



CITIZENS AGAINST GOVERNMENT WASTE

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# CRITICAL WASTE ISSUES

*for the 119th Congress*

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RECOMMENDATIONS FOR A SMALLER  
AND MORE EFFICIENT GOVERNMENT



## 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, they have helped CAGW save taxpayers more than \$2.4 trillion. CAGW publishes special reports, including the *Congressional Pig Book*, *Prime Cuts*, and *Critical Waste Issues*, as well as its 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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# Critical Waste Issues for the 119th Congress

## INTRODUCTION

Following the enactment of legislation in the 118th Congress that allocated trillions of dollars for COVID “relief,” infrastructure, and “inflation reduction,” the 119th Congress should strictly oversee how that money is being spent, including which programs are the most efficient, and prevent the expenditures of even more money. Unified government provides an opportunity to show which members of Congress are protecting the taxpayers’ money.

The budget deficit was \$1.8 trillion in fiscal year (FY) 2024, \$139 billion more than in FY 2023.<sup>1</sup> The national debt is \$36.4 trillion, and interest on the debt is both greater than defense spending and the second largest expenditure after Social Security. There could not be a more critical time to reduce government waste, fraud, abuse, and mismanagement, and rein in the size and scope of the federal government. Doing so successfully will require the combined effort of the Trump administration and its Department of Government Efficiency (DOGE), the DOGE caucuses in the House and Senate, cohesive support by Republican members of Congress, and a concerted push from taxpayers to support this objective.

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. *Critical Waste Issues for the 119th Congress* provides some of CAGW’s most important proposals for a smaller and more efficient government.

*Critical Waste Issues for the 119th Congress* details 12 policy areas that require immediate attention, including greater accountability and transparency, budget reform, entitlements, healthcare, privacy, and telecommunications. Policymakers have considered but not acted upon many of these recommendations in the past and completely ignored others.

Adoption of the recommendations in *Critical Waste Issues for the 119th Congress* will help to repair the damage done by years of runaway spending and government waste, particularly the past four years, and help to create a more 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, where there is more accountability.

CAGW’s mission reflects the interests of taxpayers. Everyone benefits when government programs are neither overlapping nor duplicative and work effectively. The adoption of these recommendations will benefit the economy because government mismanagement, fiscal profligacy, and chronic deficits crowd out the private investment necessary for long-term growth.

*Critical Waste Issues for the 119th Congress* should be mandatory reading for taxpayers, the media, and all members of Congress as they tackle the biggest issues facing America.

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<sup>1</sup> Congressional Budget Office (CBO), “Monthly Budget Review: September 2024,” October 8, 2024, <https://www.cbo.gov/publication/60730>.

## ACCOUNTABILITY, OVERSIGHT, AND TRANSPARENCY

In June 1982, President Ronald Reagan issued Executive Order 12369 to establish the President's Private Sector Survey on Cost Control, better known as the Grace Commission.<sup>2</sup> He asked its members to “work like tireless bloodhounds to root out government inefficiency and waste of tax dollars.”<sup>3</sup> For 18 months, a 161-member executive committee along with 2,000 volunteers conducted a review of federal government operations.<sup>4</sup> The effort was funded entirely by voluntary contributions of \$76 million from the private sector; it cost taxpayers nothing.<sup>5</sup>

The Grace Commission made 2,478 recommendations which would have saved \$424.4 billion over three years once they were fully implemented, without eliminating essential services.<sup>6</sup> In his December 7, 1994, remarks at the Grace Commission 10th anniversary gala, President Reagan said that more than \$250 billion had been saved to that point from the implementation of the commission's recommendations.<sup>7</sup>

The 47 volumes and 21,000 pages of the Grace Commission report constituted a vision of an efficient, well-managed government that is accountable to the taxpayers. Commission Chairman J. Peter Grace and syndicated columnist Jack Anderson co-founded CAGW in 1984 to keep the report, as President Reagan suggested, from gathering dust on a shelf. Since CAGW was founded in 1984, the organization has helped save taxpayers \$2.4 trillion through the implementation of Grace Commission findings and other recommendations.

