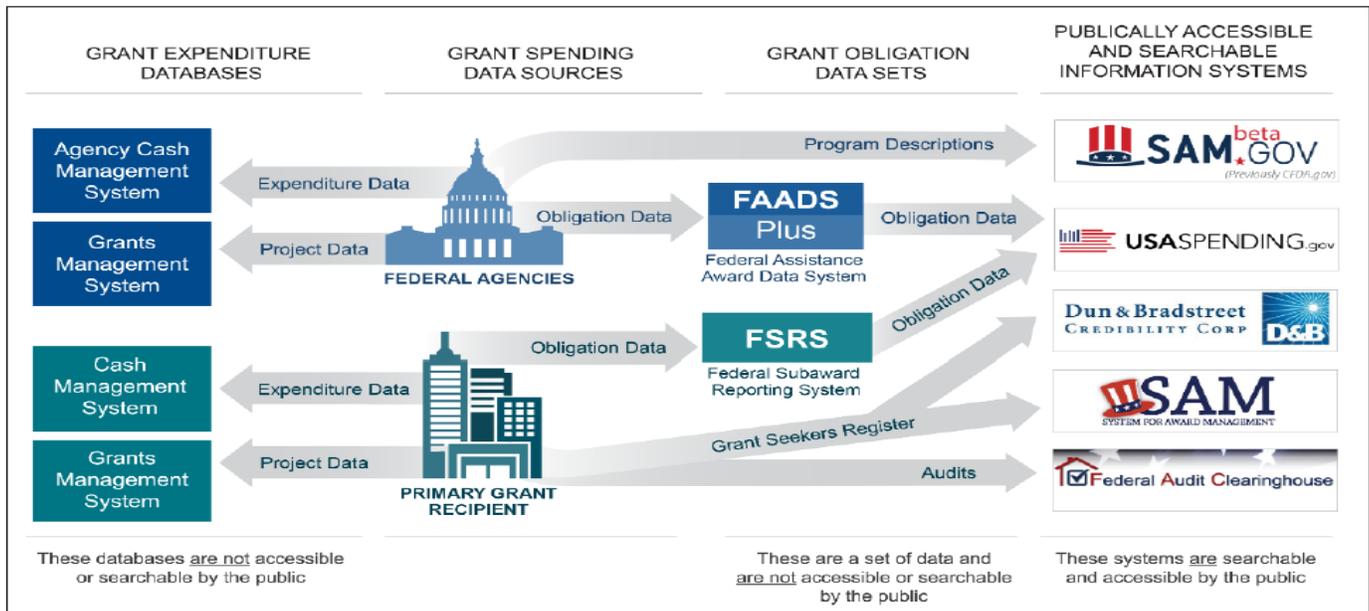
Due to the Federal Government's complex management structure and outdated recordkeeping practices, it is nearly impossible to track over \$700 billion in federal grant expenditures.

The GREAT Act, which creates data standards and a centralized, electronic repository for grant reporting, was signed into law in December 2019. Congress may consider drafting legislation to build off existing grant reporting laws.

- **Program Administration** - Assigned to the Program Manager; administered through grant management systems. Unlike financial data, there is no uniform definition of “performance data.”<sup>13</sup>

Agencies often manage grant award payments and grant project information in separate databases that are not interoperable. As shown in **Figure 2**, there are four categories of federal grant management where silos exist: 1) grant expenditure databases; 2) grant spending data sources; 3) grant obligation datasets; and 4) publicly accessible and searchable information systems.

**Figure 2. Federal Grant Spending Data Sources**



**Source:** Congressional Research Service, July 2018.

Division between financial and programmatic management databases occurs both at the federal agency level and the grant recipient level, with each “report[ing] grant spending data into separate databases.”<sup>14</sup> Further, most federal grants are awarded to state governments, which then “pass through” funds to subgrantees at the local level.<sup>15</sup> This leaves states responsible for monitoring and reporting on the grant and further divides the organizational structure as oversight on the subgrantee level is limited.

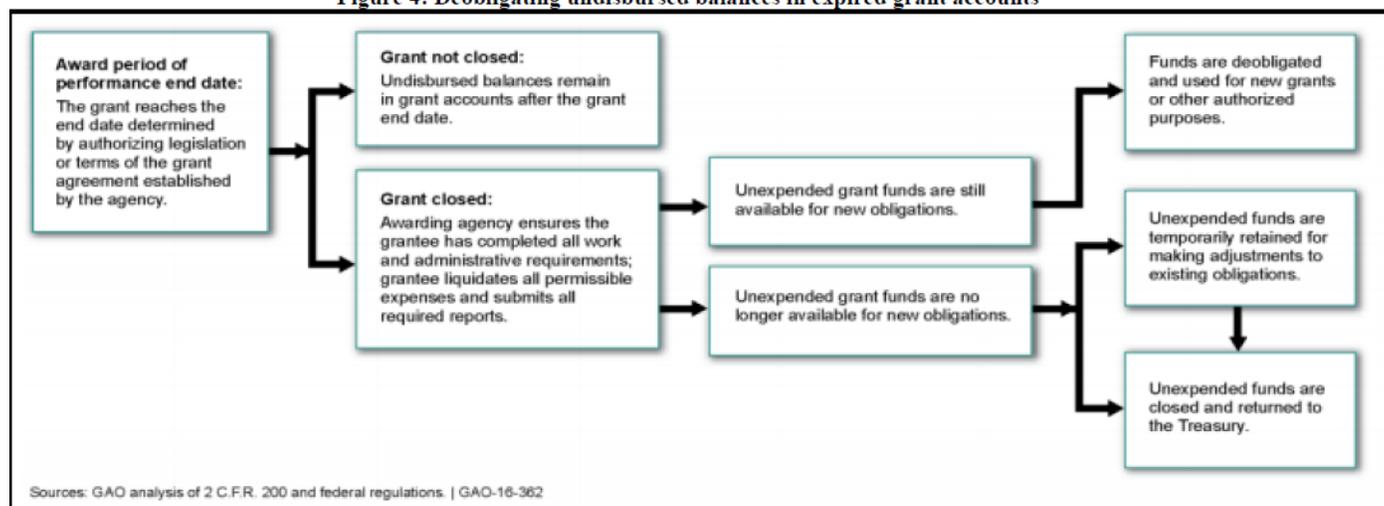
### **Closing Expired Grant Accounts**

The Federal Government has lost track of nearly a billion dollars of expired and unexpended grant awards due to operational and database silos. A 2016 report by the Government Accountability Office (GAO), for example, identified \$994 million in expired, undisbursed balances in over 8,832 grant accounts in HHS’s Payment Management System alone.<sup>16,17</sup> Agencies differ in their management of payment systems, with some agencies using their own systems to make payments directly to grantees. Other agencies use payment systems that serve multiple agencies, which requires agencies to close out a grant across multiple systems.<sup>18</sup>

A lack of coordination between financial and program managers within a single federal agency also contributes to delayed grant closeout.<sup>19</sup> According to GAO, “the separation of grant management and payment functions in different systems could [allow] an agency to close a grant in a grant management system but not close the grant in a separate payment system.”<sup>20</sup>

Closing out of grants at the time of the performance end date allows agencies “to redirect resources toward other projects and activities or return unspent funds to the Treasury.”<sup>21</sup> According to OMB guidance, grantees must finalize all reporting requirements and refund remaining balances within a 90-day period to successfully close out a grant award. Following receipt of the required reports, administering agencies must close out the grant within one year. When federal agencies fail to close grant accounts, undisbursed federal funds remain in the expired grant accounts. Failure to reduce undisbursed balances in expired grant accounts prevents the most effective allocation of federal resources and renders some grant program missions incomplete.<sup>22</sup>

**Figure 4: Deobligating undisbursed balances in expired grant accounts**



In 2016, Congress passed the Grants Oversight and New Efficiency (GONE) Act to address unclosed expired grant accounts.<sup>23</sup> The GONE Act requires federal agencies to provide three reports to Congress:

- The first report required federal agencies to provide Congress with a list of unclosed grants that have been expired for at least two years and an explanation of challenges in grant closeout and delays for each of the 30 oldest expired grants by 2017.<sup>24</sup>
- The second deadline was March 31, 2019 and required the Secretary of HHS to report to Congress indicating whether the expired grants identified in the first report were closed, and which grants were not closed out.
- The third and final deadline, on September 30, 2019, required the Director of OMB and the Secretary of HHS to report to Congress on recommendations for legislation to improve grant accountability.

