



Critical Waste Issues for the 116th Congress



About CAGW

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in government.

CAGW was founded in 1984 by J. Peter Grace and nationally syndicated columnist Jack Anderson to build public support for implementation of the Grace Commission recommendations and other waste-cutting proposals. Since its inception, CAGW has been at the forefront of the fight for efficiency, economy, and accountability in government.

CAGW has more than 1 million members and supporters nationwide. Since 1984, CAGW and its members have helped save taxpayers more than \$1.8 trillion. CAGW publishes special reports, including the *Congressional Pig Book* and *Prime Cuts*, as well as its official newspaper *Government WasteWatch* and blog *The WasteWatcher*, to expose government waste and educate the American people on what they can do to stop the abuse of their hard-earned money. Internet, print, radio, and television news outlets regularly feature CAGW's publications and experts.

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Table of Contents

Introduction	2
Accountability, Oversight, and Transparency	4
Budget Reform	7
Civil Service Reform	9
Department of Defense	11
Earmarks	16
Energy	19
Entitlements	21
Federal Real Property	28
Financial Services	30
Healthcare	34
Intellectual Property Rights	38
Institutional Reforms to Congress	41
Labor Law and Pension Reform	43
Privacy	45
Regulatory Reform	48
Technology Modernization	50
Telecommunications	53
U.S. Postal Service Reform	55

Introduction

Following the 2018 U.S. elections, the need for proposals and action to cut wasteful spending is greater than ever. Far too many members of Congress are clamoring for bigger, more intrusive government, like Medicare for all and “free” college tuition and housing. With a deficit of \$897 billion [projected](#) for fiscal year (FY) 2019 and trillion-dollar-plus deficits projected beginning in FY 2022, along with a national debt that is fast approaching \$22 trillion, this is not the time to capitulate to calls to spend more of the taxpayers’ money.¹ It is time for action to reduce the size and scope of the federal government.

Citizens Against Government Waste (CAGW) has been exposing earmarks in the *Congressional Pig Book* since 1991 and publishing a comprehensive database of recommendations to consolidate and terminate wasteful and inefficient programs in *Prime Cuts* since 1993. The publication of *Critical Waste Issues* provides a more concentrated list of some of the important proposals that CAGW believes will result in a smaller and more efficient government.

Critical Waste Issues for the 116th Congress details 18 policy areas that require immediate attention, including the need for greater accountability and transparency. Policymakers have considered many of these recommendations in the past, and completely ignored others. But with more concern than ever focused on the size and scope of the federal government, it is now time to have them implemented.

For example, the Government Accountability Office (GAO) has issued annual reports on duplicative and overlapping programs since 2011. In the 2012 annual report, GAO identified 209 science, technology, engineering and math (STEM) programs, and noted that despite spending \$3.1 billion on those programs through 13 different agencies, U.S. students “continue to lag behind students in other highly technological nations in mathematics and science achievement.” Even though this problem had not been solved by existing programs (most of which had not been evaluated for effectiveness), Congress and the executive branch continued to create new programs. GAO concluded that this proliferation of programs, one-third of which had been first funded between 2005 and 2010, in and of itself had contributed to inefficiencies in the focus and delivery of all of these programs across the federal government.

Even though the number of such programs has been slightly reduced, the STEM story is emblematic of the proclivity in the nation’s capital to create a program in order to “solve” a perceived problem. If a current program isn’t working, it doesn’t need to be fixed, because Congress can just “buy” something new to perform the same function.

Introduction (continued)

The resulting duplication and overlap and waste of taxpayer dollars is in large part due to the lack of sufficient congressional oversight to hold federal agencies accountable for results. If members do not take the time to determine which programs are working and which are wasteful, they cannot effectively allocate money. Therefore, while it is clearly the wrong solution to this lazy approach to governing, it may nonetheless be somewhat understandable that members of Congress take the “easy way” out and just create unaccountable, expensive new programs on top of equivalent programs.

It is time to repair the damage done by years of runaway spending and government waste. The adoption of the recommendations in *Critical Waste Issues for the 116th Congress* will help restore effective and efficient government. Excessive government spending results in greater involvement and interference in the economy and less personal freedom. Eliminating government waste would help transfer power from Washington bureaucrats back to the states and the people.

CAGW’s mission reflects the interests of taxpayers. All citizens benefit when government programs work cost-effectively, deficit spending is reduced, and government is transparent and held accountable. Not only will representative government benefit from the pursuit of these interests, but the country will prosper economically because government mismanagement, fiscal profligacy and chronic deficits soak up private savings and crowd out the private investment necessary for long-term growth.

Critical Waste Issues for the 116th Congress should be mandatory reading for taxpayers, the media, and all members of Congress as they tackle the biggest issues facing America.

Accountability, Oversight, and Transparency

The Freedom of Information Act (FOIA), [enacted](#) in 1967 to codify Americans' right to request and receive in a timely manner any nonproprietary information that doesn't compromise national security, has become a black hole for both taxpayers and the media.²

The Obama administration [promised](#) to be “the most transparent administration in history” and set out to reduce the overall FOIA backlog by 10 percent annually.³ Despite that lofty goal, the number of unanswered FOIA requests [reached](#) 200,000 in 2015, up by 55 percent from 2013.⁴ To address the concerns of news organizations and taxpayers alike, Congress [passed](#) the FOIA Improvement Act, signed into law by President Obama on June 30, 2016. While the legislation certainly helped give requesters a stronger legal precedent in court by codifying presumptions of disclosure, it did little to make the process more substantive and efficient.

According to the Justice Department's Office of Information Policy, in FY 2017 the federal government's more than 400 FOIA offices [reduced](#) the backlog of unanswered requests by 3.2 percent and had an 8.3 percent increase in processed FOIA requests compared with FY 2016.⁵ While those numbers show improvement, staffing and technological usage deficiencies continue to hold agencies back from reaching the annual 10 percent mark.

The way in which FOIA staffers answer requests is also very concerning. A March 12, 2018, Associated Press analysis [stated](#) that out of 823,222 answered requests in FY 2017, 78 percent were answered as censored files or blank.⁶ In other words, only about one in five FOIA requests were fully answered. The federal government also [spent](#) a record \$40.6 million in FY 2017 on legal fees defending its FOIA withholding decisions.⁷

The FOIA process continues to be woefully inefficient. The 116th Congress should fix this fractured and unresponsive process.

As internal government information is being obscured, the two largest taxpayer watchdogs, the GAO and the 72 federal agency Offices of Inspector General (OIGs), continue to pay for themselves, while rooting out waste, fraud, and abuse.

A June 2016 Brookings Institution [report](#) found that “from 2010–2014, the mean annual return on investment for IGs was 13.41.”⁸ In other words, for every dollar spent, the OIGs brought in \$13.41 in savings.

In its FY 2019 budget request, GAO [documented](#) that “in FY 2017, GAO's work resulted in a return of \$128 for every dollar invested in GAO, generating almost \$74 billion in financial benefits to the federal government.”⁹ Since FY 2003, GAO's reports have [totaled](#) more than \$785 billion in financial benefits.¹⁰

Accountability, Oversight, and Transparency (continued)

The 116th Congress should continue to fully fund GAO and the OIGs and protect these profitable watchdogs from the threat of spending reductions.

In 2010, Congress passed the Improper Payments Elimination and Recovery Act. The Department of Health and Human Services (HHS) subsequently established the Recovery Audit Contractor (RAC) program through the Centers for Medicare and Medicaid Services (CMS) to allow private-sector auditors to identify and recover improper payments by Medicare providers. Medicare is the largest source of improper payments, accounting for nearly \$40 billion annually, [according](#) to “Recovery Auditing in Medicare Fee-For-Service for Fiscal Year 2016,” a report to Congress released on September 19, 2018.¹¹

The RAC program costs taxpayers nothing, since auditors are compensated directly from the funds they recover on behalf of the Medicare Trust Fund. RACs have been highly successful, [recovering](#) nearly \$9 billion in improper payments between FYs 2010 and 2014, and they have served as both an educational resource for legitimate providers and a deterrent to unscrupulous or sloppy providers submitting error-ridden claims.¹² However, in August 2013, large provider groups with high claims error rates lobbied both HHS agency officials and members of Congress to nullify or suspend large segments of RAC audits.

Unsurprisingly, improper payment rates for Medicare have either increased or remained steady [since](#) 2013¹³ and Medicare’s actuaries have [projected](#) that the program will slip into insolvency by 2026.¹⁴ It is unconscionable, therefore, that more than 95 percent of Medicare fee-for-service (FFS) claims are paid without a review for billing accuracy, especially when CMS has at its disposal a RAC program with a proven track record of preventing improper payments.

In September 2012, CMS [launched](#) a prepayment review demonstration project in 11 states with high incidences of improper payments and fraud, as well as four states with high numbers of short hospital stays.¹⁵ Despite being hamstrung by CMS rules that prevented RACs from freely pursuing areas of vulnerability in Medicare claims and the abrupt truncation of the program one year short of its statutory three-year duration, the RAC program’s prepayment demonstration project still [recovered](#) a net of \$19 million on behalf of Medicare beneficiaries.¹⁶ Furthermore, the contractors participating in the prepayment review demonstration were able to examine the claims and resolve any billing errors within the legally mandated 30-day payment window, so as not to unduly burden Medicare providers by delaying their reimbursements.

Accountability, Oversight, and Transparency (continued)

GAO has repeatedly [recommended](#) that CMS fully implement this highly successful program, and the current RAC arrangements contain enabling language for prepayment reviews.¹⁷ Yet the Obama administration paused the prepayment review program and then allowed it to lapse entirely.

In a July 25, 2018, speech before the Commonwealth Club of California, CMS Administrator Seema Verma [addressed](#) Medicare’s chronic vulnerability to fraud and improper payments, saying, “We need to learn from our private sector colleagues, so we can be more efficient and do an even better job of safeguarding the fiscal integrity of our programs. ... we will use our demonstration authority to do more on program integrity. We need to modernize Medicare and how it handles waste, fraud, and abuse.”¹⁸ Medicare program integrity is clearly a high priority for the Trump administration, and it should also be for the 116th Congress.

Congress should grant CMS the approval it requires to revive and make permanent a nationwide Medicare prepayment claims review program. Furthermore, RACs should be allowed to use their proprietary data analytics technology, which has been used with great success for Medicare postpayment claims reviews, to identify billing areas with a propensity for erroneous payments and help prevent such payments to providers before they occur. This type of improved oversight can include not only RAC prepayment reviews, but also other tools like Medicare “smart card” technology, which the House of Representatives authorized in a pilot project in 2018.

Adding a significant prepayment review program, coupled with the current postpayment review program, is exactly the kind of private-sector best practice CMS is seeking to help prevent tens of billions in losses each year to protect Medicare now and in the future.

Restoring the full scope of the RAC program, sufficiently funding GAO and the OIGs, and further reforming the FOIA process would help demonstrate that eradicating waste, fraud, abuse, and mismanagement is being taken seriously in Washington. It would also overcome the institutional bias on Capitol Hill, in particular, that problems can be solved by creating and funding new programs rather than conducting vigorous oversight to determine the effectiveness of existing expenditures.

Members of the 116th Congress must regain the public’s trust by rediscovering and recommitting themselves to scrutinizing every corner of the federal budget, reinstating and repairing some of the government’s most powerful waste-fighting tools, and working to open the books to all Americans.

Budget Reform

The current [budget process](#) in Congress was established in 1974 by the Congressional Budget and Impoundment Control Act, also known as the Congressional Budget Act (CBA).¹⁹ The CBA created the Congressional Budget Office (CBO) and the Budget Committees in the Senate and House of Representatives. The budget process in Congress is totally broken, and reform is crucial for getting government spending under control.

According to the process established by the CBA, Congress is supposed to agree on a concurrent budget resolution by every April 15th for the coming fiscal year to set spending and revenue levels, covering 21 broadly defined functions of government. However, this timeline has been mostly ignored by Congress as all appropriations bills have been passed on time since the CBA's enactment only in four fiscal years — 1977, 1989, 1995 and 1997. Congress has instead resorted to passing [continuing resolutions](#), which provide funding similar to the previous year's level.²⁰

Passing biennial budgets that cover two years would bring increased stability and predictability to a chaotic process that has been subject to partisan bickering and grandstanding, last-minute giveaways, and government shutdowns. Regular, predictable biennial budgeting would enable Congress to increase oversight and make the process more transparent.

In addition to embracing a biennial budget process, Congress should also adopt zero-based budgeting, in which the starting number for any expenditure is zero, instead of starting each item in the budget with whatever was spent the previous year. Expenditures on any program must all be justified, not simply assumed. Congress should also enact sunset clauses to ensure that government spending does not outlive its usefulness and future spending can be paused while an evaluation of its effectiveness can be conducted. No program that was enacted 20 or 50 years ago should automatically be renewed.