### The Department of Government Efficiency

Now, the first comprehensive effort since the Grace Commission to conduct a private sector-based effort to make the government less wasteful and more effective has been set in motion. On December 3, 2024, President-elect Donald Trump announced his intent to create the DOGE, to be headed by Elon Musk and Vivek Ramaswamy.<sup>8</sup> President-elect Trump stated that the DOGE will, “provide advice and guidance from outside of Government, and will partner with the White House and Office of Management & Budget to drive large scale structural reform, and create an entrepreneurial approach to Government never seen before.”<sup>9</sup> The DOGE is expected to deliver its final report on July 4, 2026.<sup>10</sup>

Like the Grace Commission, the DOGE will bring the experience and expertise of the private sector to bear on the management practices of the federal government. Analyzing an entire

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<sup>2</sup> “Executive Order 12369-President's Private Sector Survey on Cost Control in the Federal Government,” June 30, 1982, The American Presidency Project, University of California at Santa Barbara, <https://www.presidency.ucsb.edu/documents/executive-order-12369-presidents-private-sector-survey-cost-control-the-federal-government>.

<sup>3</sup> Citizens Against Government Waste (CAGW), “About Us,” <https://www.cagw.org/about-us>.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ronald Reagan, “Remarks Honoring Peter Grace at the Grace Commission 10th Anniversary Gala,” December 7, 1994.

<sup>8</sup> “Trump announces Musk, Ramaswamy will lead newly-created Department of Government Efficiency,” *CBS News*, December 5, 2024, <https://www.cbsnews.com/news/trump-elon-musk-vivek-ramaswamy-new-department-of-government-efficiency/>.

<sup>9</sup> Ibid.

<sup>10</sup> Luke Garrett, “Elon Musk and Vivek Ramaswamy take their DOGE government efficiency pitch to the Hill,” *National Public Radio*, December 5, 2024, <https://www.npr.org/2024/12/04/nx-s1-5205354/musk-ramaswamy-doge-congress>.

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agency's or a single program's efficiency includes a determination of whether the expenditure of taxpayer money is achieving its statutory public purpose at an acceptable cost without duplication or overlap and with the necessary resources.

Unlike the Grace Commission, the DOGE recommendations will be publicized on social media. While that will provide the public with greater access and more transparency, adopting the recommendations can still only be achieved by executive order and legislation. When the Grace Commission issued its report, 73 percent of the recommendations required approval by Congress and 27 percent needed to be adopted by the executive branch. Success will therefore require significant buy-in from legislators.

Given the slim majority in the House and a three-vote majority in the Senate, which means at least seven Democrats are required to pass any legislation other than a reconciliation package which can be passed by a majority in the Senate, bipartisan support will be needed for most of the DOGE recommendations. Support from taxpayers, including a strong response for specific proposals on social media, will therefore play a key role in helping to make the DOGE successful in making the federal government more efficient and less wasteful.

### Accountability 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 does not compromise national security, has become a black hole for both taxpayers and the media.<sup>11</sup>

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.<sup>12</sup> Despite that lofty goal, the number of unanswered FOIA requests reached 200,000 in 2015, an increase of 55 percent from the 129,000 in 2014.<sup>13</sup> To address the concerns of both news organizations and taxpayers, Congress passed the FOIA Improvement Act, signed into law by President Obama on June 30, 2016. While the legislation gave requesters a stronger position by codifying presumptions of disclosure, it did little to make the process more substantive and efficient.

The federal government received a record 1,199,699 FOIA requests in FY 2023, a 29.2 percent increase from the 928,353 received in FY 2022.<sup>14</sup> It managed to process a record 1,122,211, or 93.5 percent of these requests. The Department of Justice reported that the number of backlogged requests declined by three percent in FY 2023, and the average processing time decreased marginally from 40.8 days in FY 2022 to 39.4 days in FY 2023.<sup>15</sup>

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<sup>11</sup> Department of Justice, "What is FOIA," <https://www.foia.gov/about.html>.