### **The DATA Act: Transforming to “Open Data” Reporting**

In 2014, Congress enacted the Digital Accountability and Transparency Act (DATA Act)<sup>25</sup> which required OMB to conduct a pilot program to “explore the value of standardized data within grant and contract reporting.”<sup>26</sup> HHS led the pilot program, studying \$122 billion in grants. As part of the pilot, HHS built the Common Data Element Repository (CDER) Library, a federal online repository of data fields and definitions

used on federal grant forms. As of June 18, 2019, the CDER Library had over 35,000 data elements.<sup>27</sup> HHS also standardized forms, agency communications, and grant management processes and expanded *Grants.gov* to provide educational information about the lifecycle of grants and other relevant information.

Recommendations from the DATA Act pilot included reducing duplicative reporting, continued data standardization, and streamlining and leveraging information technology and communications.

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution grants spending authority to Congress.<sup>28</sup> As a matter of principle, taxpayers should have access to a transparent account of federal expenditures.

## **POLICY SOLUTIONS**

H.R. 150, the Grant Reporting Efficiency and Agreements Transparency (GREAT) Act, was signed into law on December 30, 2019.<sup>29</sup> The GREAT Act builds off of the DATA Act pilot by creating data standards and a centralized, electronic location for grant reporting. The law would also require OMB, in conjunction with other executive branch agencies, to adopt a streamlined and standardized data structure for required information that is to be submitted to these agencies by grantees.<sup>30</sup> Congress must conduct rigorous oversight to ensure the effective implementation of the GREAT Act.

Congress must also continue oversight of the GONE Act. Congress may consider building off the GONE Act by developing legislation to require expedited closeout of expired grants.

Additionally, Congress should consider legislation to standardize regulations for federal grant management in a similar manner to the Federal Acquisition Regulation (FAR) for federal agency contracts and procurements.<sup>31</sup> On average, federal grant awards outpace procurement awards by about \$77 billion per year.<sup>32</sup> To date, there is no equivalent regulation applicable to grants.<sup>33</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> U.S. Office of Management and Budget, *The President's Management Agenda* 36 (Mar. 19, 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/04/ThePresidentsManagementAgenda.pdf>.

<sup>2</sup> *Federal Grant Management Before the H. Oversight and Gov't. Reform Comm.*, 115th Cong. (2018) (Statement of Natalie Keegan, Analyst, Cong. Research Serv.).

<sup>3</sup> There are two main types of federal grants: categorical grants and block grants. Categorical grants are limited to a specific purpose, and block grants give more flexibility in meeting objectives.

<sup>4</sup> Natalie Keegan, Cong. Research Serv., R44374, *Federal Grant Financial Reporting Requirements and Databases: Frequently Asked Questions* (2016).

<sup>5</sup> U.S. Office of Management and Budget, *Data Act Pilot Report* 56-57 (Aug. 10, 2017).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See OMB, *supra*, note 1. The President's Management Agenda calls for an integrated, data-centric strategy to standardize grant reporting and alleviate compliance burdens. The Agenda also calls for the standardization of "data elements to inform [a] comprehensive taxonomy for core grants management data standards" by the end of Fiscal Year (FY) 2018.

<sup>9</sup> Matt Rumsey & Priya Mhatre, *Transforming Federal Grant Reporting: Current Challenge, Future Vision*, The Data Foundation (Jun. 2018),

<https://static1.squarespace.com/static/56534df0e4b0c2babdb6644d/t/5b292f6c758d4693297d0148/1529425775127/Grant-Innovation-Report-June-18.pdf>.

<sup>10</sup> *Federal Grant Management Before the H. Oversight and Gov't. Reform Comm.*, *supra*, note 2.

<sup>11</sup> OMB, *supra* note 1.

---

<sup>12</sup> *Federal Grant Management Before the H. Oversight and Gov't. Reform Comm., supra*, note 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Natalie Keegan, Cong. Research Serv., R42769, *Federal Grants-in-Aid Administration: A Primer* 6 (2012), <https://fas.org/sgp/crs/misc/R42769.pdf>.

<sup>16</sup> U.S. Gov't Accountability Office (GAO), GAO-16-362, *Grants Management: Actions Needed to Address Persistent Grant Closeout Timeliness and Undisbursed Balance Issues* 13 (2016), <https://www.gao.gov/assets/680/676558.pdf>.

<sup>17</sup> According to GAO, HHS' Payment Management System is the largest civilian grant payment system in the federal government.

<sup>18</sup> GAO, *supra*, note 16.

<sup>19</sup> *Federal Grant Management Before the H. Oversight and Gov't. Reform Comm., supra*, note 2.

<sup>20</sup> GAO, *supra*, note 16.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Grants Oversight and New Efficiency Act, Pub. L. No. 114-117, 130 Stat. 6 (2016).

<sup>24</sup> According to the first GONE Act report, HHS and HUD accounted for the top agencies with the oldest expired federal grants in the report. Federal agencies reported the following top explanations for grant closeout delays: 1) Disconnection between grants management and payment systems; 2) Manual report reconciliation process; 3) Delayed technical deliverable; and 4) Grant projects requirements that require multi-jurisdictional review.

<sup>25</sup> Pub. L. No. 113-101

<sup>26</sup> Matt Rumsey & Priya Mhatre, *supra* note 9.

<sup>27</sup> Department of Health and Human Services, *Common Data Element Repository Library*, [repository.usaspending.gov/cder\\_library/](https://repository.usaspending.gov/cder_library/), accessed June 18, 2019.

<sup>28</sup> U.S. Const. art. I, § 9.

<sup>29</sup> Pub. L. No. 116-103

<sup>30</sup> Grant Reporting Efficiency and Agreements Transparency Act of 2019, H.R. 150, 116<sup>th</sup> Cong. (2019).

<sup>31</sup> The federal government is the largest buyer of goods and services in the world, and federal agencies are the primary drivers of such expenditures. The Federal Acquisition Regulation (FAR) governs federal agency contracts and procurements of goods and services.

<sup>32</sup> *Federal Grant Management Before the H. Oversight and Gov't. Reform Comm., supra*, note 2.

<sup>33</sup> Generally, federal agencies have broad discretion in administering federal grant programs.



## RECLAIM UNOBLIGATED FEDERAL FUNDS

Unobligated balances have not yet been committed by contract or other legally binding action by the government at the end of a fiscal year (FY). Federal agencies will carry over nearly \$1.129 trillion in unspent, unobligated balances from 2020 to 2021.<sup>1</sup> With national debt over \$23 trillion, Congress must determine which funds should be rescinded.

### BACKGROUND

Federal budget authority is divided into two subcategories (see Figure 1 below for a visual breakdown):<sup>2</sup>

- **Obligated Balances** are funds designated for a specific payment. The Department of Treasury defines an obligation as a “legally-binding agreement that will result in outlays, immediately or in the future.”<sup>3</sup>
- **Unobligated Balances** are funds not allocated or committed for a specific purpose. These can be single-year, multi-year, or no-year (i.e., no time restriction) periods available for allocation.