Budget reform is made even more essential given the spiraling national debt, which currently stands at \$21.9 trillion. This figure is set to explode in the coming years, and the debt as a percentage of annual economic output is set to [increase](#) to its highest level since the years immediately following World War II.²¹

When a new Congress convenes every two years, the majority party in each chamber decides the rules and procedures that will govern the Senate and House respectively. Democrats, who control the House during the 116th Congress, have revived the "Gephardt Rule," introduced by former Rep. Dick Gephardt (D-Mo.), which automatically raises the debt ceiling whenever the House passes a budget. The Gephardt Rule was originally in effect from 1979 to 1995, when it was wisely repealed by the new Republican majority. The

Budget Reform (continued)

revival of the rule makes it easier to raise the federal borrowing limit, thus greatly reducing the likelihood of reducing spending to help rein in the national debt.

Lawmakers remain bitterly divided along partisan lines regarding how to address the gap between revenues and expenditures. CBO is [projecting](#) an \$879 billion deficit in FY 2019 and trillion-plus deficits beginning in FY 2022.²² This will mark the second time the U.S. will run annual deficits in excess of \$1 trillion, with the first occurring during the aftermath of the 2008 financial crisis and resulting recession.

Every part of the congressional budget process must be reformed to bring back fiscal restraint. The following proposals are essential:

1. Biennial budgets: Pass budgets that cover two years.
2. Zero-based budgeting: Start the budgeting process for each expenditure from a zero base.
3. Joint budget resolution: Convert the concurrent budget resolution into a joint budget resolution that is signed into law by the president.
4. Point-of-order protection: Amend the rules of the House so that any rule waiving applicable spending points of order would also face a point of order.
5. Entitlement cap: Limit growth in entitlement spending to the current inflationary adjustment for each program and population growth.
6. End the Gephardt Rule: Repeal the rule that makes it easier to raise the federal borrowing limit.
7. Family budget protection accounts: Allow Congress to target spending during the appropriations and direct spending processes and allow that spending to be redirected for deficit reduction.
8. Enhanced rescission: Give the president power to propose the elimination of wasteful spending in appropriations bills, which would be given expedited legislative consideration.

Congress's inability to adhere to the requirements of the budget process proves that the system needs reform. Following these recommendations would increase accountability and improve the chances of passing the appropriations bills on time.

Civil Service Reform

The federal government is the largest single [employer](#) in the nation with more than two million civilian workers, all of whom are unionized.²³ Salaries are paid by taxpayers, who should expect accountability for how workers perform on the job and spend their time.

One of the most prominent issues facing the federal civil service is the use of “official time.” Under the Civil Service Reform Act of 1978, federal employees are allowed to conduct union business during work hours while being paid their full salary. These taxpayer-funded union duties include negotiating collective bargaining agreements and filing and handling grievances against the agencies where they are employed. There is no cap on either the number of hours an individual can spend on official time or the total number of hours that can be spent on official time government wide or within each agency.

The Office of Personnel Management (OPM) reported that in FY 2016, federal workers used more than 3.6 million hours of official time at a taxpayer cost of [\\$175 million](#),²⁴ a [4 percent](#) increase in time²⁵ and a [\\$12 million](#) increase in cost from FY 2014.²⁶ The OPM report noted, “Generally speaking, federal law does not require agencies to track official time expenditures or provide agencies with uniform recordkeeping standards for official time.” An October 2014 GAO [report](#) echoed the lack of accurate measurement tools and warned that the true cost of official time could be much higher than OPM’s numbers.²⁷

In a series of executive orders issued May 25, 2018, President Trump attempted to crack down on abuse of official time. One order [instituted](#) a 25 percent cap on the amount of time a federal employee is permitted to spend on union duties.²⁸ That order also barred employees from lobbying Congress while on the taxpayers’ dime, stating, “Federal employees should spend the clear majority of their duty hours working for the public.”

Another order [streamlined](#) the ability of departments and agencies to terminate employees in a more expedited fashion.²⁹ A February 2015 GAO report [found](#) that it took an average of a year or longer to fire a lackluster federal worker.³⁰ The executive order instituted a 30-day cap on a worker’s mandated “Performance Improvement Plan.”

Unfortunately, on August 25, 2018, a U.S. District Court [struck](#) down nearly all provisions in the orders³¹ and the Washington, D.C., Circuit Court of Appeals [denied](#) the administration’s request for an expedited appeal on October 19, 2018.³² On October 5, 2018, OPM Director Jeff Pon [resigned](#), further slowing down the reform process.³³

As the broader effort at civil service reform sputters, a more focused, department-level reform has been enacted. After the insidious wait times [scandal](#) at the Department of Veterans Affairs (VA),³⁴ Congress [passed](#)

Civil Service Reform (continued)

and President Trump signed into law the Department of Veterans Affairs Accountability and Whistleblower Protection Act on June 23, 2017.³⁵ The law expedites the process of dismissing an employee to less than a month, significantly shortening a process that had previously taken several months or years.

The fits and starts of civil service reform make it even more critical for Congress to consider key pieces of legislation that would help accomplish the goal of a leaner and more accountable federal workforce. In March 2015, Rep. Jody Hice (R-Ga.) and Sen. Johnny Isakson (R-Ga.) [introduced](#) the Federal Employee Accountability Act, which would eliminate official time for federal employees.³⁶ Federal workers acting as union representatives would no longer be paid by taxpayers to negotiate their collective bargaining contracts. These companion bills never moved out of their respective committees.

On January 13, 2017, Rep. Barry Loudermilk (R-Ga.) [introduced](#) the Modern Employment Reform, Improvement, and Transformation (MERIT) Act.³⁷ Sen. David Purdue (R-Ga.) [introduced](#) companion legislation in the Senate on July 12, 2018.³⁸ The bills would give a fired employee just 30 days to appeal and would double the probationary period for new hires, making it easier to dismiss employees who are not a good fit. The House version passed out of the House Oversight and Government Reform Committee on July 17, 2018, but it died on the House floor. The Senate bill was never considered.

Federal workers who collect paychecks funded with taxpayer dollars should be held to the highest performance and ethical standards. Any federal employee who breaches the public trust through poor performance or unethical behavior should be subject to a fair but swift termination process. As the executive branch implements reforms, Congress should also exercise its authority to ensure that the federal bureaucracy is not taking advantage of taxpayers.

Department of Defense

As the U.S. federal budget increases every year, it is entirely possible that one day soon the budget for the Department of Defense (DOD), which is the government's largest discretionary expenditure, will eclipse \$1 trillion annually. The \$717 billion approved for FY 2019 is one of the [highest](#) amounts in U.S. history, accounting for approximately one-sixth of federal spending.³⁹ Making matters worse, the DOD remains the sole federal agency that has not undergone a clean audit under the Chief Financial Officers Act of 1990.

To ensure the DOD spends its dollars wisely, the 116th Congress should focus on two key areas.

Financial Disarray

In November 2018, the DOD released the results of its first-ever departmentwide audit. It did not bode well for the Pentagon. Speaking to reporters on November 15, 2018, Deputy Secretary of Defense Patrick Shanahan [stated](#), "We failed the audit, but we never expected to pass it."⁴⁰

Although a few areas, such as the Army Corps of Engineers, the Defense Health Agency, and the Military Retirement Fund, [received](#) a passing grade, the DOD largely met the ultra-low expectations it had set for the audit.⁴¹ The inspection revealed "significant information technology systems security issues" and 20 "material weaknesses" in internal controls. Although the report did not identify specific instances of fraud, it revealed that the Pentagon does not adequately track the various payments it makes, bringing into question the veracity of financial statements.

The audit provided insight into multiple areas where the Pentagon can improve, including compliance with cybersecurity policies and improving inventory accuracy. Although the DOD has already begun addressing some of the failures identified, spending [approximately](#) \$559 million on fixes, it did not disclose how much money had turned up missing.⁴² Considering the \$2.7 trillion in assets, \$2.6 trillion in liabilities, and near-record levels of spending in FY 2019, that amount is likely to be substantial.

The necessity for the Pentagon to get its financial house in order is revealed on a regular basis, as numerous problems have cropped up in recent years. A July 26, 2016 DOD OIG [report](#) noted that the Defense Financing and Accounting Service, which provides payment for military and civilian personnel and retirees, could not adequately document \$6.5 trillion worth of year-end adjustments to general fund transactions and data.⁴³ The books are so bad that areas within the DOD have been on the GAO list of programs at high risk for waste, fraud, abuse, and mismanagement since 1995.

Department of Defense (continued)

The road to the failed audit has been long and arduous. In 2013, the Pentagon [announced](#) with much fanfare that the Marine Corps had become the first military service to attain a clean audit.⁴⁴ Then-Secretary of Defense Chuck Hagel even held a ceremony on February 6, 2014, stating, “I know that it might seem a bit unusual to be in the Hall of Heroes to honor a bookkeeping accomplishment, but, damn, this is an accomplishment!”

Damn, that celebration was short-lived. A July 30, 2015 GAO report on the Marine Corps audit [stated](#) that the DOD IG “did not perform sufficient procedures, under professional standards, and consequently did not obtain sufficient, appropriate audit evidence to support the audit opinion.”⁴⁵ It remains to be seen whether the DOD-wide audit manages to avoid the catastrophic flaws that plagued the 2013 Marine Corps inspection.

It appears the DOD is still years away from passing a clean audit. Until it does, members of Congress should continue to press for more rigorous financial oversight at the Pentagon.

Poor Acquisition Track Record

The acquisition side of defense spending is also a mess, including several infamous procurement disasters that are emblematic of the Pentagon’s systemic problems. Two of the most egregious examples of acquisition malpractice are the F-35 Joint Strike Fighter (JSF) and the Littoral Combat Ship (LCS).

The misadventures of the JSF program have been well-documented, as the program has been plagued by an abundance of persistent issues. In development for 17 years and seven years behind schedule, total acquisition costs now exceed \$406 billion, nearly double the initial estimate of \$233 billion. An April 2015 GAO [report](#) noted that the lifetime operation and maintenance costs of the most expensive weapon system in history will total approximately \$1 trillion.⁴⁶ On April 26, 2016, Senate Armed Services Committee Chairman John McCain (R-Ariz.) [called](#) the JSF program “both a scandal and a tragedy with respect to cost, schedule, and performance.”⁴⁷

As in each preceding year, 2018 brought more bad news. A May 2018 House Armed Services Committee (HASC) [report](#) revealed that the Navy’s version, the F-35C, may lack sufficient range to function adequately in a future war.⁴⁸

Many of the problems with the F-35 program can be traced to the decision to develop and procure the aircraft simultaneously. Whenever problems have been identified, contractors needed to go back and make changes to aircraft that were already assembled, adding to overall costs. Speaking at the Aspen Security Forum on July 24, 2015, Air Force Secretary Deborah Lee James [stated](#),

Department of Defense (continued)

“The biggest lesson I have learned from the F-35 is never again should we be flying an aircraft while we’re building it.”⁴⁹

Unbelievably, the JSF program office and members of Congress appear ready to repeat this mistake yet again. A June 5, 2018 GAO [report](#) found that major technological deficiencies still exist despite the F35 nearing the October 2019 time frame when it will enter full production.⁵⁰ According to the GAO, in its “rush to cross the finish line, the program has made some decisions that are likely to affect aircraft performance and reliability and maintainability for years to come.” Those decisions include the choice to address existing flaws after full production is initiated.

Remarkably, some DOD brass do not appear overly concerned. On December 19, 2016 now-retired Lieutenant General Christopher Bogdan, who at the time headed the F-35 Program Office, [claimed](#), “This program is not out of control.”⁵¹ For this stark example of institutional bias, CAGW named Lt. Gen. Bogdan [Porker of the Month](#) for January 2017.⁵²

In February 2014, then-Under Secretary of Defense for Acquisition, Technology, and Logistics Frank Kendall [referred](#) to the purchase of the F-35 as “acquisition malpractice,” a description that has yet to be improved upon.⁵³

Rather than asking pressing questions as to whether the F-35 remains worthy of further commitment, members of Congress provided earmarks for 20 additional aircraft in FY 2018. Upon completion of the development phase, additional funding will be needed to retrofit the 20 planes purchased via earmarks in FY 2018.

One crucial consequence of the delays and underperformance of the JSF program is that those aircraft it was meant to replace are aging rapidly, leaving a readiness gap. During a February 7, 2017 HASC hearing, Vice Chief of Naval Operations Admiral William Moran [claimed](#) that the number of grounded F/A-18s is “double where we should be.”⁵⁴ As of February 2017, 62 percent of the planes were nonoperational, and 53 percent of the Navy’s total air fleet was grounded.

Beyond the litany of cost overruns and delays, doubts exist as to whether the JSF will be an improvement over existing aircraft. Members of Congress such as Sen. Martha McSally (R-Ariz.), who served 26 years in the Air Force and retired as a colonel in 2010, have [questioned](#) whether the F-35 will exceed the performance of the (far cheaper) A-10 in providing close air support (CAS) of troops on the ground.⁵⁵

Air Force leadership appears to have seen enough of the F-35 to determine it is not up to the job of providing CAS. According to a February 2, 2018 *Defense*

Department of Defense (continued)

News [article](#), the service is in the initial stages of exploring a new CAS aircraft to replace the A-10.⁵⁶

Unfortunately, the JSF is not the only indication of a broken procurement system. Known to some inside the Navy as the “Little Crappy Ship,” the LCS has been a disaster since its inception, with problems that include a vaguely defined mission, a lack of [firepower and survivability](#), and design flaws leading to [cracks](#) in the hull and [corrosion](#).⁵⁷ The number of ships the Navy intends to purchase has been cut in half, from 55 to 28, while the cost per ship has increased by 117.3 percent, from \$220 million to \$478 million.