<sup>12</sup> C.J. Ciaramella, "'The Most Transparent Administration in History': A campaign promise becomes a punchline," *Reason*, January 18, 2017, <http://reason.com/archives/2017/01/18/the-most-transparent-administr/>.

<sup>13</sup> Ted Bridis, "US sets new record for denying, censoring FOIA requests," *Federal News Network*, March 18, 2015, <https://federalnewsnetwork.com/management/2015/03/us-sets-new-record-for-denying-censoring-foia-requests/>.

<sup>14</sup> Department of Justice, "Summary of Fiscal Year 2023 Annual FOIA Reports for Fiscal Year 2023," June 7, 2024, <https://www.justice.gov/oip/media/1354721/dl?inline>.

<sup>15</sup> *Ibid.*

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The Government Accountability Office (GAO) has detailed the trials and tribulations of the federal FOIA program. A March 7, 2024, report noted that increasingly complex requests had contributed to the gradual increase in backlogged requests between FYs 2015 and 2022, before declining in FY 2023.<sup>16</sup> While agencies are directed to calculate the average processing and response times to requests, “since 2013, many agencies have reported inaccurate times in one or more years.”<sup>17</sup>

A March 11, 2020, GAO report noted continued delays in response time and a substantial increase in the FOIA backlog.<sup>18</sup> The report was requested by a bipartisan group of legislators because some agencies were not fully complying with the FOIA Improvement Act. In FY 2018, only 27 percent of FOIA requests were fully granted. The FOIA backlog increased by 97 percent between FY 2012 and FY 2020.<sup>19</sup> Costs to litigate FOIA requests also increased by 69 percent since FY 2012.

The way in which FOIA staffers answer requests is also 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.<sup>20</sup> In other words, only about one in five FOIA requests were fully answered.

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.”<sup>21</sup> In other words, for every dollar spent, the OIGs brought in \$13.41 in savings.

In its FY 2025 budget request, GAO stated that since 2002 the watchdog has produced \$1.38 trillion in financial benefits, with an average return on investment of \$133 to each dollar spent over the previous six years.<sup>22</sup> During this timeframe, the GAO has identified more than “28,000 program and operational benefits that helped to change laws, improve public safety, and promote sound management throughout government.”<sup>23</sup>

Sufficient support for GAO and the OIGs and further reforms to the FOIA process would help demonstrate that eradicating waste, fraud, abuse, and mismanagement is being taken seriously in Washington. It would also help overcome the predilection on Capitol Hill for solving problems

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<sup>16</sup> Government Accountability Office (GAO), “Freedom of Information Act, Additional Guidance and Reliable Data Can Help Address Agency Backlogs,” March 7, 2024, <https://www.gao.gov/assets/d24106535.pdf>.

<sup>17</sup> Ibid.

<sup>18</sup> Michelle Sager, “Freedom of Information Act: Federal Agencies’ Recent Implementation Efforts,” Government Accountability Office, March 11, 2020, <https://www.gao.gov/assets/710/705284.pdf>.

<sup>19</sup> GAO, “Freedom of Information Act Selected Agencies Adapted to the COVID-19 Pandemic but Face Ongoing Challenges and Backlogs,” January 2022, <https://www.gao.gov/assets/gao-22-105040.pdf>.

<sup>20</sup> Ted Bridis, “US sets new record for censoring, withholding gov’t files,” *AP News*, March 12, 2018, <https://apnews.com/714791d91d7944e49a284a51fab65b85>.

<sup>21</sup> John Hudak and Grace Wallack, “Sometimes cutting budgets raise deficits: The curious case of inspectors’ general return on investment,” Center for Effective Public Management at Brookings, April 2015, <https://www.brookings.edu/wp-content/uploads/2016/06/CEPMHudakWallackOIG.pdf>.

<sup>22</sup> Gene L. Dodaro, “Fiscal Year 2025 Budget Request, U.S. Government Accountability Office,” GAO, April 10, 2024, <https://www.gao.gov/assets/gao-24-107438.pdf>.

<sup>23</sup> Ibid.

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by creating and funding new programs rather than conducting vigorous oversight to determine the effectiveness of existing expenditures, which is another justification for the DOGE to have been created.