Federal agencies “must return single-year funds to the Treasury if they are unspent in the given year.”<sup>4</sup> As single-year unobligated balances are “use-it-or-lose-it,” high single-year balances may suggest that agencies are appropriated more money than necessary. In FY2017, the Departments of Justice (DOJ), State, and Health and Human Services (HHS) each had single-year unobligated balances in excess of \$130 million.<sup>5</sup>

Some unobligated funds languish and remain unused for years. The Government Accountability Office, for example, reports that about \$1.6 billion in unobligated balances is available for rescission within the defunct U.S. Enrichment Corporation Fund (USEC). USEC began under the Energy Policy Act of 1992 to provide uranium enrichment services for the government and utilities. USEC was eventually privatized, eliminating the need for government funding.<sup>6</sup>

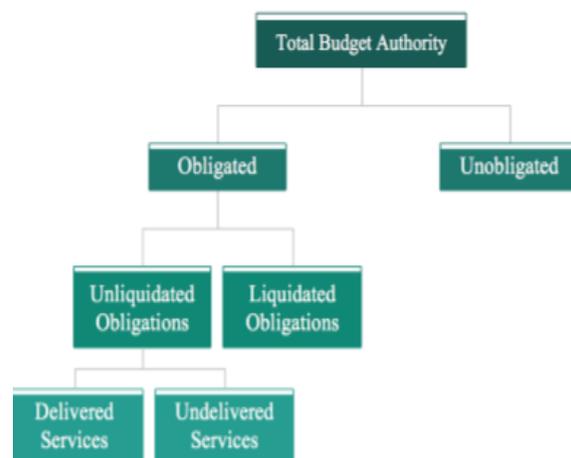
Year-end unobligated balances have remained high, but relatively consistent, ranging from \$957.68 billion in 2017 to an estimated \$1.265 trillion in 2020 according to the Office of Management and Budget (OMB):<sup>7,8,9</sup>

### Quick Take

Federal agencies will carry over an estimated \$1 trillion in unspent, unobligated balances from 2020 to 2021.

Congress should create a government-wide inventory of unobligated balances to determine which funds to rescind to offset soaring federal deficits.

Figure 1: Budget Breakdown Flowchart



Source: Data Lab, *USASpending.gov*

In FY2020, \$1.129 trillion in unobligated balances make up about 38 percent of total unexpended balances carried over from FY2020 to FY2021.<sup>10,11</sup>

Unobligated balances are generally grouped in the following categories:<sup>12</sup>

- Insurance and other financial reserves: \$651 billion, or 58 percent of the total;
- Programs that require working capital: \$50 billion, or four percent of the total;
- Programs funded by earmarked receipts or dedicated taxes: \$61 billion, or five percent of the total;
- Prefunding of major appropriated entitlements: \$14 billion, or one percent of the total;
- Programs with long lead times to outlay: \$142 billion, or 13 percent of the total; and
- All other programs that account for the remaining \$211 billion.

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution grants Congress the power to tax and spend.<sup>13</sup> Congress must be accountable for federal expenditures of taxpayer dollars.

## POLICY SOLUTIONS

The Digital Accountability and Transparency (DATA) Act of 2014 requires federal agencies to report unobligated balances from each of their appropriations accounts.<sup>14</sup> Additionally, agency unobligated balances are published in the President's Budget and other government-wide publications.<sup>15</sup> Congress should compile a government-wide inventory of current accounts with unobligated balances to determine which funds may be rescinded to the Treasury.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup>Budget of the United States, Balances of Budget Authority, Budget of Fiscal Year 2021, [https://www.whitehouse.gov/wp-content/uploads/2020/02/balances\\_fy21.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/balances_fy21.pdf)

<sup>2</sup> USASpending.gov, Data Lab, *Unspent Funds Across Federal Agencies*, Apr. 30, 2018, <https://datalab.usaspending.gov/data-lab-data/college-playbook/Full-Report.pdf>.

<sup>3</sup> Outlays are defined by OMB Circular A-11, Section 20, as a measure of government spending. Generally, outlays refer to expenditures paid out by the federal government. The Congressional Budget Office estimates federal outlays in 2019 totaled over \$4 trillion.

<sup>4</sup> USASpending.gov, *supra*, note 2.

<sup>5</sup> *Id.*

<sup>6</sup> Government Accountability Office, GAO-15-404SP, *Energy: US Enrichment Corporation Fund* (2015), [https://www.gao.gov/modules/ereport/handler.php?1=1&m=1&path=/ereport/GAO-15-404SP/data\\_center\\_savings/Energy/16\\_U.S.\\_Enrichment\\_Corporation\\_Fund](https://www.gao.gov/modules/ereport/handler.php?1=1&m=1&path=/ereport/GAO-15-404SP/data_center_savings/Energy/16_U.S._Enrichment_Corporation_Fund).

<sup>7</sup> Budget of the United States, *supra*, note 1, Table 2.

<sup>8</sup> Budget of the United States, *Balances of Budget Authority, Budget of Fiscal Year 2019* Table 2, <https://www.whitehouse.gov/wp-content/uploads/2018/02/balances-fy2019.pdf>.

<sup>9</sup> Year-end unobligated balances have increased into the trillions of dollars in recent years: \$957.68 billion in 2017; \$1.123 trillion in 2018; \$1.119 trillion in 2019; and an estimated \$1.265 trillion in 2020.

<sup>10</sup> OMB reports \$2.818 trillion in total unexpended balances carried over from FY2019 to FY2020.

<sup>11</sup> Budget of the United States, *supra*, note 1.

<sup>12</sup> *Id.*

<sup>13</sup> U.S. Const. art. I, § 8, cl. 1.

<sup>14</sup> Pub. L. No. 113-101

<sup>15</sup> *Federal Spending Transparency*, Data Lab: Element: Unobligated Balance, <https://fedspendingtransparency.github.io/whitepapers/unobligated-balance/> (last viewed on August 28, 2019).

## **REDUCE THE COSTS OF FEDERAL CONSTRUCTION**

The Davis-Bacon Act impedes competition and artificially inflates construction costs.<sup>1</sup> Congress must repeal this requirement and maximize the impact of federal infrastructure dollars.

### **BACKGROUND**

The Davis-Bacon Act (DBA) was enacted by Congress in 1931.<sup>2</sup> The DBA requires employees of federally funded or assisted construction, alteration, or repair projects of public buildings or public works to be paid at least the locally prevailing wage.<sup>3</sup> The DBA prevailing wage principle has been written into more than 50 federal program statutes.<sup>4</sup>

The prevailing wage is a combination of the basic hourly rate paid to various classes of laborers and mechanics employed on specific types of construction projects in an area and any fringe benefits listed in the Davis-Bacon wage determination.<sup>5</sup> On average, the DBA prevailing wage is more than 22 percent above the average wages calculated by the Bureau of Labor Statistics (BLS).<sup>6</sup>

As the prevailing wage is higher than both the true market rate and the minimum wage, the DBA distorts the market for construction workers' wages.<sup>7</sup>

The Congressional Budget Office (CBO) predicts that repealing the DBA would save the Federal Government \$12 billion in outlays from 2019 to 2028.<sup>8</sup> CBO references the post-1930's implementation of a federal minimum wage and reduced employment of federal construction workers among its arguments for repealing the law.<sup>9</sup>

### **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution grants spending authority to Congress.<sup>10</sup> As a matter of principle, the Federal Government should not artificially inflate labor costs for construction projects.