Delays have also plagued the LCS. A June 2018 GAO [report](#) noted that “deliveries of almost all LCS under contract have been delayed by several months, and, in some cases, a year or longer.”⁵⁸ The average LCS Freedom variant is 16 months behind schedule, while the average Independence variant is delayed by 14 months.

The program has become so troubled that the Pentagon took active measures to undermine the bad press. According to a March 2017 GAO [report](#), the DOD Office of Prepublication and Security Review, which is charged with reviewing information to be released to the public, blocked critical information regarding cost growth in the LCS program.⁵⁹

A 2014 Navy evaluation of potential alternatives to the LCS rejected other ship designs and opted instead to modify the LCS slightly and redesignate it as a frigate.

A December 1, 2016 GAO [report](#) disagreed with the planned acquisition of the final two old-model ships in FY 2017, citing their obsolete design.⁶⁰ The report also criticized the Navy’s request for 12 frigates in FY 2018, questioning “whether a ship that costs twice as much yet delivers less capability than planned warrants an additional investment of nearly \$14 billion.”

As is so often the case with deeply flawed DOD programs, the justification for additional LCS funding can be boiled down to a desire to protect jobs. In a March 20, 2018 HASC [hearing](#), HASC member Bradley Byrne (R-Ala.), whose district hosts the Austal USA shipyard that builds one of the two versions of the LCS, reproached Navy Secretary Richard Spencer for requesting only one LCS in FY 2019.⁶¹ Rep. Byrne stated in the hearing, “Unfortunately, your acquisition plan for small surface combatants fails to provide for an enduring industrial base. In fact, it will erode the industrial base for those ships,” and reducing the program to one annual ship will result in “thousands of shipyard workers” being laid off.

Parochial politics should not drive defense strategy.

Department of Defense (continued)

The deficiencies that have plagued the DOD in recent years have been identified ad nauseum. The Pentagon's track record in addressing its financial shortcomings and procurement failures makes it evident that these will continue until members of Congress hold the DOD to a much higher standard of effectiveness and efficiency.

Earmarks

Each year since the earmark moratorium was established in 2011, lawmakers from both parties have called for the restoration of earmarks. Prominent proponents include Senate Appropriations Committee Chairman Richard Shelby (R-Ala.) and committee members Susan Collins (R-Maine), Dick Durbin (D-Ill.), and Patrick Leahy (D-Vt.); House appropriators Tom Cole (R-Okla.) and Mike Simpson (R-Idaho); and leaders like House Majority Leader Steny Hoyer (D-Md.) and Majority Whip James Clyburn (D-S.C.).

Although the Senate agreed to extend the moratorium in the 115th Congress, the House did not. However, then-Speaker Paul Ryan (R-Wis.) eventually killed the effort to revive earmarks late in the second session of that Congress.

When Democrats approved the rules for the 116th Congress, they did not extend the moratorium, while House Republicans agreed in their conference rules that they would abide by the moratorium. Senate Republicans are expected to agree to extend the moratorium once again, setting up what should be an interesting series of appropriations bills and possibly an infrastructure bill under which House Democrats will feel free to include earmarks, while Republicans will have to resist the siren's call of these wasteful expenditures and uphold their decision to abide by the moratorium.

Since earmarks will be coming back, it is worth revisiting why this corrupt, inequitable, and costly practice was subject to the moratorium in the first place.

The movement gained traction due to the tireless work of members of Congress such as then-Sen. Jeff Flake (R-Ariz.) and the late Sen. John McCain (R-Ariz.); high-profile boondoggles such as the Bridge to Nowhere; and a decade of scandals that resulted in jail terms for Reps. Randy "Duke" Cunningham (R-Calif.) and Bob Ney (R-Ohio) and lobbyist Jack Abramoff.

Earmarks provide the most benefit to those with spots on prime congressional committees. In the 111th Congress, when the names of members of Congress who obtained earmarks were included in the appropriations bills, the 81 House and Senate appropriators, making up 15 percent of Congress, were responsible for 51 percent of the earmarks and 61 percent of the money.

As Sen. McCain [explained](#) regarding those making the case for a return to earmarks, "The problem with all their arguments is: the more powerful you are, the more likely it is you get the earmark in. Therefore, it is a corrupt system."⁶² A return to rampant earmarking would increase the risk of corruption and reinstate the grossly inequitable distribution of money that has always favored a small group of legislators.

Another argument centers on the Article I tax and spending power given to

Earmarks (continued)

Congress. As Sen. Mike Lee (R-Utah) and Rep. Jeb Hensarling (R-Texas), co-leaders of the Article I Project, [wrote](#) in 2017 in regard to earmarks, “Congress needs to assert its power of the purse, but not in this manner.”⁶³ As practiced in the past, Lee and Hensarling continued, “earmarking was not the innocuous exercise of Congress’ constitutional spending power; it was the tool lobbyists and leadership used to compel members to vote for bills that their constituents — and sometimes their conscience — opposed.” Bringing back earmarks, they wrote, “would make our job harder, make Congress weaker and make federal power more centralized, less accountable and more corrupt.”

Those sentiments echo President James Monroe’s May 4, 1822 [Special Message](#) to Congress regarding its authority to spend money on internal improvements in the U.S.: “It is, however, my opinion that the power should be confined to great national works only, since if it were unlimited it would be liable to abuse and might be productive of evil.”⁶⁴

One of the more frequently used arguments in favor of earmarks is that they help pass legislation, which even President Trump [mentioned](#) on January 9, 2018.⁶⁵ But earmarks cause members to vote for excessively expensive spending bills that cost tens or hundreds of billions of dollars in [exchange](#) for a few earmarks worth a few million or sometimes just thousands of dollars.⁶⁶

Unfortunately, even under the earmark moratorium, CAGW has been able to uncover hundreds of earmarks, using the definition it established in 1991 in conjunction with the bipartisan Congressional Porkbusters Coalition. Nonetheless, the moratorium at least succeeded in reducing the number of wasteful projects, and the dollars spent on them.

The cost of earmarks peaked in FY 2006, when members of Congress added 9,964 projects costing \$29 billion. In the first five years following the imposition of the earmark moratorium in FY 2012, members of Congress added an average of 130 earmarks each year costing on average \$4.4 billion, far below the levels reached annually on average prior to the ban on earmarks.

In [FY 2018](#), legislators made a partial return to the bad old days, adding 232 earmarks, an increase of 42.3 percent, from the 163 in FY 2017.⁶⁷ The cost of earmarks in FY 2018 jumped from \$6.8 billion in FY 2017 to \$14.7 billion, an increase of 116.2 percent. This marked the first time since FYs 1992-1993 that spending on earmarks had at least doubled.

Much of the explosion of earmarks in FY 2018 can be attributed to the passage of the Bipartisan Budget Act of 2018, which was approved on February 8, 2018. That legislation obliterated the spending caps established in the 2011 Budget Control Act (BCA) and increased spending by \$143 billion, or 13.4 percent, in

Earmarks (continued)

FY 2018 compared with FY 2017. With the demise of the BCA, members of Congress were free to earmark to their heart's content, and they did at a pace that was almost nine times greater than the overall increase in spending.

The one downside of the earmark moratorium has been a reduction in transparency. During FYs 2008-2010, the three years prior to the moratorium, members of Congress were required to add their names to projects they were responsible for, and list the specific location of the recipient. This information is no longer available, and earmarks are now found throughout the appropriations bills, increasing the amount of effort necessary for identification. Under the old system, earmarks were largely contained in a section at the end of the legislation. CCAGW is not suggesting that earmarks should be restored in exchange for increased transparency. But, knowing that House Democrats are planning to begin earmarking spending bills, they should adhere to strict transparency and accountability when they do so.

Since FY 1991, CAGW has identified 110,861 earmarks costing \$344.5 billion. While those figures are certain to increase with the publication of the *2019 Congressional Pig Book*, the number and cost of earmarks for FY 2019, which will appear in the *2020 Pig Book*, are highly likely to explode due to the proposed restoration of earmarks in the House.

Taxpayers should not only object to the decision by House Democrats to restore earmarks, they should demand that the 116th Congress permanently ban earmarks.

Energy

Both the Senate and the House of Representatives will consider broad energy legislation in the 116th Congress. While energy policy should focus on freeing the energy market from government intervention, ensuring a secure supply of energy to meet the needs of a growing economy, and increasing domestic production of critical and conventional energy resources, proposals such as the “Green New Deal” would undermine those objectives.

All federal lands and waters that are not part of the national park system or congressionally designated areas should be open to exploration and production for America’s growing energy needs. States should be delegated the authority to manage resource development within their borders and off their shores.

Domestic production of consumer goods and technologies, including the production of smart devices, flat-screen TVs, and the next generation of electric smart cars, is challenged by America’s dependence on foreign minerals. Leading carmakers expect the demand for minerals such as cobalt and [lithium](#) to rise as world production of electric vehicles increases.⁶⁸ Manufacturers use those minerals to make ion batteries, circuits, and charging stations, among other items.

In December 2017, President Trump signed an [executive order](#) to end U.S. dependence on foreign minerals.⁶⁹ In support of that executive order, the Department of the Interior [published](#) in May 2018 a list of 35 mineral commodities considered critical to the country’s economic and national security.⁷⁰ As noted elsewhere in this report, most of the land owned by the federal government is concentrated in 10 Western U.S. states. Those states also account for 75 percent of [domestic metal production](#).⁷¹ While America possesses a mineral reserve base estimated to be worth [\\$6.2 trillion](#),⁷² half of these minerals are restricted or off-limits to mining, and access to the other half has been hampered by a lengthy and outdated permitting process.

Congress should also streamline and complete licensing for Yucca Mountain. Located on federal land outside Las Vegas, Yucca Mountain was designated by Congress as the sole site the Department of Energy (DOE) could study for disposal of spent fuel and other high-level nuclear waste. But Yucca Mountain has never been opened. This means the government cannot take possession of America’s spent nuclear waste, so it currently sits in temporary sites across the country. Taxpayers have shelled out approximately \$7 billion, or [about \\$2.2 million a day](#), in temporary storage costs for the stockpile of spent fuel.⁷³

Taxpayers and electricity rate payers have spent around [\\$39.6 billion](#) on the Yucca Mountain site, and no scientific evidence has disqualified it as a viable option.⁷⁴ Congress should direct the Nuclear Regulatory Commission to complete its review of the Yucca Mountain permit application and move

Energy (continued)

America's nuclear waste to its intended destination.

The existing energy market suffers from oppressive [energy regulations](#) as well as subsidies to both fossil fuels and green energy.⁷⁵ The solution to fixing the energy situation should be to repeal onerous regulations and to get rid of existing subsidies that distort the market.

However, the Trump administration is [advocating](#) adding new subsidies for coal and nuclear to further distort the playing field.⁷⁶ The DOE made the unfounded claim that closing both coal and nuclear power plants threatens national security. A [40-page memo](#) to the National Security Council has laid out a strategy on how to reinforce this claim.⁷⁷ The memo asserts that U.S. military installations are 99 percent dependent on the commercial power grid, and therefore reliability of the electric system is vitally important to national defense. It argues that the federal government must oversee the decommissioning of power plants to ensure the U.S. doesn't reach a tipping point in the loss of vital and secure energy resources. The memo lays out a plan whereby the DOE would direct the purchase of power from a designated list of facilities over the next two years "to forestall any future action toward retirement, decommissioning or deactivation." Fortunately, the Federal Energy Regulatory Commission rejected this plan.⁷⁸

Congress and the Trump administration should work together to open access to energy resources, expand opportunities for domestic and foreign investment, reduce regulations, and protect free and open energy markets.