### **POLICY SOLUTIONS**

Congress must repeal the DBA. Additionally, Congress may also consider introducing legislation requiring the Federal Government to pay federal contractors the market wages as determined by BLS.

#### **Quick Take**

The DBA requires employees of federally funded or assisted construction to be paid at least the locally prevailing wage.

The law's prevailing wage is more than 22 percent above the average wages calculated by the BLS. CBO predicts that repealing the law would save over \$12 billion.

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

---

<sup>1</sup> Gerald Mayer, Jon O. Shimabukuro, *Davis-Bacon Prevailing Wages and State Revolving Loan Programs Under the Clean Water Act and the Safe Drinking Water Act*, Congressional Research Service (Nov. 20, 2013), <https://www.crs.gov/Reports/R41469?source=search&guid=3693e538665b43b09c64b6816adcf845&index=4#fn7>.

<sup>2</sup> An Act Relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia [Public, No. 798.] by contractors and subcontractors, and for other purposes, Pub. L. No. 71–798 (1931).

<sup>3</sup> U.S. Department of Labor Wage and Hour Division, *Fact Sheet #66: The Davis-Bacon and Related Acts (DBRA)* (April 2009), <https://www.dol.gov/whd/regs/compliance/whdfs66.pdf>.

<sup>4</sup> William G. Whittaker, *The Davis-Bacon Act: Institutional Evolution and Public Policy*, Congressional Research Service, (Nov. 30, 2007), [https://www.crs.gov/Reports/94-408?source=search&guid=3693e538665b43b09c64b6816adcf845&index=3#\\_Toc228236051](https://www.crs.gov/Reports/94-408?source=search&guid=3693e538665b43b09c64b6816adcf845&index=3#_Toc228236051).

<sup>5</sup> U.S. DOL, *supra* note 3.

<sup>6</sup> Sarah Glassman, Michael Head, David G. Tuerck, Paul Bachman, *The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages*, The Beacon Hill Institute at Suffolk University (Feb. 2008), <http://www.beaconhill.org/BHISTudies/PrevWage08/DavisBaconPrevWage080207Final.pdf>.

<sup>7</sup> Congressional Budget Office, *Repeal the Davis-Bacon Act*, (Dec. 13, 2018), <https://www.cbo.gov/budget-options/2018/54786>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> U.S. Const. art. I, § 9.

## **REFORM THE UNITED STATES POSTAL SERVICE**

The Government Accountability Office has featured the United States Postal Service's (USPS) financial viability in its annual *High-Risk List* report every year since 2009.<sup>1</sup> Congress must reform the USPS to address long-running structural and financial challenges that leave taxpayers on the hook for billions of dollars in liabilities.

### **BACKGROUND**

The USPS lost a total of \$78 billion between 2007 and 2019.<sup>2</sup> In fiscal year (FY) 2019 alone, USPS experienced a net loss of \$8.8 billion by spending nearly \$80 billion, while only collecting \$71.2 billion in revenue.<sup>3</sup> With no improvement of the USPS financial condition in sight, the former Postmaster General notified Congress, “the Postal Service’s business model is broken and will only produce widening losses in the coming years absent dramatic changes.”<sup>4</sup>

The USPS operates at a multi-billion-dollar loss every year. As Table I shows below, USPS unfunded liabilities and debt have grown to \$161 billion, representing twice the amount of its annual revenues. In April 2019, former Postmaster General Brennan testified that “absent legislative and regulatory reform...[USPS will run] out of cash in 2024.”<sup>5</sup>

Several factors contribute to the ongoing financial deterioration of the USPS:

- Declining volume of First-Class and other mail categories;
- Inflexible product pricing;
- Substantial personnel costs in the form of compensation and benefits; and
- Broad universal service obligation.

Currently, the USPS operates under a statutory mandate to offer nationwide service at affordable rates.<sup>6</sup> Such mandates also prohibit the USPS from closing post offices which operate at a deficit.<sup>7</sup> Many of the connectivity considerations that lead to the creation of the USPS’s universal service obligation (USO) may not hold sway in an era increasingly dominated by digital communication.

In FY 2018, “labor costs accounted for 76 percent of the USPS’s overall operating costs.”<sup>8</sup> As a 2017 comparison, “total per-employee cost at the USPS was \$85,800, compared to \$76,200 and \$53,900 at UPS and FedEx, respectively.”<sup>9</sup> USPS per-employee costs were significantly higher than the private sector companies with which it most directly competes.

### **Quick Take**

The USPS operates at a multi-billion loss every year. In FY 2019 alone, the USPS averaged a net loss of \$8.8 billion.

Congress should consider the numerous recommendations from the Task Force on the United States Postal System.

Generally, federal law caps the USPS prices on market-dominant mail at the rate of change in the consumer price index for all urban consumers (CPI-U).<sup>10</sup> Additionally, the USPS must also consult the Postal Regulatory Commission (PRC) to change service standards. These statutory restrictions hinder the USPS's ability to respond quickly to market changes.

Historically, USPS's "mailbox monopoly" and monopoly on most letter mail enabled the USPS to cover any losses associated with the USO. While USPS package volumes and revenue are increasing due to increases in e-commerce, they are not enough to offset declines in mail revenues. More importantly, the USPS may have a distortionary impact on the private parcel shipping marketplace where its package shipments benefit indirectly from infrastructure and personnel on the mail side of the USPS operation.

On April 12, 2018, President Donald Trump signed Executive Order 13829 to establish the Task Force on the United States Postal System (USPS Task Force) to evaluate the operations and finances of the USPS and develop reform recommendations.<sup>11</sup>

## **CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES**

The Constitution empowers Congress to "establish Post Offices and post Roads."<sup>12</sup> The USPS should be modernized to reflect current national service needs, operate within its generated revenues, and minimize any distortionary impact on the private shipping marketplace.

## **POLICY SOLUTIONS**

The USPS Task Force offered several recommendations for Congress:<sup>13</sup>

- Align USPS employee rights with other federal employee rights by eliminating collective bargaining overcompensation for USPS employees;
- Pursue reforms to USPS employee wages consistent with those proposed for the broader federal workforce in the president's Management Agenda;
- Explore and implement new business lines that generate revenue and that present no balance sheet risk to the USPS;
- Institute a new policy mandate for management that sets organizational direction and financial targets, which align with a sustainable business model and establish an enforcement mechanism if the existing Board is unable to meet these targets; and
- Pursue reform of the Federal Employee Retirement System that would increase employee contributions and move toward a defined contribution system.

Additionally, Congress should consider re-evaluating the USO to determine what the modern essential services for the USPS should be as the nation increasingly relies on digital avenues as the lowest-cost form of communication.

**Table 1: Selected U.S. Postal Service (USPS) Liabilities and Outstanding Debt (Dollars in billions)**

Fiscal Year	Selected USPS liabilities (included on USPS balance sheet)			Funded Status of Retiree Health and Pension Funds (not fully included on USPS balance sheet)			Totals			
	Outstanding debt	Workers' compensation liabilities	Other liabilities	Funded status for retiree health benefits (unfunded)	Funded Status for CSRS (unfunded)	Funded Status for FERS (unfunded)	Total USPS balance sheet assets	Total USPS liabilities, debt, and unfunded obligations	Total USPS revenue	Unfunded obligations, liabilities, and debt as percentage of revenue
2007	(4.2)	(7.8)	(12.7)	(55.0)	(3.1)	8.4	25.8	(74.3)	75.0	99
2008	(7.2)	(8.0)	(12.5)	(53.5)	(9.0)	6.5	26.0	(83.7)	75.0	112
2009	(10.2)	(10.1)	(13.2)	(52.0)	(7.3)	6.9	28.1	(85.9)	68.1	126
2010	(12.0)	(12.6)	(13.6)	(48.6)	1.6	10.9	24.3	(74.3)	67.1	111
2011	(13.0)	(15.1)	(14.2)	(46.2)	(17.8)	2.6	23.4	(103.7)	65.7	158
2012	(15.0)	(17.6)	(13.7)	(47.8)	(18.8)	0.9	22.6	(112.1)	65.2	172
2013	(15.0)	(17.2)	(12.5)	(48.3)	(17.8)	(0.1)	21.6	(110.9)	67.3	165
2014	(15.0)	(18.4)	(12.5)	(48.9)	(19.4)	(3.6)	23.0	(117.8)	67.9	174
2015	(15.0)	(18.8)	(12.5)	(54.8)	(16.7)	(3.8)	24.0	(121.6)	69.0	176
2016	(15.0)	(20.0)	(11.8)	(52.1)	(26.9)	(15.3)	25.2	(141.1)	71.5	197
2017	(15.0)	(17.9)	(11.9)	(62.2)	(24.2)	(17.1)	27.4	(148.4)	69.7	213
2018	(13.2)	(16.4)	(11.5)	(66.5)	(27.9)	(19.4)	26.7	(154.9)	70.8	219
2019	(11.0)	(18.5)	(12.0)	(69.4)	(29.0)	(20.9)	25.6	(160.9)	71.3	226

Source: U.S. Postal Service (USPS) Form 10-K Statements.

Government Accountability Office, February 2020<sup>14</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

<sup>1</sup> U.S. Gov't Accountability Off., GAO-19-157SP, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High Risk Areas 99* (2019), <https://www.gao.gov/assets/700/697245.pdf>.

<sup>2</sup> U.S. Postal Service, *Ready-Now → Future-Ready: The U.S. Postal Service Five-Year Strategic Plan FY2020-FY2024* 9 (2020) <https://about.usps.com/strategic-planning/five-year-strategic-plan-2020-2024.pdf>.

<sup>3</sup> U.S. Postal Service, Form 10-K Annual Report (2019), <https://about.usps.com/what/financials/10k-reports/fy2019.pdf> and U.S. Postal Service, *Newsroom: U.S. Postal Service Reports Fiscal Year 2019 Results*, Nov. 19, 2019, available at <https://about.usps.com/newsroom/national-releases/2019/1114-usps-reports-fiscal-year-2019-results.htm>

<sup>4</sup> United States Postal Service, *FY2018 Annual Report to Congress* (2018), <https://about.usps.com/who-we-are/financials/annualreports/fy2018.pdf>.

<sup>5</sup> *The Financial Condition of the Postal Service: Hearing Before the H. Comm. on Oversight and Reform*, 116th Cong. 40-41 (2019) (oral statement of Postmaster Gen. and Chief Executive Officer Megan J. Brennan).

<sup>6</sup> 39 U.S.C. §§ 403(b) and 404(c).

<sup>7</sup> 39 U.S.C. § 101(b).

<sup>8</sup> Task Force on the United States Postal System, U.S. Dept. of the Treasury, *United States Postal Service: A Sustainable Path Forward* (2018), [https://home.treasury.gov/system/files/136/USPS\\_A\\_Sustainable\\_Path\\_Forward\\_report\\_12-04-2018.pdf](https://home.treasury.gov/system/files/136/USPS_A_Sustainable_Path_Forward_report_12-04-2018.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> 39 U.S.C. § 3622(d)(2)(A)

<sup>11</sup> Exec. Order No. 13,829, 83 Fed. Reg. 17281 (Apr. 12, 2018).

<sup>12</sup> U.S. Const. art. I, § 8, cl. 7.

<sup>13</sup> Task Force on the United States Postal System, *supra*, note 8.

<sup>14</sup> Prepared by the Gov't Accountability Off. from U.S. Postal Service Form 10-K Statements for House Republican staff briefing on February 4, 2020.



## **TACKLE FEDERAL IMPROPER PAYMENTS**

As the national debt continues to rise, the amount of federal improper payments grows with it. The Government Accountability Office (GAO) estimates that improper payments government-wide have totaled over \$1 trillion since 2003. In Fiscal Year (FY) 2019, the Federal Government reported \$175 billion in improper payments.<sup>1</sup> These payments are a representation of systemic government waste and mismanagement.

### **BACKGROUND**

According to GAO, “the federal government is unable to determine the full extent to which improper payments occur and reasonably ensure that actions are taken to reduce them.”<sup>2</sup> Improper payments are defined as “any payment that should not have been made or that was made in an incorrect amount.”<sup>3</sup> Since 2002, a series of laws have established and expanded requirements for agencies to identify, measure, prevent, and report improper payments within their programs. Despite these requirements, GAO estimates that improper payments government-wide have totaled over \$1.5 trillion since 2003.<sup>4,5</sup>

According to recently released figures from the Office of Management and Budget (OMB), federal improper payments rose to about \$175 billion in FY2019.<sup>6,7</sup> In FY2018, the Federal Government reportedly sent out \$151 billion in improper payments,<sup>8</sup> an increase of about \$10 billion from FY2017.<sup>9</sup> Nearly all of the \$10 billion increase in FY2018 was attributed to the USDA Supplemental Nutrition Assistance Program (SNAP), which began reporting its improper payments for the first time in about four years.<sup>10</sup>

The five highest reported root causes for improper payments in FY2019 include (note: data may be incomplete due to failure to report):<sup>11</sup> Insufficient documentation (about \$73.7 billion); inability to verify eligibility (about \$39.7 billion); administrative or process errors made by other parties (about \$25 billion);<sup>12</sup> administrative or process errors made by state or local agencies (about \$11 billion); and program design or structural issues (about \$14 billion).<sup>13</sup>

### **Select GAO Transparency and Accountability Concerns:**<sup>14,15</sup>

- GAO has been unable to render an opinion on the Federal Government's consolidated financial statement since 1997, due in part to the government's inability to adequately account for and reconcile its financial activities.<sup>16</sup>
- OMB ceased publishing the total amount of federal improper payments on its website in 2017,<sup>17</sup> focusing only on program-by-program amounts at individual agencies.<sup>18</sup>

### **Quick Take**

GAO estimates that improper payments government-wide have totaled over \$1 trillion since 2003.

Congress must ensure the Federal Government takes appropriate measures to safeguard the integrity of taxpayer resources.

- Nine Chief Financial Officer (CFO) Act executive agencies<sup>19</sup> were reported as noncompliant from FY2011 through FY2017 in one or more programs every year since the implementation of the Improper Payments Elimination and Recovery Act (IPERA) of 2010, totaling seven consecutive years of noncompliance.<sup>20</sup> See Appendix I for a breakdown of the seven-year agency noncompliance.
- Half, or 12 of 24 CFO Act agencies,<sup>21</sup> reported as noncompliant with one or more criteria under IPERA in FY2018.<sup>22,23</sup> IPERA compliance does not necessarily imply accurate reporting.<sup>24</sup>
- Agencies with any program reported as noncompliant for three or more consecutive years are required to notify Congress of their program's consecutive noncompliance and submit a proposal for reauthorization or statutory change to bring that program into compliance.
- The number of federal programs reported as noncompliant for three or more consecutive years increased from 14 programs in FY2016 (\$109 billion),<sup>25</sup> to 18 programs in FY2017 (\$74 billion),<sup>26</sup> and to 21 programs in FY2018 (\$78 billion). As Table 1 shows below, FY2018 noncompliant programs across eight federal agencies represented nearly 52 percent, of the total \$151 billion in improper payments.