Entitlements

In FY 2018, [total federal outlays](#) were \$4.152 trillion, or 20.5 percent of the gross domestic product (GDP), compared with \$3.978 trillion in 2017. Spending on mandatory programs, the formal budget designation for entitlement programs, totaled \$2.56 trillion in FY 2018, or 61.7 percent of total outlays.⁷⁹

[According to](#) the January 2019 CBO report “The Budget and Economic Outlook: 2019 to 2029,” the three largest entitlement programs, Social Security, Medicare, and Medicaid, [cost](#) \$982 billion, [\\$704](#) billion, and [\\$389](#) billion, respectively, in FY 2018.⁸⁰ The CBO stated in its 2019 report that “because of persistently large deficits, federal debt held by the public is projected to grow steadily, reaching 93 percent of GDP in 2029 (its highest level since just after World War II) and about 150 percent of GDP in 2049 — far higher than it has ever been. ... Moreover, if lawmakers amended current laws to maintain certain policies now in place, even larger increases in debt would ensue.”⁸¹

The Trustees for the Social Security and Medicare trust funds [stated](#) the following when they released their June 2018 annual [reports](#), “The 2018 Annual [Report](#) of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds” and the “2018 Annual [Report](#) of the Boards of Trustees of the Federal Hospital and Federal Supplementary Medical Insurance Trust Funds”:

Both Social Security and Medicare face long-term financing shortfalls under currently scheduled benefits and financing. Lawmakers have a broad continuum of policy options that would close or reduce the long-term financing shortfall of both programs. The Trustees recommend that lawmakers take action sooner rather than later to address these shortfalls, so that a broader range of solutions can be considered and more time will be available to phase in changes while giving the public adequate time to prepare. Earlier action will also help elected officials minimize adverse impacts on vulnerable populations, including lower-income workers and people already dependent on program benefits.⁸²

Social Security

The Old Age, Survivors, and Disability Insurance program, or Social Security, along with the Social Security Disability Insurance (SSDI) program, makes monthly income payments to insured workers and their families at retirement, death, or disability. Social Security was created in 1935 and is the largest single program in the federal budget, paying monthly benefits to [68 million](#) beneficiaries in 2018.⁸³

Entitlements (continued)

According to an American Academy of Actuaries [report](#), the combined Social Security trust reserves are projected to be depleted during 2034. If Congress does not implement changes by that year, only 79 percent of scheduled benefits would be payable, and that will decline to 74 percent by 2092.⁸⁴

When the Social Security program was created, average [life expectancy](#) at birth was 58 for men and 62 for women.⁸⁵ Today, if a man reaches 65, he can be [expected to live](#), on average, to 84; a woman, on average, will live to age 87.⁸⁶ Improving the financial status of Social Security is critical to promoting a sustainable budget and ensuring that earned benefits will be paid. Reforms will entail making sacrifices and tough choices, no matter how politically unpopular, but changes must be made to avoid an even bigger financial crisis.

Currently, the [earliest](#) retirement age at which benefits can be paid is 62, but that retiree will receive only 70 to 75 percent of his or her full-retirement-age monthly benefit, depending on date of birth. The full retirement age was 65 until 1983, when Congress passed the Social Security Amendments of 1983 to gradually raise the full retirement age for people born in 1938 or later. For example, if someone was born in 1942, the full retirement age is 65 years and 10 months. If someone was born in 1953, his or her full retirement age is 66. The full retirement age for those born after 1959 is 67.⁸⁷

Because medical science and technology are advancing, the average life span will continue to lengthen; thus, Social Security's normal retirement age (NRA) should continue to be raised. By making some additional changes in retirement and benefit structures, Social Security can be salvaged for current and future beneficiaries.

The Social Security Office of the Chief Actuary has [produced](#) a "Summary of Provisions That Would Change the Social Security Program," which includes raising the NRA to different levels over different periods of time, thus providing varying degrees of savings to extend Social Security's solvency. The most aggressive proposal would increase the NRA three months per year starting for those at age 62 in 2019, until the NRA reaches 70 in 2033. This proposal would eliminate approximately 48 percent of the long-range shortfall.⁸⁸

In addition to raising the NRA, Social Security benefit increases should be tied to prices rather than wages. Under the current system, as productivity rises so do wages, thereby increasing benefit levels. Progressive price indexing would index initial benefit levels for middle-income and upper-income families to price inflation rather than wage growth, while ensuring that the relative living standard of retirees is not eroded.

Entitlements (continued)

SSDI

SSDI makes up about 17 percent of total Social Security costs, or approximately [\\$144](#) billion in 2018. Under current law, the balance of the DI fund is expected to be exhausted by 2027.⁸⁹

The total number of disabled workers receiving SSDI benefits was approximately 2.7 million in 1985 and rose to approximately 9.0 million in 2014. It then declined to about 8.7 million in December 2017.⁹⁰

A 2015 GAO [report](#) showed widespread fraud and poor oversight of the SSDI program. From 2005 to 2014, the Social Security Administration overpaid \$11 billion in SSDI benefits to beneficiaries who had returned to work and received earnings above program limits.⁹¹

An April 2018 GAO [report](#) found that although the Social Security Administration had taken steps to identify and properly manage risk in the SSDI program, more remains to be done. The agency “had not yet comprehensively assessed these fraud risks or developed a strategic approach to help ensure its antifraud activities effectively mitigate those risks.”⁹²

SSDI has been cited as a “welfare” program under which able-bodied adults have been given government checks for life due to a congressional expansion of what it means to be disabled.⁹³ Because it continues to be a high-risk program, more federal oversight and substantial reforms are needed to prevent people from gaming the system and to ensure funds are available for the truly disabled.

Medicare

In its 2018 annual report, the Medicare Board of Trustees [wrote](#), “The estimated depletion date for the HI [hospital insurance] trust fund is 2026, 3 years earlier than in last year’s report. As in past years, the Trustees have determined that the fund is not adequately financed over the next 10 years.”⁹⁴

Established in 1965 under Title XVIII of the Social Security Act, Medicare provides health insurance to individuals age 65 and older. It has been expanded beyond its original purpose to include people younger than 65 who cannot work because of a medical condition that will last at least a year or result in death, have end-stage renal disease, or suffer from amyotrophic lateral sclerosis (Lou Gehrig’s disease). In 2018, [59.1](#) million seniors and disabled Americans were enrolled in Medicare. The program is run by the CMS, which contracts with private entities to process claims, conduct audits, and oversee quality control.⁹⁵

Entitlements (continued)

The GAO has designated Medicare and Medicaid as high-risk programs because “their size, scope, and complexity make them vulnerable to fraud, waste, and abuse.” In 2016, CMS estimated that the FFS improper payment rate was approximately 11 percent, or \$41 billion.⁹⁶

In 1967, the House Ways and Means Committee [predicted](#) that the entire Medicare program would cost taxpayers \$12 billion in 1990, but its cost that year was \$98 billion.⁹⁷ The CBO’s January 2019 “Budget and Economic Outlook” predicted that spending for Medicare will reach \$1.52 trillion by 2029, which means higher debt and greater unfunded obligations.⁹⁸

Yet, despite the dire economic outlook for Medicare, efforts are under way that would double down on the country’s debt by creating a new healthcare entitlement, “Medicare for All.” Sen. Bernie Sanders (I-Vt.) and several members of Congress believe this single-payer, government-run health insurance system would solve the nation’s health problems and, in the end, be less expensive.⁹⁹ But just as other countries have resorted to rationing, price fixing, and high taxation to pay for their “free healthcare,” the U.S. will also follow that road should this plan be adopted.

Creating a single-payer system would mean that neither private insurance nor the current Medicare program would exist in their current forms. Those that support a single-payer plan admit that taxes would need to be raised. Sen. Sanders’s [plan](#) states that there would be a 6.2 percent tax on employers, a 2.2 percent income tax on households, and progressively higher taxes on “the wealthy,” meaning those who make \$250,000 or more a year.¹⁰⁰

A July 2018 Mercatus [study](#), “[The Cost of a National Single-Payer Healthcare System](#),” estimated that Medicare for All would add \$32.6 trillion over 10 years to the federal budget, and that is conditioned on doctors and other providers accepting drastically reduced payments of at least 40 percent, plus substantially decreased pharmaceutical and administration costs. The report also projected that the increase of federal commitments would be equal to 10.7 percent of the gross national product (GNP) in 2022 and 12.7 percent of GNP in 2031, and sequentially rising going forward. Even if the projected federal individual and corporate taxes were doubled, there would not be enough revenue to finance the program.¹⁰¹

A May 2016 Urban Institute [report](#) also estimated that a single-payer healthcare plan would increase federal expenditures by \$32 trillion for the same time period and that Sanders’s proposed taxes would be much too low to finance the plan.¹⁰²

Entitlements (continued)

Several states have considered adopting a single-payer healthcare system, until they saw the cost. Sen. Sanders's home state of Vermont came the closest to executing such a plan, until the estimates came in. Even though Vermont is a wealthy state with a low uninsured rate, implementing the plan would have required doubling the state's budget. The Democratic governor, who had campaigned on the idea, ditched the plan, stating it was "unwise and untenable."¹⁰³

Instead of expanding Medicare to the entire country, the financially troubled program must be reformed so that it will be available for future seniors.

The dynamics making Medicare unstable are a growing elderly population, increasing costs, and an archaic payment system that encourages overuse of medical services and perpetuates mismanagement and fraud. Congress must restructure the entire program and infuse market forces into the system to lower costs and improve care.

CAGW has long supported converting Medicare FFS to a premium support system that would allow beneficiaries to choose from a variety of private health plans that would compete for their business, similar to the Federal Employees Health Benefits Program. The federal government would provide a "defined contribution" to lower a beneficiary's premium. Contributions would increase for low-income beneficiaries or those that become chronically ill.

An October 2017 CBO [report](#), "A Premium Support System for Medicare: Updated Analysis of Illustrative Options," said such a system could save taxpayers \$419 billion between 2022 and 2026, without grandfathering — in other words, requiring all Medicare beneficiaries to move to the premium support program once it began. The savings would come about because competing private insurers would help to drive down premium costs. As a result, there would be a lower federal contribution compared with FFS costs per capita.¹⁰⁴

If grandfathering were allowed, enabling beneficiaries to choose to stay in the current Medicare program after the premium support program began, the CBO found that net federal spending for Medicare would drop by \$50 billion between 2022 and 2026.¹⁰⁵ However, it has been argued that as time went on many current beneficiaries would switch to the premium support model, as opposed to traditional FFS, because they would prefer more efficient, but less expensive plans that provide similar or even better service. Current Medicare Advantage beneficiaries would have no problem adapting to what would be a similar system, and others would find that a premium support model resembled the type of insurance they had while employed.¹⁰⁶

Entitlements (continued)

Medicaid

Medicaid is the largest public health program serving low-income individuals and families. It covered just under [73 million people in 2018](#), which includes 6.6 million enrolled in the Children’s Health Insurance Program (CHIP).¹⁰⁷ Medicaid is a jointly funded, federal–state health insurance program. When the program was created in 1965, it provided health insurance to low-income children, caretaker relatives, the elderly, the blind, and the disabled. Through the years, other individuals became eligible for Medicaid, especially when it was expanded to include able-bodied adults under the Patient Protection and Affordable Care Act (ACA), or Obamacare.

The federal government matches every dollar spent by the states with a calculated amount dependent on per capita income, called the Federal Medical Assistance Percentage ([FMAP](#)), and a multiplier, which can vary from year to year. While the FMAP average is 50 percent, and can be no lower than that amount, some states get much more. For example, Mississippi will receive a match rate of approximately 76.4 percent for 2019.¹⁰⁸

Not only is Medicaid expensive, it invites fraud. In 2017, the HHS OIG was able to obtain [\\$1.8 billion](#) in civil and criminal recoveries.¹⁰⁹ It is not clear how much fraud it was unable to recover, however, according to a December 2017 [GAO report](#). In FY 2016, CMS estimated an improper payment rate of 10.5 percent, or \$36 billion.¹¹⁰

Obamacare allowed states to expand Medicaid coverage to nearly all low-income people under the age of 65, including able-bodied adults with incomes at or below 138 percent of the federal poverty level. Medicaid expansion under Obamacare also provides a much larger FMAP payment. Starting in 2014 and through 2016, the federal government covered 100 percent of Medicaid expansion dollars. In 2017, that amount dropped to 95 percent, gradually diminishing to 93 percent in 2019 and to 90 percent in 2020 and beyond.

[According to](#) the CBO, about 12 million people will have received insurance through Medicaid expansion in 2018, compared with 9 million who obtained private insurance through the Obamacare marketplaces.¹¹¹ As of this report, [37 states](#), including Washington, D.C., have expanded Medicaid.¹¹² Because of Congress’s inaction on repealing and replacing Obamacare, other states are looking to expand Medicaid. For example, voters in Idaho, Maine, Nebraska, and Utah approved ballot initiatives to extend Medicaid to able-bodied adults.¹¹³

Generally, states that expanded Medicaid under the ACA saw larger enrollment than expected in 2014. A recent example is Virginia, which expanded Medicaid in 2018 and is on track to enroll 375,000 residents, or 25 percent more than the original estimate of 300,000. At the end of 2018, the state reported a \$460

Entitlements (continued)

million cost overrun in Medicaid due to the start-up costs of converting to a managed-care system, which is a budget issue that it will need to address in 2019. One question that has been raised is this: if accurate estimates cannot be obtained for the regular Medicaid program, how accurate will the cost estimates be for Medicaid expansion?¹¹⁴

According to the Medicaid and CHIP Payment and Access Commission, between 2015 and 2017, spending rates were lower than expected and this is likely due to the initial surge diminishing. However, because the federal government contribution is dropping, states will start to see their contribution grow. And as with most federal programs, this one will likely end up costing far

more than initially assumed. For example, in 1965, the House Ways and Means Committee predicted Medicaid would cost \$238 million in its first year; its cost was more than \$1 billion. In 1969, the Senate Finance Committee reported the following: “Expenditures under the Medicaid program have increased much more rapidly than anyone had anticipated. Between 1965 and 1970, total Federal, State, and local costs will have risen from \$1.3 billion to \$5.5 billion.”¹¹⁵

It has been stated that it will only be a matter of time before Congress looks to decrease the 90 percent FMAP, relying on the states to pick up the remaining cost for expanding Medicaid. In December 2018, the CBO provided this option to reduce the national debt. In fact, former President Obama offered this option as a budget pay-for, \$100 billion over 10 years, to the “Supercommittee” during deficit-reduction talks in 2011.¹¹⁶

Studies have shown that Medicaid provides substandard care. Indeed, prior to Obamacare, almost one-third of physicians did not accept new Medicaid patients, with some states having even higher nonparticipation.¹¹⁷ Medicaid expansion caused a surge in emergency room use, contrary to what was promised. This means emergency rooms are crowded with non-urgent cases and that Medicaid patients are likely not getting the specialized care they may need.¹¹⁸

The best way to reform and restrain Medicaid spending while introducing more innovation and oversight and providing better care to beneficiaries is by using federal block grants or per capita allotments while turning over full control of the program to the states. Enabling patients to use Medicaid funds to obtain private insurance that would compete for their business could be accomplished by adopting the [Health Care Choices Proposal](#) discussed in the healthcare reform section of this report.¹¹⁹

Federal Real Property

Republicans and Democrats agree that the government should get rid of empty and underused buildings, yet this has not been done effectively. The two parties disagree on what types of other [properties](#) should be divested.¹²⁰ According to a 2016 [poll](#) from the Colorado College State of the Rockies Project, 85 percent of Democrats are against the selling of any public land for any reason.¹²¹

Uncle Sam owns more property than any other entity in the U.S. — approximately three out of every 10 acres, or more than 640 million acres. This includes [around 273,000 buildings](#) that it leases or owns and that cost billions of dollars annually to operate and maintain.¹²² Given the unreliability of the Federal Real Property Profile (FRPP), one cannot quantify the precise number of buildings the government owns or how they are utilized. Knowing exactly how many properties the federal government owns and leases, where they are located, and how much is being spent on rent and maintenance are the first steps toward ensuring taxpayer money is not wasted.