**Table 1: Reported Improper Payment Estimates for Chief Financial Officers Act of 1990 Agency Programs That Their Inspectors General Reported as Noncompliant with IPERA for 3 or More Consecutive Years as of Fiscal Year 2018**

Agency	Program	Estimated improper payments reported for fiscal year 2018 (millions of dollars)
Department of Agriculture	Food and Nutrition Services School Breakfast Program - Total Program	469.3
	Food and Nutrition Services Special Supplemental Nutrition Program for Women, Infants, and Children - Total Program	194.2
Department of Defense	Civilian Pay	85.0
	Defense Finance and Accounting Service Commercial Pay	15.0
	Department of Defense Travel Pay	365.3
	Military Health Benefits	91.2
	Military Pay	305.8
	Military Retirement	314.4
Department of Health and Human Services	Children's Health Insurance Program	1,389.6
	Foster Care	29.8
	Medicaid	36,249.7
	Temporary Assistance for Needy Families	Not reported
Department of Labor	Unemployment Insurance	3,743.5
Department of the Treasury	Earned Income Tax Credit	18,443.5
Department of Veterans Affairs	Beneficiary Travel	216.0
	Civilian Health and Medical Program of Veterans' Affairs	85.3
	Purchased Long Term Services and Support	2,059.1
	Supplies and Materials	829.2
	Community Care	7,998.1
General Services Administration	Rental of Space	16.7
Social Security Administration	Supplemental Security Income	4,757.4
<b>Total</b>		<b>77,658.2</b>

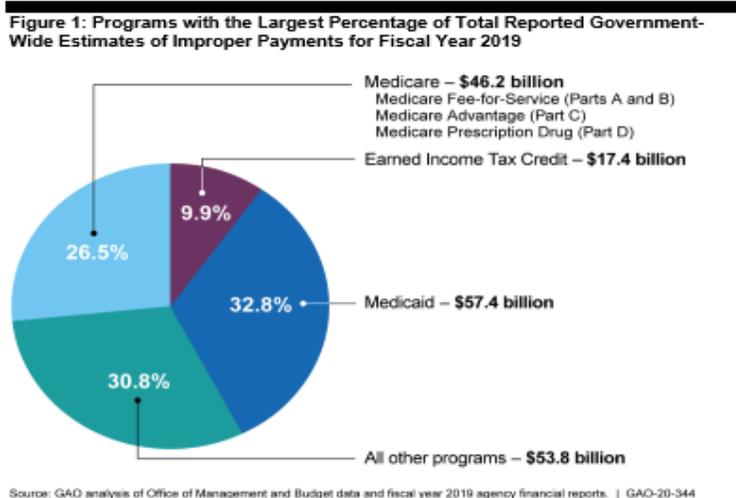
Legend: IPERA = Improper Payments Elimination and Recovery Act of 2010.  
Source: GAO analysis of Chief Financial Officers Act of 1990 agencies' IPERA compliance reports for fiscal years 2016 through 2018, Office of Management and Budget data, and agencies' data. | GAO-20-344

Note: Total does not agree because of rounding.

From FY2015 to FY2018, improper payments government-wide increased from \$137 billion to over \$151 billion.<sup>27</sup> The Department of Health and Human Services (HHS) accounted for two-thirds of all federal improper payments<sup>28</sup> with over \$90 billion in FY2017. Medicaid reported over \$36 billion, or 40 percent, of the HHS improper payments, with a recent increase of over \$57 billion in FY2019.<sup>29</sup> According to GAO's

*High-Risk List* report, Medicare reached an estimated \$48 billion in improper payments in FY2018.<sup>30</sup>

Recent data released by OMB provides more context, although lack of sufficient reporting prevents a full account of government-wide improper payments.<sup>31</sup> In FY2019, the Federal Government reported a total of about \$175 billion in improper payments. HHS alone reported over \$106 billion of that amount.<sup>32</sup>



<sup>20</sup>The Department of Health and Human Services (HHS) estimates improper payments for the Medicaid program across three components: (1) fee-for-service, (2) managed care, and (3) eligibility. In fiscal year 2019, HHS reported improper payment rates for each of these components but did not report separate improper payment amounts.

Source: GAO-20-344,<sup>33</sup>

Medicare (Fee-for-Service, Part C, and Part D) declined slightly to about \$46 billion in FY2019, but Medicaid improper payments rose to \$57 billion, representing about one-third of government-wide improper payments.<sup>34</sup> Medicaid’s improper payments increase can primarily be attributed to the Centers for Medicare and Medicaid (CMS) conducting Payment Error Rate Management (PERM) eligibility reviews on states for the first time since FY2015, which it had ceased to perform following rule changes through the Affordable Care Act’s Medicaid expansion.<sup>35</sup> Although the Treasury Department reported an improper payment estimate for the EITC program, GAO reports that “Treasury and OMB developed a series...of supplemental measures in lieu of reduction targets. As such, the Treasury IG determined that the requirement” to meet and publish “reduction targets was not applicable.”<sup>36</sup>

## CONSTITUTIONAL AUTHORITY AND REPUBLICAN PRINCIPLES

The Constitution grants Congress the power to tax and spend.<sup>37</sup> Congress must utilize its legislative and oversight authorities to safeguard the integrity of taxpayer resources.

## POLICY SOLUTIONS

GAO has over 30 open priority recommendations on improper payments.<sup>38</sup> At a minimum, Congress must review root causes to determine appropriate actions to reduce improper payments. Actions Congress may consider include, but are not limited to:

- Reduce payments to ineligible deceased recipients. Amending the Social Security Act would enable the Social Security Administration to share relevant death data to appropriate federal agencies and other administering entities;
- Facilitate government-wide data standardization by establishing a common taxonomy and information sharing by reforming the Computer Matching Act, the Do Not Pay System, and the National Directory of New Hires; and
- Review statutory limitations to data sharing between federal, state, and local agencies.

On March 2, 2020, President Trump signed S.375, the Payment Integrity Information Act of 2019, into law. The new law consolidates the various existing improper payment laws within the U.S. Code. It also creates a working group consisting of federal agencies and non-federal partners, such as state governments, to develop strategies for addressing root causes of improper payments.

Promoting accountability and program integrity also requires transparency across the Federal Government. GAO has estimated that the Federal Government could save billions of dollars by reconciling duplicative and overlapping missions across agencies.<sup>39</sup> The GPRA Modernization Act (GPRAMA) of 2010 required the development of a federal program inventory and quarterly reporting on performance management.<sup>40</sup> However, nearly a decade later after the law was passed, no such inventory list exists. According to GAO Comptroller General Dodaro hearing testimony, such a list would help agencies identify significant savings.<sup>41</sup> In 2015, the Competitive Enterprise Institute (CEI) found inconsistent accounts of the number of agencies and departments reported across the federal bureaucracy, due to the lack of an authoritative list.<sup>42</sup>

The Senate should pass H.R. 3830, the Taxpayers Right-to-Know Act, which passed the House on February 10, 2020. The Taxpayers Right-to-Know Act would build on efforts to promote transparent accounting of federal program administration<sup>43</sup> by requiring public agency disclosure of performance metrics and financial data across certain federal programs.<sup>44</sup> Additionally, it would require the disclosure of essential budgetary information and links to relevant assessments and reviews conducted by GAO and the Inspectors General.

# Appendix I

**Figure 4: CFO Act Agencies' Overall IPERA Compliance for Fiscal Years 2011 through 2017, as Reported or Acknowledged by Their IGs**

Agency	Fiscal year							Number of years reported as noncompliant
	2011	2012	2013	2014	2015	2016	2017	
Department of Agriculture	X	X	X	X	X	X	X	7
Department of Commerce	✓	✓	✓	✓	✓	✓	X	1
Department of Defense	✓	X	X	X	X	X	X	6
Department of Education	✓	✓	✓	X	X	X	X	4
Department of Energy	X	✓	✓	✓	✓	✓	✓	1
Department of Health and Human Services	X	X	X	X	X	X	X	7
Department of Homeland Security	X	X	X	X	X	X	X	7
Department of Housing and Urban Development	✓	✓	X	X	X	X	X	5
Department of the Interior	X	✓	✓	X	X	✓	✓	3
Department of Justice	✓	✓	✓	✓	✓	✓	✓	0
Department of Labor	X	X	X	X	X	X	X	7
Department of State	X	✓	✓	✓	✓	✓	✓	1
Department of Transportation	X	X	X	X	X	X	X	7
Department of the Treasury	X	X	X	X	X	X	X	7
Department of Veterans Affairs	X	X	X	X	X	X	X	7
Environmental Protection Agency	✓	X	✓	✓	✓	✓	✓	1
General Services Administration	✓	✓	✓	X	X	X	X	4
National Aeronautics and Space Administration	X	✓	✓	✓	✓	✓	✓	1
National Science Foundation	✓	X	NR	X	✓	✓	✓	2
Nuclear Regulatory Commission	✓	✓	✓	✓	✓	✓	✓	0
Office of Personnel Management	X	✓	✓	✓	X	✓	✓	2
Small Business Administration	X	X	X	X	X	X	X	7
Social Security Administration	X	X	X	X	X	X	X	7
U.S. Agency for International Development	✓	✓	✓	✓	✓	✓	✓	0
<b>Total not reported</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>Total compliant agencies</b>	<b>10</b>	<b>12</b>	<b>12</b>	<b>9</b>	<b>9</b>	<b>11</b>	<b>10</b>	
<b>Total noncompliant agencies</b>	<b>14</b>	<b>12</b>	<b>11</b>	<b>15</b>	<b>15</b>	<b>13</b>	<b>14</b>	

✓ Compliant: IG reported compliance

X Noncompliant: IG reported noncompliance or acknowledged noncompliance after report was issued

NR Not reported: IG did not issue compliance report because agency did not publish improper payment information

CFO Act - Chief Financial Officers Act of 1990

IG - inspector general

IPERA - Improper Payments Elimination and Recovery Act of 2010

Source: GAO analysis of CFO Act agencies' IG IPERA reports for fiscal years 2011 through 2017. | GAO-19-14

Source: GAO-19-14<sup>45</sup>

**Please contact the Republican Policy Committee at [RPC@mail.house.gov](mailto:RPC@mail.house.gov) or (202) 225-4921 with any questions.**

<sup>1</sup>U.S. Off. of Mgm't and Budget, Payment Accuracy, *Payment Accuracy 2019 Data Set*, <https://paymentaccuracy.gov/the-numbers/>

<sup>2</sup> U.S. Gov't Accountability Office, GAO-18-377, *Improper Payments: Actions and Guidance Could Help Address Issues and Inconsistencies in Estimation Processes* (May 2018), <https://www.gao.gov/assets/700/692207.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> U.S. Gov't Accountability Office, GAO-16-554, *Improper Payments: CFO Act Agencies Need to Improve Efforts to Address Compliance Issues* (2016), <https://www.gao.gov/assets/680/678154.pdf>.

<sup>5</sup> While federal data on improper payments is generally unreliable, not all improper payments represent a loss to the government: roughly 10 percent of improper payments are considered underpayments, while about 90 percent of improper payments are

---

overpayments. These figures are based off of FY2015 data from OMB's *paymentaccuracy.gov* website, which is no longer available.

<sup>6</sup> *Supra*, at 1

<sup>7</sup> GAO found that about \$74.6 billion, or 42.7 percent, of the government-wide improper payments estimate was reported as a monetary loss. According to OMB Circular No. A-136, "monetary loss" represents an amount that should not have been paid and in theory should or could be recovered. OMB acknowledges on its website that "the American citizens deserve to know that their hard-earned tax dollars are being spent as efficiently and effectively as possible by the Federal government. Although not all improper payments are fraud, and not all improper payments represent a loss to the government, all improper payments degrade the integrity of government programs and compromise citizens' trust in government." U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf> and Off. of Mgm't and Budget, PaymentAccuracy, *FAQ: What is an Improper Payment?* (2020) <https://paymentaccuracy.gov/faq/>

<sup>8</sup> U.S. Gov't Accountability Office, GAO-19-314, *The Nation's Fiscal Health Action Is Needed to Address the Federal Government's Fiscal Future* (2019), <https://www.gao.gov/assets/700/698368.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> Briefing by the Gov't Accountability Office to Republican Policy Committee staff, Feb. 27, 2019.

<sup>11</sup> U.S. Off. of Mgm't and Budget, PaymentAccuracy, *Payment Accuracy 2019 Data Set*, <https://paymentaccuracy.gov/the-numbers/>

<sup>12</sup> For example, health care provider, lender, or any organization administering federal dollars.

<sup>13</sup> To compare FY19 data to the previous year, FY18 root causes were reported thusly: The five highest reported root causes for improper payments in FY18 include (note: data may be incomplete due to failure to report): Inability to verify eligibility (about \$40.8 billion); insufficient documentation (\$40 billion); administrative or process errors made by state or local agencies (\$21.5 billion); administrative or process errors made by other parties (\$19 billion); and administrative or process errors made by federal programs (over \$12.77 billion). Off. of Management and Budget, PaymentAccuracy, *Payment Accuracy 2018 Data Set*, <http://paymentaccuracy.gov/wp-content/uploads/2019/07/2018-Dataset-7-18-2019.xlsx>.

<sup>14</sup> Other concerns include, but are not limited to, unreliable or underreported estimates, inaccurate risk assessments, thresholds for improper payments in high-priority programs, noncompliance with federal law, and other considerations.

<sup>15</sup> U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>16</sup> Press Release, U.S. Gov't Accountability Office, *U.S. Government's Annual Financial Report Unable to Pass GAO Audit* (Feb. 25, 2016), [https://www.gao.gov/about/press-center/press-releases/read/usgov\\_financial\\_report\\_unable\\_pass\\_gao\\_audit.htm](https://www.gao.gov/about/press-center/press-releases/read/usgov_financial_report_unable_pass_gao_audit.htm).

<sup>17</sup> OMB's improper payment website can be found at *paymentaccuracy.gov*.

<sup>18</sup> U.S. Gov't Accountability Office, *Financial Audit: Fiscal Years 2017 and 2016 Consolidated Financial Statements of the U.S. Government* 29 (Feb. 15, 2018), <https://www.gao.gov/assets/700/690123.pdf>.

<sup>19</sup> U.S. Gov't Accountability Office, GAO-19-14, *Improper Payments: Additional Guidance Needed to Improve Oversight of Agencies with Noncompliant Programs* (Dec. 2018), <https://www.gao.gov/products/GAO-19-14> and Chief Financial Officers Act of 1990, H.R. 5687, 101st Cong. (1990).

<sup>20</sup> *Id.*

<sup>21</sup> Chief Financial Officers Act of 1990, H.R. 5687, 101st Cong. (1990).

<sup>22</sup> The IPERA compliance improvement is attributable to the Departments of Commerce and Education. In FY18, the noncompliant agencies were the Departments of Agriculture, Defense, HHS, Homeland Security, HUD, Labor, Transportation, Treasury, Veterans Affairs, General Services Administration, Small Business Administration, and USAID. U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>23</sup> As a comparison, 14 of 24 Chief Financial Officer (CFO) Act executive agencies were reported as noncompliant with one or more criteria under the Improper Payments Elimination and Recovery Act of 2010 (IPERA) for FY2016 and FY2017. U.S. Gov't Accountability Office, GAO-19-14, *Improper Payments: Additional Guidance Needed to Improve Oversight of Agencies with Noncompliant Programs* (Dec. 2018), <https://www.gao.gov/products/GAO-19-14>.