The government must fix the reliability of the FRPP, and once that is done it should use the information to help decrease the federal footprint and divest surplus property. The federal government has shown that it can neither manage its existing properties nor justify the amount of empty land that it owns. A 2010 CRS [report](#) estimated approximately 77,000 government-owned or -leased buildings were vacant or underutilized at the time the report was published.¹²³ Shuttered buildings crumble due to neglect, meaning federal agencies face higher repair and clean-up costs before they can divest the properties. This makes it less likely such buildings will be repaired or sold.

Title V of the [McKinney-Vento Homeless Assistance Act of 1987](#) requires that excess federal property be offered to states, municipalities, or nonprofit groups that provide services for homeless people before such property can be sold to anyone else.¹²⁴ A February 2016 CRS report [found](#) that this requirement can add months or years to the divestment process.¹²⁵ A month after that report was published, former Rep. Jeff Denham (R-Calif.) [told](#) the *Los Angeles Times* that this existing requirement meant that “[a] homeless advocacy group could actually put a hold on any property that we were trying to sell. That created a disincentive for agencies actually trying to sell.”¹²⁶ A June 2015 GAO [report](#) found that only 122 of 40,000 screened federal properties had been transferred to homeless advocacy groups since the law’s enactment in 1987.¹²⁷

Divesting excess property from federal ownership would deliver additional funding to the Treasury, and placing federal property in private hands would make that property taxable by state and municipal authorities. Selling excess federal real property also sells well in the [10 Western states](#) where most of the land owned by the government is concentrated.¹²⁸ Nevada [tops](#) the list with the federal government owning 84.5 percent of that state’s land.¹²⁹

Federal Real Property (continued)

The government's current leasing practices are also problematic. A March 2014 GAO [report](#) reviewed case study projects from four agencies that rank in the top 10 in federal real property holdings.¹³⁰ The GAO found that the federal government can end up spending more money on renovation costs and lease payments over the course of a long-term lease than it would if it just paid the initial contract price and bought the building outright.

The GAO first placed federal real property management on its High-Risk List in [2003](#).¹³¹ This issue has remained on the list ever since, and has only become more critical over time.

Due to a combination of partisan disagreement and unnecessary red tape, selling federal real estate is a long, costly process. Reforms are essential. Prioritizing the public auction of unused or underused federal real property would go a long way toward efficiently allocating a huge amount of real estate across America, and it would help reduce the \$21.9 trillion federal debt.

Financial Services

According to the White House Council of Economic Advisers, “approximately 500 new economically significant regulations” were [created](#) between 2010 and 2017.¹³² Under the leadership of House Financial Services Committee Chairman Jeb Hensarling (R-Texas) and Senate Banking Committee Chairman Mike Crapo (R-Idaho), the 115th Congress rolled back some of those regulations. For example, [S. 2155](#), the Economic Growth, Regulatory Relief, and Consumer Protection Act, loosened the grip of suffocating Dodd-Frank regulations on main street banking and small business.¹³³

JOBS 3.0

Although Congress has made progress on banking reform and regulatory relief, there is still a long way to go. One piece of legislation Congress should consider is the JOBS and Investor Confidence Act of 2018 (JOBS 3.0). During the 115th Congress, JOBS 3.0 [passed](#) the House with more than 400 votes, including that of new House Financial Services Committee Chair Maxine Waters (D-Calif.), but failed to receive a vote in the Senate.¹³⁴

This bipartisan legislation would [spur](#) small business, venture capital, and entrepreneurship by streamlining regulatory compliance for initial public offerings and emerging growth companies, expanding the definition of “accredited investors,” and providing startups with legal clarity when interacting with potential investors.¹³⁵ By supporting small business investment and opportunity, JOBS 3.0 is a home run that will help the U.S. compete and grow in the global economy.

Fannie Mae and Freddie Mac

September 6, 2018, marked the ill-famed 10-year anniversary of conservatorship for government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac.

What was supposed to be a temporary patch to the 2008 financial crisis has transformed into a decade of inaction toward a long-term solution, abusive GSE expansion, and a constant threat of another massive taxpayer-funded bailout. Since conservatorship, Fannie Mae and Freddie Mac have become the primary buyers in the secondary mortgage market, financing nearly 90 percent of all U.S. mortgages, and have borrowed more than \$190 billion from taxpayers, including most recently a \$3.7 billion request on February 15, 2018. An August 7, 2018, a Federal Housing Finance Agency (FHFA) stress test [report](#) found that the GSEs could require up to \$78 billion in new bailout money in the event of another severe global recession.¹³⁶ Under conservatorship, taxpayers are on the [hook](#) for \$5.3 trillion in mortgage obligations from the GSEs.¹³⁷

Financial Services (continued)

FHFA Director Mel Watt, whose five-year term expired in January 2019, has allowed Fannie Mae and Freddie Mac to pursue risky private-sector strategies and an expansionary agenda, while abusing the comforts of government control. Instead of supporting the secondary mortgage marketplace, as originally intended, the GSEs have sought to compete with small lenders, flirted with ways to extend credit to riskier borrowers, and attempted to directly conduct business with consumers. This includes the GSEs' [purchasing](#) of no-appraisal loans and radically increasing their multifamily lending portfolios,¹³⁸ which the American Enterprise Institute has [called](#) "crony welfare and crony capitalism — where profits are privatized but the losses are taken by the taxpayer."¹³⁹

Another blatant example of charter creep [involves](#) Freddie Mac's Integrated Mortgage Insurance and Fannie Mae's Enterprise-Paid Mortgage Insurance pilot programs, which unfairly give preference to some lenders over others who sell low-down-payment mortgages to the GSEs.¹⁴⁰ These pilot programs allow Freddie Mac and Fannie Mae to intrude into the private-sector mortgage insurance market and dictate decisions typically made by the lenders themselves.

Fannie and Freddie [announced](#) on August 21, 2018, that they would conclude their single-family rental pilot programs, belatedly recognizing that the private sector has had no trouble backing the purchasing of such homes without government intervention.¹⁴¹ This is exactly the type of unnecessary dabbling that the FHFA regulator should have put a stop to before it got off the ground. Another example of wasteful spending was highlighted in a September 28, 2017, FHFA OIG report, which criticized the agency's officials for inadequate [supervision](#) of Fannie Mae's lavish spending on a new headquarters.¹⁴²

During a September 6, 2018, House Financial Services Committee [hearing](#), Chairman Hensarling asserted that the failure to enact GSE reform poses a growing systemic risk to both mortgage markets and taxpayers.¹⁴³ He [argued](#) that while reform efforts have been ignored, the GSEs have slowly crept back to their "pre-crisis market dominance," which is "bad news for competition, innovation, and most of all, taxpayers."¹⁴⁴ Edward DeMarco, former FHFA acting director and president of the Housing Policy Council, [agreed](#) that there is a concerning growth in "systemic reliance on Fannie Mae and Freddie Mac," eerily similar to the early days of the 2008 financial crisis.¹⁴⁵

Although attempts to change the system have proven difficult, the Trump administration and committee members from both sides of the aisle show an appetite for reform. Secretary of the Treasury Steven Mnuchin has [said](#) he is determined to "fix the GSEs" and that leaving them in conservatorship indefinitely was not a constructive solution.¹⁴⁶ Mark Calabria, Vice President

Financial Services (continued)

Pence's chief economist and longtime proponent of GSE reform, has been nominated by President Trump to succeed Director Watt at the FHFA. While the administration should and will likely move forward with reforms of its own, Congress should continue to work toward a viable solution that both protects taxpayers and maintains a stable secondary mortgage market.

One option is to [reintroduce](#) the Protecting American Taxpayers and Homeowners Act, which would end taxpayer-funded bailouts of Fannie and Freddie entirely and phase out the GSEs within five years. While it has a slim chance of passing, this bill provides a viable legislative solution to create a sustainable housing finance system.¹⁴⁷

Federal Housing Administration

The Federal Housing Administration (FHA) runs a more than [\\$1.3 trillion](#) mortgage insurance program that was originally designed to help low- and moderate-income people buy houses if they cannot provide a 20 percent down payment.¹⁴⁸ The FHA is the largest single provider of mortgage insurance and has a 100 percent guarantee of payment to lenders, should the homeowner default.

During the 1990s, the FHA controlled about 10 percent of the purchase mortgage market. Following the 2008 financial crisis, the FHA's share of purchase lending increased to nearly one-third of the market by 2010, with maximum income eligible for FHA mortgage insurance rising from \$120,000 to \$230,000. Put another way, people with about twice the income as before can get FHA insurance. As eligibility exploded, the FHA faced serious solvency problems culminating in a \$1.7 billion bailout from the Treasury at the end of 2013. CBO [estimated](#) that FHA insurance cost taxpayers \$15 billion from 2009 to 2012.¹⁴⁹

Even after taxpayer money was thrown at the agency, the FHA was seriously undercapitalized until 2015 when the agency reached its 2 percent cash-on-hand threshold. Chairman Hensarling [reacted](#) by saying, "After breaking the law for seven years, it's good to see that the FHA is finally in compliance but it's sad that merely following the law is what passes for 'victory.' ... Hardworking taxpayers remain exposed to more than \$1 trillion in FHA insured mortgage credit risk, and the FHA capital reserve remains woefully inefficient."¹⁵⁰

Financial Services (continued)

Instead of making home buying more affordable for first-time buyers, FHA's loose lending policies are driving up house prices, particularly entry-level ones, to unsustainable levels. While the nation is still in the midst of a housing boom, an inevitable return of real house prices to their historic growth trend path will again subject the country to volatile home prices, loss of equity, and attendant loan defaults.

The FHA should return to its original mission: insure loans for people of modest means, either through income tests or limits on the size of the mortgage. The private sector and private capital are perfectly capable of taking care of everything else.

Healthcare

A November 7, 2018, *Washington Post* article [declared](#) a day after the November 2018 midterm elections:

For eight years, Republicans waged a war against Barack Obama’s health-care law, holding dozens of repeal votes, filing lawsuits and branding it a dangerous government takeover.

On Wednesday, they effectively surrendered.

The day after crushing midterm election losses handed Democrats control of the House, GOP leaders signaled they had no appetite to make another go at shredding the signature accomplishment of Obama’s presidency anytime soon.¹⁵¹

The article went on to say that Republican candidates were hit by unmerciful campaign ads, claiming they wanted to get rid of the preexisting condition protections found in the Patient Protection and Affordable Care Act (ACA), or Obamacare. One of the causes for their losses was their inability to refute this falsehood, as well as their failure to enact a viable alternative to Obamacare. After the election, Senate Majority Leader Mitch McConnell (R-Ky.) “suggested instead that lawmakers address the flaws in the Affordable Care Act ‘on a bipartisan basis.’ ”

It is unlikely Obamacare will ever be repealed or that Congress will adopt a single-payer, or government-run, health insurance plan, although many Democrats support the latter idea. Instead, Congress must accept that the ACA is severely broken and fix the problems.

When Obamacare was enacted, Americans had been assured that premiums would decrease on average by [\\$2,500](#) per family, per year.¹⁵² Instead, premiums went up on average by [105 percent](#) on the Federal Exchange ([Healthcare.gov](#)) from 2013 to 2017.¹⁵³

States also had [substantial increases](#) in premium prices from 2017 to 2018. For example, the average premium for the benchmark plan (the second-lowest-cost silver plan, which is used to determine premium subsidies) in Wyoming went from \$413 to \$710, a 72 percent increase; and in Iowa, the average premium for the benchmark plan increased from \$310 to \$585, or 88 percent. The lowest average premium increase for the benchmark plan was in Indiana, where the premium rose from \$228 to \$286, or 26 percent. Tennessee had the dubious honor of seeing the largest increase in the premium for the benchmark plan from 2014 to 2018 as its average premium increased from \$161 to \$610, or 278 percent, over that period.¹⁵⁴

Over the years, insurance issuer participation [has declined](#), leaving consumers with fewer choices and less competition. In 2014, 36 states used Healthcare.

Healthcare (continued)

gov and 191 issuers participated, with an average of five issuers in each state. In 2018, 39 states were using Healthcare.gov, due to the failure of state exchanges, and there were 132 issuers nationwide, a 31 percent decline, and an average of three issuers per state.¹⁵⁵

The Trump administration is doing what it can to encourage competition and more choices to drive down costs for consumers. For example, using the regulatory power provided to the Secretary of HHS within the ACA, the administration has used [Section 1332 State Innovation Waivers](#), now called State Relief and Empowerment Waivers, to allow states to come up with inventive ideas to provide alternatives to Obamacare and meet their state's particular population needs. States can improve their insurance markets to increase competition, help lower costs, and still protect those with preexisting conditions.¹⁵⁶

For example, Alaska's waiver enabled the state to construct a program that lowered health insurance premiums on average by [26.5 percent](#) from 2017 to 2018.¹⁵⁷ It is expected that for 2019 premiums will decrease by an average of [19.8 percent](#) and enrollment will increase by 7.1 percent in the non-group market. The state created a risk pool for 33 medical conditions, funded by a portion of the federal premium subsidy payments, which is permitted under the waiver.¹⁵⁸ Alaska's success is encouraging other states to evaluate the changes they can make to Obamacare to provide more competition and more choice and drive down costs, while still protecting those with preexisting conditions.

The administration also expanded the use of [short-term, limited-duration](#) (STLD) health insurance plans to less than 12 months, but no longer than a maximum duration of 36 months. The prior administration had limited the use of these plans to less than three months. These plans are not required to follow Obamacare's essential mandates, such as maternity care or mental health coverage. While these plans are not for everyone, they do provide more affordable options for people who cannot afford Obamacare.¹⁵⁹

The administration also expanded the use of [association health plans](#) (AHPs), which will allow employees of small businesses and their families to join together and gain access to more affordable choices of health insurance, giving them many of the opportunities and insurance options as large employers.¹⁶⁰

In October 2018, the administration announced a [proposed rule](#) that would expand the use of health reimbursement arrangements (HRAs). The Obama administration prevented employers from using HRAs to reimburse employees for the cost of individual insurance. The proposed rule would reverse that

mandate and would allow an employer to reimburse the cost of individual health insurance on a tax-preferred basis while not having to face large

Healthcare (continued)

administrative burdens in offering health insurance. Essentially, it would extend the tax advantage from federal income and payroll taxes for premiums and benefits received, just like traditional employer group insurance. Employers that do provide traditional group insurance will also be able to provide up to \$1,800 per year per employee for qualified medical expenses such as stand-alone dental benefits and premiums for STLD plans.¹⁶¹

While implementing new policies for Section 1332 waivers, STLD plans, HRAs, and AHPs have been a good thing, a future president could reverse these regulations. That is why it is necessary for Congress to change Obamacare by law.

One way to fix Obamacare is to adopt the [Health Care Choices Proposal](#), which would allow Americans to get the healthcare they want and need without the massive, centralized government interference that has driven up premium costs and reduced choice. The proposal has been steadily worked on and crafted by the [Health Policy Consensus Group](#), a coalition of patient-centered and free-market healthcare policy professionals located in Washington, D.C., and across the country. The plan was announced in June 2018, and several senators have been working to put the proposal into legislative language. Former Sen. Rick Santorum (R-Pa.) has been at the forefront, working as a go-between between senators and governors to make the plan a reality.¹⁶²

The plan would in essence take the federal money currently given to insurance companies to prop up Obamacare and send it to the states in the form of block grants. The states would use the grants to assist their specific population's needs and help those with low incomes get access to care from the doctors and plans they choose, while protecting those with pre-existing conditions. Initially, the grants would be based on the amount of Obamacare spending, which includes Medicaid expansion funding, tax credits, and subsidies, on a fixed date. Ultimately, the individual grants would be based on the total number of low-income residents.

For example, states could use these new resources and implement innovative ideas, like those being employed through the State Relief and Empowerment Waivers. Establishing robust risk pools for those with pre-existing conditions and reinsurance to stabilize their insurance markets, like Alaska did, would go a long way to create more competition and drive down premium costs. Enacting the Health Care Choices Proposal into law would protect these novel ideas from being undone by some future president via regulation.

Implementing Obamacare proved that top-down, Washington, D.C.-controlled healthcare is not the answer. Billions of dollars were wasted on faulty state-run exchanges; fixing and getting the Healthcare.gov website to operate properly;

Healthcare (continued)

the collapse of the CO-OPs; and the failure to sign up sufficient “[young invincibles](#)” in the numbers needed to stabilize the marketplaces. Premiums and deductibles skyrocketed, causing many people to pay the individual mandate tax penalty instead and go uninsured.¹⁶³

But problems seen with Obamacare would be miniscule compared with adopting “Medicare for All” as a replacement. The Medicare Trustees 2018 [report](#) stated that the Medicare Hospital Insurance trust fund is expected to be depleted in 2026, three years earlier than they reported in 2017.¹⁶⁴ Implementing Medicare for All will not only destroy the current Medicare program, it will be financially destructive to the country and harm healthcare for all Americans. Establishing a single-payer system, like the system used by the VA, must be opposed at every turn.

The [VA healthcare scandal](#), which gained notoriety after an investigation of the Phoenix VA hospital, was not unique to that facility.¹⁶⁵ Veterans tried to use VA facilities [across the country](#) but were subject to long waiting lists and suffered for months without care.¹⁶⁶ A March 7, 2018 OIG [report](#), “Critical Deficiencies at the Washington D.C. VA Medical Center,” found that even in the nation’s capital, conditions were dangerous and inexcusable.¹⁶⁷ The VA system is pure single-payer and should not be replicated.

Nor should the U.S. mimic single-payer healthcare systems in Europe and Canada. Long wait times and denying patients access to the most innovative procedures are [commonplace](#).¹⁶⁸ That is what keeps their health costs lower, not better or more efficient care. In socialistic and centralized government health plans, patients are owned by the state where unelected bureaucrats decide what medical treatment one receives.

The Health Care Choices Proposal is an opportunity for Democrats and Republicans to come together, return power and funds back to the states, and enable the American people to access the kind of health insurance that fits their needs while still protecting those with pre-existing conditions.

There is a reason why people from around the world come to the U.S. for treatment. From miracle drugs that cure complicated diseases, to medical technology that helps people live productive and longer lives, to world-class physicians and surgeons that practice premier medicine, the U.S. leads the world in medical research and development. To date, an ever-encroaching big government has been kept somewhat at bay when it comes to medical care. It must be kept that way so that Americans can have even more power and control over their healthcare decisions.

Intellectual Property Rights

The protection and promotion of intellectual property (IP) is the only property right included in the Constitution, found in the General Welfare Clause, Article 1, Section 8:

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

This clause is rooted in the notion that the best way to encourage creation and dissemination of new inventions and creative works to the benefit of both the public good and individual liberty is to recognize one's right to his or her IP. In his first presidential address on April 30, 1789, George Washington encouraged Congress to enact legislation that would further protect IP, stating, "nothing ... can better deserve your patronage than the promotion of science and literature."¹⁶⁹ The Senate responded on January 11, 1790, noting, "Literature and science are essential to the preservation of a free constitution; the measures of government should, therefore, be calculated to strengthen the confidence that is due to that important truth." On January 12, 1790, the House of Representatives issued its concurrence with the President stating, "the promotion of science and literature will contribute to the security of a free Government; in the progress of our deliberations we shall not lose sight of objects so worthy of our regard." Congress responded by passing H.R. 43, the Copyright Act of 1790, which was signed into law on May 31, 1790.¹⁷⁰

The Copyright Act of 1790 was among the first laws enacted by Congress, establishing both the U.S. Copyright Office and the U.S. Patent and Trademark Office (PTO). These agencies are tasked with cataloguing, analyzing, and protecting IP rights.

Americans are likely to be more aware of the monetary value of private property than IP, since most people do not realize that nearly every product they use is the result of someone's idea, or IP. They are also not likely to know the value of IP to the economy.

According to a September 26, 2016 Economics and Statistics Administration and PTO report, IP-intensive industries support nearly 28 million jobs in the U.S.¹⁷¹ Between 2010 and 2014, the value added by IP-intensive industries accounted for \$6.6 trillion of the GDP. Directly and indirectly, IP-intensive industries supported 45.5 million jobs, or about 30 percent of all employment in 2014.¹⁷²

Intellectual Property Rights (continued)

Promoting IP in Trade Agreements

The protection of IP should be a key consideration in all trade negotiations. Although the U.S. has a strong history of IP protection, other countries do not value IP protection as highly.

The 116th Congress will have the opportunity to review and either approve or disapprove the recently negotiated United States–Mexico–Canada Agreement (USMCA). As it evaluates this new agreement, it should ensure that U.S. IP is protected. The USMCA is noteworthy for its chapters that support a twenty-first century economy through new protections for U.S. IP and that ensure opportunities for trade in U.S. services.

In addition, the USMCA contains a new chapter covering digital trade that will provide much-needed protection for cross-border data flow, which is increasingly important as more information is stored using cloud computing services.

As other trade agreements are negotiated or renegotiated in the coming years, every nation's track record on IP must be considered to ensure that America's creativity, innovation, and technology is protected.

The Battle Against Counterfeits and Piracy

In 2016, the Trade Facilitation and Trade Enforcement Act was signed into law, strengthening the ability of border patrol officers to interdict and seize suspected infringing goods at the border.¹⁷³ According to the Department of Homeland Security, the number of IP rights seizures increased from 31,560 in FY 2016 to 34,143 in FY 2017.¹⁷⁴ Based on the estimated manufacturer's suggested retail price, had the seized goods been genuine, those seizures would have had a value of \$1,206,382,219.¹⁷⁵ A February 2017 report from the Commission on the Theft of American Intellectual Property estimated the economic loss of IP due to theft or counterfeits to be from \$225 billion to \$600 billion annually.¹⁷⁶ The report also estimated that counterfeit goods account for \$29 billion to \$41 billion annually.¹⁷⁷

In addition to counterfeit goods, there is an ongoing threat from counterfeit and pirated content online. Piracy of digital movies, music, and software applications is not only anticompetitive but also often a harbinger of malware and other virtual attacks on unsuspecting consumers.

Intellectual Property Rights (continued)

With the increased proliferation of streaming set-top boxes on the market, consumers are at greater risk of downloading malware onto their networks through pirated streaming content. The movie industry has filed several piracy lawsuits against set-top box manufacturers to reduce the availability of pirated digital goods being downloaded by unsuspecting consumers. One such suit resulted in a \$90 million settlement on October 24, 2018, paid to DISH Network by SET TV for damages stemming from allegations that SET TV was using DISH channels and retransmitting them without permission.¹⁷⁸

When content is widely distributed without the consent of, or compensation to, the creator, IP is being stolen. Until it is reined in, this industrial-scale theft will continue to rob the U.S. economy and consumers of jobs, investment, innovation, and creativity.

IP rights have been paramount since the Republic was established. As James Madison noted in *Federalist Paper* No. 43, referring to the authority to promote science and the arts by providing exclusive rights to authors' and inventors' writings and discoveries (which became Article 1, Section 8 of the Constitution):

The utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged in Great Britain to be a right of common law. The right to useful inventions seems with equal reason to belong to inventors. The public good fully coincides in both cases with the claims of individuals. The States cannot separately make effectual provision for either of the cases, and most of them have anticipated the decision of this point by laws passed at the instance of Congress.¹⁷⁹

Everyone benefits from IP. If the Founding Fathers had not recognized its importance, the light bulb, the telephone, the cell phone, and the microchip might never have been invented. Strong IP protection in both domestic policy and ongoing trade discussions is fundamental to keeping the American engine of ingenuity on track for generations to come.

Institutional Reforms to Congress

Congress needs to adopt numerous important reforms across the federal government, including the way it operates. Adopting the following proposals inside Congress would help improve efficiency, eliminate duplication and overlap, and reduce wasteful spending.

Term limits for Congress would reduce the powerful advantage of incumbency, under which the longest-serving members are awarded prized committee chairmanships and leadership positions, which allows them to direct funds to projects that benefit special interests and campaign contributors. Upon leaving Congress, many former members accept positions as lobbyists and consultants, and the revolving door continues. Term limits would require a constitutional amendment and help mitigate these problems.