<sup>24</sup> For example, at least one agency Inspector General "reported inaccurate amounts for identified and recaptured improper payments in its" annual financial report (AFR). However, "the IG reported that the agency was compliant with the IPERA criterion for publishing financial information in a [performance and accountability report (PAR)] or AFR." U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>25</sup> Agencies with any program reported as noncompliant with the Improper Payments Elimination and Recovery Act (IPERA) of 2010 for three or more consecutive years are required to notify Congress of their program's consecutive noncompliance and submit a proposal for reauthorization or statutory change to bring that program into compliance. As of FY16, three agencies – the Departments of Labor, Agriculture, and Treasury – with one or more programs reported as noncompliant for three or more consecutive years, did not notify Congress or submit the required proposals. The Departments of Labor and the Treasury submitted

---

proposed legislative changes in response to their programs being previously reported as noncompliant but did not notify Congress of the programs' continued noncompliance as of FY16. USDA has not notified Congress despite prior GAO and USDA OIG recommendations. U.S. Gov't Accountability Office, GAO-19-14, *Improper Payments: Additional Guidance Needed to Improve Oversight of Agencies with Noncompliant Programs* (Dec. 2018), <https://www.gao.gov/products/GAO-19-14>

<sup>26</sup> GAO states that the total improper payment estimates in this category decreased for FY17 primarily because the Medicare FFS program (estimated \$41 billion in improper payment estimates) was reported as compliant in FY17. U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>27</sup> U.S. Gov't Accountability Office, GAO-19-314, *The Nation's Fiscal Health Action Is Needed to Address the Federal Government's Fiscal Future* (2019), <https://www.gao.gov/assets/700/698368.pdf>. See also Angie Petty, *Federal Improper Payments Show Slight Decline in FY 2017*, Deltek (Feb. 6, 2018), <https://www.deltek.com/en/learn/blogs/b2g-essentials/2018/02/federal-improper-payments-show-slight-decline-in-fy-2017>.

<sup>28</sup> U.S. Dep't of Health and Human Services, Office of the Inspector General, *U.S. Dep't of Health and Human Services Met Many Requirements of the Improper Payments Information Act of 2002 but Did Not Fully Comply for Fiscal Year 2016* (2017), <https://oig.hhs.gov/oas/reports/region17/171752000.pdf>.

<sup>29</sup> U.S. Centers for Medicare & Medicaid Services, *Fact Sheet: 2019 Estimated Improper Payment Rates for Centers for Medicare & Medicaid Services (CMS) Programs*, Nov. 18, 2019, <https://www.cms.gov/newsroom/fact-sheets/2019-estimated-improper-payment-rates-centers-medicare-medicaid-services-cms-programs>.

<sup>30</sup> U.S. Gov't Accountability Office, GAO-19-157SP, *HIGH-RISK SERIES: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas* (Mar. 2019), <https://www.gao.gov/assets/700/697245.pdf>.

<sup>31</sup> GAO notes that "the federal government's ability to understand the full scope of its improper payments is hindered by incomplete, unreliable, or understated agency estimates; risk assessments that may not accurately assess the risk of improper payment; and agencies not complying with reporting and other requirements" in IPERA. IPERA compliance also does not necessarily imply accurate reporting: According to GAO, for example, at least one agency IG "reported inaccurate amounts for identified and recaptured improper payments in its AFR. However, the IG reported that the agency was compliant with the IPERA criterion for publishing financial information in a PAR or AFR." U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>32</sup> U.S. Off. of Mgm't and Budget, PaymentAccuracy, *Payment Accuracy 2019 Data Set*, <https://paymentaccuracy.gov/the-numbers/>

<sup>33</sup> U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>34</sup> U.S. Off. of Mgm't and Budget, PaymentAccuracy, *Payment Accuracy 2019 Data Set*, <https://paymentaccuracy.gov/the-numbers/>.

<sup>35</sup> U.S. Centers for Medicare & Medicaid Services (CMS), Off. of Financial Mgm't, The PERM Eligibility Team, *The New PERM Eligibility Review and Other Final PERM & MEQC Changes*, July 6, 2017, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/TheNewPERMEligibilityReviewandOtherFinalPERMandMEQCChanges.pdf> and U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>36</sup> U.S. Gov't Accountability Office, GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf>

<sup>37</sup> U.S. Const. art. I, § 8, cl. 1.

<sup>38</sup> U.S. Gov't Accountability Office, *Recommendations Database*, [https://www.gao.gov/reports-testimonies/recommendations-database/?q=%22Improper+payments%22&field=thesaurus\\_ss&list=1&rec\\_type=priority#results](https://www.gao.gov/reports-testimonies/recommendations-database/?q=%22Improper+payments%22&field=thesaurus_ss&list=1&rec_type=priority#results) (last accessed August 28, 2019). DOD accounts for over 20 percent of GAO's open priority recommendations.

<sup>39</sup> U.S. Gov't Accountability Off., GAO-19-285SP, *Report on Opportunities to Reduce Duplication, Fragmentation, and Overlap* (2019), <https://www.gao.gov/products/gao-19-285sp>.

<sup>40</sup> Pub. L. No. 111-352. The law also required OMB to create a single, comprehensive website to house this information, which was published in limited capacity in 2013 and is now largely defunct. [https://obamaadministration.archives.performance.gov/s3fs-public/files/Federal\\_Program\\_Inventory\\_Fact\\_Sheet\\_.pdf](https://obamaadministration.archives.performance.gov/s3fs-public/files/Federal_Program_Inventory_Fact_Sheet_.pdf).

<sup>41</sup> U.S. Senate Comm. On Homeland Security & Governmental Aff., Subc. On Federal Spending Oversight and Emergency Management, Hearing on Review of GAO's Annual Duplication Report, May 21, 2019, <https://www.hsgac.senate.gov/subcommittees/fso/hearings/review-of-gaos-annual-duplication-report> and *Id.*, Press Release, *Senators Lankford Hassan, Johnson, Sinema, Ernst Introduce Taxpayers Right-to-Know Act*, July 18, 2019, <https://www.hsgac.senate.gov/subcommittees/fso/media/senators-lankford-hassan-johnson-sinema-ernst-introduce-taxpayers-right-to-know-act>.

<sup>42</sup> Clyde Wayne Crews, Competitive Enterprise Institute, *Nobody Knows How Many Federal Agencies Exist*, (2015), <https://cei.org/blog/nobody-knows-how-many-federal-agencies-exist>.

---

<sup>43</sup> The DATA Act (Pub. L. No. 113-101) and the Foundations for Evidence-Based Policymaking Act (Pub. L. No. 115-435) represent such examples of recently enacted law that need to be fully implemented.

<sup>44</sup> Demian Brady, Nat'l Taxpayers Union Foundation, *Issue Brief: Taxpayers Right-to-Know Act Would Ease Completion of an Inventory of Federal Programs*, Jan. 24, 2020, <https://www.ntu.org/foundation/detail/taxpayers-right-to-know-act-would-ease-completion-of-an-inventory-of-federal-programs>.

<sup>45</sup> U.S. Gov't Accountability Office, GAO-19-14, *Improper Payments: Additional Guidance Needed to Improve Oversight of Agencies with Noncompliant Programs* (Dec. 2018), <https://www.gao.gov/products/GAO-19-14>.