Other reforms to Congress as an institution could be achieved with much less effort than amending the Constitution. Congress should adopt, and enforce, rules requiring that a period of 72 hours elapse between the introduction of legislation and a vote on that legislation. It should end its bipartisan tradition of funding the government through continuing resolutions and instead abide by the budget laws that require it to pass individual appropriations bills through regular order, in committee and on the floor, that fund each part of government.

Congress must also allow more votes on amendments. Too often, massive bills are introduced at the last minute with no opportunity for rank-and-file members to offer amendments for consideration. This “take it or leave it” approach encourages members to vote for bills that include wasteful spending that they would have offered amendments to curtail or remove.

The many problems with earmarks are discussed earlier in this publication; any institutional reforms should include a permanent ban on earmarks. CAGW was instrumental in the adoption of the earmark moratorium in 2011. With the highly likely [restoration](#) of earmarks by House Democrats, it is now more important than ever that earmarks be banned permanently.¹⁸⁰

Citizens also need more information about the inner workings of congressional offices, like the secret slush fund used to pay taxpayer-funded settlements on behalf of members of Congress accused of sexual and workplace misconduct. Between 1997 and 2017, 268 [settlements](#) were paid, totaling more than \$17 million.¹⁸¹ The public does not know what allegations were made or the identities of any members or staff who were the subject of complaints.

Institutional Reforms to Congress (continued)

In December 2018, Congress reached a bipartisan agreement to overhaul its methods of handling allegations of sexual misconduct. This legislation holds members and former members responsible for any settlement costs and seeks to provide a fairer process for alleged victims. Never again should taxpayers be required to pay for these settlements.

Labor Law and Pension Reform

One of the most egregious labor laws is the Davis-Bacon Act of 1931. It requires that federal contractors pay “the prevailing wage” to their employees on any federal project exceeding \$2,000. The act mandates that the prevailing wage on federal projects reflects the highest local union contract wages, instead of the true prevailing wage in the area as calculated independently by the Bureau of Labor Statistics. At the time of its passage, both its goal and its effect were to reward disproportionately white, unionized workers while making worse the discrimination that nonunionized African Americans [faced](#).¹⁸²

Today, Davis-Bacon continues to keep potential new entrants out of the federal contracting market, as they are unable to comply with the law’s onerous rules. This includes many small businesses led by women, people of color, and recent immigrants.

Efforts to repeal Davis-Bacon have consistently failed in Congress, requiring taxpayers to shoulder the extra cost of federal construction projects and exacerbating the cronyism, waste, and unfairness that has resulted from coziness between big government and large federal contracting businesses. Davis-Bacon adds about 20 percent to the cost of each federal project. In December 2018, the CBO [estimated](#) that repealing Davis-Bacon would save \$12 billion over the next decade.¹⁸³

A major development in American labor law occurred in June 2018, when the Supreme Court ruled in *Janus v. AFSCME* that public-sector employees cannot be required to provide financial support to unions with which they do not want to be involved, as such payments violate the First Amendment. The decision effectively secured right-to-work for public-sector workers in all states.

Yet large labor unions and the state politicians they support have attempted to undermine the *Janus* ruling by allowing workers to opt out only during [small](#) windows of time;¹⁸⁴ [collecting](#) the personal information of all new public-sector employees;¹⁸⁵ and, worst of all, using taxpayer dollars to pay unions [directly](#) to compensate for any decline in revenue that results from the *Janus* decision.¹⁸⁶ Lawmakers across the country must abide by the *Janus* decision and protect the rights of these employees who do not wish to support a union.

The nation continues to face pension crises on several levels. States and localities suffer from [massive](#) unfunded pension liabilities that pose a threat to their long-term financial solvency.¹⁸⁷ The main factors in this crisis are the failure of legislators to fund pension systems fully and the use of unrealistic assumed rates of return. Funds meant to support state and local pension systems are instead wasted on other projects, and the projected return on investment is made using outdated and overly rosy assumptions. As with anything that involves long-term investment, the failure to fund pensions adequately adds

Labor Law and Pension Reform (continued)

up year after year, leading to gaping revenue shortfalls.

States and localities must reform their pension systems to ensure that benefits will be paid to future retirees. Federal lawmakers must avoid the temptation to bail them out, which would put all taxpayers on the hook for the state and local politicians' reckless behavior.

The issue of multiemployer pension reform commanded significant attention during the 115th Congress. Like many public-sector pension plans, these plans promised beneficiaries significantly more than they are able to pay. For multiemployer pension plans, that [figure](#) is at least \$600 billion.¹⁸⁸ But the Pension Benefit Guaranty Corporation (PBGC), which partially insures private-sector pension plans, is speeding toward insolvency.

The PBGC is not currently funded by taxpayers, but if it becomes insolvent, the pressure for a taxpayer bailout would be enormous. It is vital that multiemployer pension plans be reformed quickly and in a manner that does not cause taxpayers to bail them out.

Privacy

Americans have become increasingly concerned about the amount of personal information held by banking institutions, e-commerce sites, Internet service providers, online platforms, retailers, and many others, and how such information is being used for data analytics, online advertising, and targeted messaging without adequate transparency or consumer choice. This concern was underscored after the 2016 elections when it was revealed that Cambridge Analytica used ill-gotten personal data from Facebook for targeted political ads.

The U.S. has enacted several laws that contain provisions governing how personal information should be protected using an industry-by-industry approach, including the Communications Act of 1934, the Electronic Communications Privacy Act, the Children's Online Privacy Protection Act, the Driver's Privacy Protection Act, the Family Educational Rights and Privacy Act, the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, the Health Insurance Portability and Accountability Act, the Wire Act, and the Video Privacy Protection Act. There is no single law or federal agency for protecting consumer privacy. The most prominent agency entrusted with protecting consumer privacy is the Federal Trade Commission (FTC).

On April 14, 2016, the European Parliament adopted the General Data Protection Regulation (GDPR). The GDPR entered into force on May 24, 2016, and its provisions became directly applicable to all European Union (EU) member states on May 25, 2018. The GDPR [imposes](#) requirements for data protection by businesses or other entities that process the personal data of individuals in the member states of the EU, regardless of where the data processing takes place.¹⁸⁹ This includes U.S. companies conducting business in the EU.

On June 28, 2018, the California Consumer Privacy Act was signed into law by Gov. Jerry Brown. The bill, which was rushed through the legislature in a few days, imposes extremely onerous requirements on how companies must store and provide access to consumers' personal information, as well as harsh restrictions on the types of product and service options and discounts companies may offer to their customers. Other states have enacted or are reviewing laws that would purportedly protect personal information, covering issues such as children's online privacy, website privacy policies, and monitoring employee e-mail communications. There is an overriding concern that without the adoption of a consistent national privacy protection regime that preempts state and local laws, more states will follow California's example, further complicating the privacy regulatory environment that companies, large and small, must negotiate.

Privacy (continued)

On November 8, 2018, CAGW [offered](#) the following recommendations to the National Telecommunications and Information Administration for consumer-based privacy:

1. National Privacy Framework: Because of the unique nature of the internet ecosystem and its presence beyond state borders, a clear and concise national data privacy framework is necessary to provide consistency and certainty for businesses and consumers alike.
2. Consumer Choice and Control: Businesses should provide consumers with easy-to-understand privacy choices based on the sensitivity of their personal data and how it will be used or disclosed, consistent with the FTC's privacy enforcement guidance. Businesses should be able to continue to rely on implied consent to use customer information for activities such as service fulfillment and support, fraud prevention, market research, product development, network management and security, compliance with the law, and first-party marketing. However, businesses should also provide consumers with an opt-out choice regarding the use of their non-sensitive customer information for personalized third-party marketing.
3. Transparency: Consumers should be provided with clear, comprehensible, accurate, and continuously available privacy notices by businesses collecting, using, or sharing consumer data that describe in detail the information being collected, how that information will be used, and whether the information will be sold or shared with third parties. Should customer information be sold or shared with a third party, customers must be notified about the types of third parties to whom their information has been given and for what purpose.
4. Data Minimization and Contextuality: Consumers should expect reasonable limits on the amount of personal data that organizations collect, use, and disclose consistent with the context in which that data is provided. Every effort should be made to de-identify and delete data as promptly as possible when it is no longer necessary.
5. Flexibility: Different types of data require separate methods and standards of protection. For example, sensitive health care data and financial data require a higher level of security than a social media account or a computer's IP address. Therefore, policies must be consistent with the type of data being collected and how it is to be used.

Privacy (continued)

6. Data Security and Breach Notification: Consumers should expect that the personal data they share with other entities is maintained in a secure environment. Information technology systems (IT) are under constant attack; breaches have and will continue to occur. In the event of a data breach in which there is a reasonable likelihood of misuse and consumer harm, consumers should expect timely notification of the event, and an offer by the entity breached as to the remedies available to make the consumer as whole as possible, including credit protection services, fraud alerts, and credit monitoring through credit reporting agencies.¹⁹⁰

These six recommendations provide the groundwork for a national privacy policy going forward, in a technology- and industry-neutral manner, and should be part of the overall privacy framework discussion.

Regulatory Reform

One of President Donald Trump's most significant successes during his first two years in office has been the whirlwind pace at which his administration has slashed federal regulations. The deregulatory agenda is even more impressive considering where the federal bureaucracy stood before President Trump took office.

The Competitive Enterprise Institute estimated in 2017 that federal regulations [cost](#) Americans nearly \$2 trillion each year.¹⁹¹ The Obama administration added [more than 20,000](#) new regulations during his two terms in the White House,¹⁹² including 600 [major regulations](#) with an economic impact of more than \$100 million.¹⁹³ The Obama administration [averaged](#) 29 new regulations for every new law passed by Congress.¹⁹⁴

To chop the Obama regulatory behemoth down to size, President Trump [signed](#) an executive order on January 30, 2017, mandating that federal agencies eliminate two regulations before a new one is created.¹⁹⁵ As a result, federal regulations were [slashed](#) at a 22-to-1 rate in 2017,¹⁹⁶ and the *Federal Register* had its lowest word count [since 1993](#).¹⁹⁷

After his second year, President Trump has issued the [fewest](#) number of regulations since the mid-1970s.¹⁹⁸ In 2018 alone, the White House estimated [\\$23 billion](#) in regulatory savings¹⁹⁹ and the ratio of new regulations to new laws passed by Congress stood at a [15-year low](#) of 12 to 1.²⁰⁰ Although much progress has been made in cutting federal rules and regulations, the number of Trump-era regulations ticked up in 2018 slightly more than its record-breaking first year low, and [several agencies](#) are still slow-walking major regulatory reforms to older, more entrenched rules.²⁰¹

Congress used the Congressional Review Act (CRA) to great effect in the first half of 2017 to [upend](#) 14 of 15 Obama-era "[midnight regulations](#)"²⁰² signed toward the end of the former President's term.²⁰³ But under the CRA, a congressional resolution to overturn a regulation must be passed within 60 legislative days of the regulation's final approval.

Congress could take additional steps to reduce overregulation. The most expansive option available would be to enact the Regulations From the Executive in Need of Scrutiny (REINS) Act. The REINS Act would require Congress to approve every major rule proposed by the executive branch before it can be imposed on the American people. Once a major rule is drafted, it must be approved by both the House and Senate and signed by the President before it could be enacted. Agencies would be required to classify rules as either major or non-major and justify their classification.

Regulatory Reform (continued)

The REINS Act process would proactively help safeguard taxpayers from unnecessary and onerous regulations and ensure that federal agencies do not overstep their bounds, instead of waiting until after regulations have been promulgated and seeking to overturn them in accordance with the CRA or challenge them in court. The House passed the REINS Act on January 5, 2017, but the Senate did not follow suit.

Other legislative avenues include the Regulatory Accountability Act, which would reform the process by which federal agencies analyze and formulate new regulations and guidance documents, clarify the nature of judicial review of agency legal interpretations, and ensure a complete analysis of the potential impact of rules on small entities. The House passed that bill on January 11, 2017, but the Senate failed to do the same.

In 2019, signs point to potential [slowdowns](#) on the deregulatory highway.²⁰⁴ The rate of deregulation already slowed to a 12-to-1 ratio in 2018, primarily because agencies have exhausted the easiest cuts and will now be forced to tackle larger, more complicated regulations. This process will take more time and legal justification, thereby slowing down the total pace of cuts. The Democratic majority in the House could also use its new oversight authority to question and put pressure on agencies that choose to make substantial cuts, as well as pass resolutions under the CRA to overturn Trump administration regulations.

With these potential headwinds on the horizon, lawmakers must remember that relieving taxpayers and small businesses of unnecessary and excessive regulatory burdens is crucially important for the long-term health and strength of America's economy. Congress is not powerless to bring the regulatory state to heel. On the contrary, it has several legislative options that would help restore oversight and accountability to the nation's rulemaking process.

Technology Modernization

The federal government spent more than \$94 billion in FY 2017 and according to GAO was expected to spend approximately \$96 billion in FY 2018 on IT, including hardware, software, programming, and development. According to a May 23, 2018 GAO [report](#), while much has been done to address approximately 800 IT management-related and 2,700 security-related recommendations, much work remains to be done to modernize and streamline federal IT systems.²⁰⁵

In 51 federal agencies, the IT systems are so old that in FY 2015 more than 90 percent of IT expenditures supported operations and maintenance. Ancient taxpayer-supported legacy systems include two 56-year-old Department of the Treasury Master File systems; a 51-year-old VA system used to track veterans' benefits; and a 53-year-old DOD system used to coordinate the operation function of the nuclear forces, which runs on an IBM Series/1 computer and uses 8-inch floppy disks for storage.

Some of the older systems are written in assembly language code, which is difficult to write and maintain, and still operate on an IBM mainframe. Antiquated systems at the Department of Justice and the Social Security Administration still use COBOL, a programming language developed in the 1950s and '60s, which is fast becoming [obsolete](#) in the business world.²⁰⁶ Programmers for both assembly language code and COBOL are becoming increasingly scarce.

Migrating federal IT systems to newer, more agile systems is critical to the continued operation of government. On December 26, 2013, the Federal Information Technology Acquisition Reform Act (FITARA) was signed into law as part of the National Defense Authorization Act for 2015 (P.L. 113-66). This was followed on July 29, 2016, by the Making Electronic Government Accountable By Yielding Tangible Efficiencies Act of 2016 (MEGABYTE Act) (P.L. 114-210). On December 12, 2017, the Modernizing Government Technology Act (MGT Act) was enacted as part of the FY 2018 National Defense Authorization Act.

These laws provide the tools necessary to streamline federal IT purchases; increase data center consolidation; provide additional incentives to move toward cloud services; give agencies a centralized budgeting authority for IT acquisitions managed by a chief information officer; ensure that software assets are inventoried to avoid costly duplication of software and equipment; and, help provide federal agencies with access to funding to modernize outdated IT equipment.

The IT systems used by federal agencies are too important to remain outdated. Savings achieved through implementation of FITARA and the MEGABYTE Act should be used to modernize and strengthen IT systems. The resources

Technology Modernization (continued)

made available through the MGT Act must also be managed appropriately to ensure that taxpayers receive the best value for their dollar. In addition, federal agencies should be mindful of avoiding duplication and mismanagement of IT services and infrastructure while implementing new and innovative methods of deploying IT across their departments, including the use of agile software development, cross-agency collaborations, and leveraging private-sector practices to reduce costs while streamlining services.

Another option available to agency chief information officers is to use functions and program solutions already proven successful in other agencies, rather than creating an entirely new process or technology to perform the same task. A prime example of this is the VA's financial software system. The VA tried and failed twice to [develop](#) its own financial software system.²⁰⁷ On October 5, 2016, the department announced it would be utilizing the financial management IT shared services developed by the Department of Agriculture to [replace](#) its existing financial management system.²⁰⁸ As the federal government increases the use of cloud technology solutions, it can employ similar IT-sharing initiatives rather than wasting taxpayer dollars duplicating systems that already exist in other agencies.

While passage of these laws is useful in modernizing federal IT systems, it is critical for Congress to conduct stringent oversight over agency implementation of these initiatives. On December 13, 2018, the DOD OIG [released](#) the results of an audit focused on how the DOD components identified and eliminated any duplicative or obsolete software applications.²⁰⁹ The DOD IG found that the Marine Corps, the Navy, and the Air Force commands were not consistently rationalizing their software applications, and concluded that, "As a result, the DoD and its Components are exposing the DoD Information Network to unnecessary cybersecurity risks because they lack visibility over software application inventories and, therefore, are unable to identify the extent of existing vulnerabilities associated with their own software applications. In addition, the DoD is not realizing the cost savings associated with the elimination of duplicate and obsolete software applications that it has already procured and is paying to maintain."

Congress must also conduct stringent oversight over federal IT procurement to ensure that the 11 agencies that are authorized to use other transaction agreements do not abuse that process, and that federal IT contracts are not written in a manner that predetermines the awardee before proposals are even submitted. In addition, sole-source contracting should not be overused.

For example, when the DOD issued its request for proposals for its Joint Enterprise Defense Infrastructure (JEDI) cloud computing contract, it was clear that the agency intended this to be a sole-source contract that would allow

Technology Modernization (continued)

one company to manage all the cloud computing services for the DOD. The JEDI contract is expected to be a 10-year, \$10 billion project for the winning bidder. However, when one company provides the single solution for every agency and department within the DOD, it places national security at risk.

Air Force Deputy Chief of Staff for Intelligence, Surveillance, and Reconnaissance Lt. Gen. VeraLinn “Dash” Jamieson [questioned](#) the use of one cloud provider, since “multi-cloud” will give the enemy “a targeting problem.”²¹⁰ Congress must continue to scrutinize and monitor the award and implementation of this major IT project.

To avoid the wasteful and costly fate of past efforts to modernize IT throughout the federal government, agencies must administer contracts in a fair, open, and truly competitive manner. Finally, Congress should direct annual IT funding appropriations to modernization projects that will enhance and improve the taxpayer’s experience, while providing much-needed, effective security against cyber threats. Following up with appropriate oversight will ensure that the budgets are being properly managed and allocated for the best possible solutions.

Telecommunications Reform

The Federal Communications Commission (FCC) was established by the Communications Act of 1934. The act has been amended through the Cable Act of 1992, the Telecommunications Act of 1996, the Satellite Television and Localism Act Reauthorization (STELAR) Act of 2014, and the RAY BAUM's Act of 2018. However, Congress needs to do more to clarify and update existing telecommunications law to make it more applicable to current and future technology innovations.

During the 113th Congress, the House Energy and Commerce Committee began an effort to modernize telecommunications law, engaging stakeholders through a series of white papers and meetings to discuss the parameters for change. Topics included competition policies; interconnection; internet regulations; Universal Service Fund (USF) reforms; and, video transmission issues. However, this effort was for the most part set aside, and a greater focus was placed on spectrum management and FCC process reform during the 114th and 115th Congresses. The House of Representatives should revisit modernizing the Communications Act of 1934, using the information collected in the 113th Congress, to more appropriately address today's communications ecosystem.

The telecommunications industry is providing services far beyond the scope envisioned by the Communications Act of 1934 and the Telecommunications Act of 1996, and companies are continuing to expand their offerings to include, for example, 10-gigabit networks that will provide symmetrical speeds, lower latencies, enhanced reliability, higher computing capabilities, and improved security. Cable companies provide more than television services, including voice over IP and internet services; telephone companies have ventured into providing broadband and television services; and mobile communications companies are also providing mobile broadband solutions.

A starting point for Congress will be the reauthorization of the STELAR Act. This law expires on December 31, 2019, and without reauthorization nearly 870,000 viewers, mostly in rural America, who rely on satellite television for local and national broadcast news will lose service.

In the 115th Congress, Rep. Steve Scalise (R-La.) introduced H.R. 6465, the Next Generation Television Marketplace Act, which would repeal provisions in the Communications Act that mandate the carriage and purchase of broadcast signals by cable operators, satellite providers, and their customers; allow broadcast affiliates to sell programming they license without hindrance and overregulation from the government; promote competition by eliminating the government's role in defining the scope of programming exclusivity; and codify the repeal of certain limitations imposed on local broadcasters that prevent them from adapting to today's dynamic communications marketplace. STELAR

Telecommunications Reform (continued)

reauthorization provides a platform for Congress to use the satellite industry as an incubator for these ideas to further refine and develop them before applying them to the larger video industry.

With respect to federally subsidized communications programs, Congress should exercise greater oversight on the Rural Utilities Service (RUS) broadband grant and loan program, and the USF's Lifeline program.

CCAGW has called for the elimination of the RUS, which would save taxpayers \$8.2 billion in one year, and \$41 billion over five years. However, Congress clearly has no intention of eliminating this program, and instead expanded the RUS broadband program in the 2018 Farm Bill by \$350 million annually supposedly to help rural unserved communities bridge the digital divide. It is imperative that Congress provide stringent oversight of the program to ensure that the funding is used to build in prioritized unserved communities and not upgrade or overbuild existing broadband infrastructure.

The Lifeline program serves a vital role in enabling those in need a means with which to communicate. However, since 2010, GAO has issued several reports outlining issues of waste, fraud, and abuse within the Lifeline program, including multiple beneficiaries from a single household, and other recipients advertising the sale of Lifeline-subsidized phones and services on Craigslist. The FCC is in the process of developing a National Lifeline Accountability Database verification system to reduce the incidence of ineligible recipients. Congress should conduct stringent oversight on the development and implementation of the national verification system for the Lifeline program to ensure that only those who are truly in need of the program are accessing the services offered.

Other areas that the 116th Congress should address include reducing the wireless tax burden for consumers using mobile services, creating a standard method for taxation of digital goods, and, ensuring that free market competition be allowed to flourish without additional regulatory burdens.

U.S. Postal Service Reform

“While the organization is fundamentally strong in terms of the value we deliver and the role we play in America’s economy and community, we are not financially strong,” said the Postmaster General Meghan Brennan when presenting the United States Postal Service’s (USPS) annual financial statement on November 14, 2018.

However, GAO, among other oversight bodies, has delivered a starker analysis. “USPS faces unsustainable financial challenges,” a June 28, 2018, GAO [report](#) declared. A similar verdict was rendered in a September 2011 GAO [report](#), which stated, “The stark reality is that USPS’s business model is broken.”

In FY 2018, the USPS [lost \\$3.9 billion](#), an increase of \$1.2 billion, or 44 percent greater than the \$2.7 billion loss in 2017.²¹¹ This marks the agency’s 12th consecutive year of losses, which now [total](#) \$69 billion since 2007.²¹²

Those staggering numbers do not tell the entire story. According to the [USPS](#), “operating expenses for the year were \$74.4 billion, an increase of \$2.2 billion, or 3.1 percent, compared to the prior year. This was driven by an increase in compensation and benefits of \$896 million due to contractual wage increases and increased transportation expenses of \$623 million primarily due to higher package volume, increases in fuel prices and higher highway contract rates.”²¹³ Furthermore, “Expenses for workers compensation and retiree health benefits increased by \$801 million and \$221 million.”

The agency faces \$121 billion in additional unfunded liabilities for pensions and retiree health benefits and has reached its statutory borrowing limit of \$15 billion. The GAO placed the USPS on its [High Risk List](#) in 2017, an indication of its dire fiscal situation.²¹⁴

According to a March 5, 2018, USPS [OIG report](#), “Total First-Class Mail volume has declined significantly from its peak volume in 2001.”²¹⁵ This decline is the result of the ongoing migration of communications and transactions to overnight services and the internet. The report concludes, “Recent trends suggest that the Postal Service cannot expect First-Class Mail to maintain its leadership role among postal products.”

The USPS has been granted a monopoly on delivery of most letter mail, and must deliver to each address in the country, under its statutory universal service obligation (USO). The USO does not specify six-day delivery, yet Congress has stymied postal management’s attempts to reduce delivery to five days a week, a move that both the Postal Regulatory Commission and USPS officials [have estimated](#) could save the agency \$2.2 billion annually.²¹⁶

U.S. Postal Service Reform (continued)

The agency operates 35,000 brick-and-mortar retail and processing facilities. Here, too, Congress has meddled when USPS management has attempted to close or consolidate underperforming facilities to improve operations and save money.

On April 12, 2018, President Trump signed an [executive order](#) creating a task force to issue a report addressing the future of the USPS.²¹⁷ The [report](#), “The United States Postal Service: A Sustainable Path Forward,” was released on December 4, 2018, and contained 25 recommendations, including redefining the USO to provide greater flexibility in delivery and pricing of delivery services.²¹⁸ The report advises capping prices for mail and packages deemed essential services, while developing a market-based pricing model for commercial packages. It recognizes the salutary impact of negotiated service agreements and third-party partnerships, and urges postal management to enter into more partnerships with the private sector to realize more efficiencies. The report also points to the USPS’s mailbox monopoly, suggesting that it could be monetized.

Future reforms included in the report are to grant appropriate flexibility to downsize and reconfigure its workforce; modernize its sclerotic, inefficient internal operations and work rules; and outsource more of its operations to cost-efficient private contractors. In addition, the agency’s finances must be made far more transparent to ensure that it adheres to the statutory prohibition against using funds from its monopoly operations to start new businesses.

The task force report’s findings are notable not only for its suggestions of what should be done to shore up the teetering USPS, but also for its remarks on what should not be done. For example, the report throws cold water on the concept of allowing the USPS to enter into the field of financial services, an idea that continues to be pushed by people like Sens. [Kirsten Gillibrand](#) (D-N.Y.),²¹⁹ [Bernie Sanders](#) (I-Vt.),²²⁰ and [Elizabeth Warren](#) (D-Mass.).²²¹ The financial services sector of the economy is highly competitive and nimble, giving customers many options, and the USPS has no expertise in this area.

Several postal reform bills have been introduced and considered in the House and Senate committees of jurisdiction over the past several years. None of these efforts have come to fruition, yet time is growing short.

Enacting meaningful market-oriented, long-term structural reform for the USPS is going to require sustained actions by current executives and regulators, including the USPS Board of Governors and the Postal Regulatory Commission, and of course, Congress. All of these matters must be addressed during the 116th Congress, before the agency’s finances reach the catastrophic stage, when a taxpayer bailout is much more likely.

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