Members of the 119th Congress must regain the public's trust by committing themselves to scrutinizing every corner of the federal budget, reinstating and repairing some of the government's most powerful waste-fighting tools, and providing complete transparency for every penny of federal government spending in an easily understood and searchable online database accessible to all Americans.



### BUDGET REFORM

The current congressional budget process was established by the Congressional Budget and Impoundment Control Act, also known as the Congressional Budget Act (CBA).<sup>24</sup> The CBA, which was enacted in 1974, created the Congressional Budget Office (CBO) and the budget committees in the Senate and House of Representatives. Despite Congress's intent for the CBA to improve the budget process, it has long been broken, and reform is crucial to improve accountability and transparency, and get government spending under control.

According to the CBA, Congress is supposed to agree on a concurrent budget resolution by every April 15 for the coming fiscal year to set spending and revenue levels, covering 21 broadly defined functions of government, and enact all 12 appropriations bills by October 1. 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 FYs – 1977, 1989, 1995, and 1997. Instead, Congress has resorted to passing continuing resolutions, which provide funding similar to the previous year's level without regard to the effectiveness of federal spending.<sup>25</sup>

Continuing resolutions are a primary example of Congress's inability to carry out its most fundamental duties. Short-term spending bills undermine the ability of the government to save money, “and nowhere more so than the DOD, where multi-year contracts are essential to providing proper and timely procurement for weapons systems and other equipment needed to give warfighters the tools they need to protect national security.”<sup>26</sup>

In addition to adhering to the timeline for the budget resolution and appropriations bills, the adoption of several reforms would improve the process. 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 enact two-year appropriations in the first year and conduct vigorous oversight hearings and analysis in the second year. In the 118th Congress Sen. Jeanne Shaheen (D-N.H.) introduced S. 3208, the Biennial Budgeting and Appropriations Act. This legislation had 12 co-sponsors and was referred to the Senate Budget Committee.<sup>27</sup> The bill was referred to the Senate Budget Committee, but no further action was taken on the legislation.<sup>28</sup>

Congress should also adopt zero-based budgeting. The starting number for any expenditure would be zero, instead of starting the budget at the level spent during the previous year.

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<sup>24</sup> James V. Saturno, Bill Heniff Jr., and Megan S. Lynch, “The Congressional Appropriations Process: An Introduction,” Congressional Research Service (CRS), November 30, 2016, <https://fas.org/sgp/crs/misc/R42388.pdf>.

<sup>25</sup> Jessica Tollestrup, “Automatic Continuing Resolutions: Background and Overview of Recent Proposals,” CRS, August 20, 2015, <https://fas.org/sgp/crs/misc/R41948.pdf>.

<sup>26</sup> Sean Kennedy, “Congressional inaction raises costs and damages national defense,” *The Hill*, February 2, 2024, <https://thehill.com/opinion/congress-blog/4479653-congressional-inaction-raises-costs-and-damages-national-defense/#:~:text=This%20abdication%20by%20members%20of,other%20equipment%20needed%20to%20give.>

<sup>27</sup> Sen. Jeanne Shaheen, (D-N.H.), “Shaheen and Braun Reintroduce Bipartisan Legislation to Reform the Broken Budget Process,” November 2, 2023, <https://www.shaheen.senate.gov/shaheen-and-braun-reintroduce-bipartisan-legislation-to-reform-the-broken-budget-process>.

<sup>28</sup> Biennial Budgeting and Appropriations Act, S. 3208, 118th Congress (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/3208>.

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Spending on any program would then have to be justified, not merely assumed. Zero-based budgeting was included in the Republican Study Committee’s (RSC) FY 2025 Budget Proposal.<sup>29</sup> Congress should also enact sunset clauses to ensure that government spending does not outlive its usefulness, and future expenditures can be paused. At the same time, an evaluation of the effectiveness of federal programs can be conducted. No program that was enacted 20 or 50 years ago should automatically be renewed.

Parallel to sunset clauses to stop the automatic renewal of federal programs is the Unauthorized Spending Accountability (USA) Act, first introduced by Rep. Cathy McMorris Rodgers (R-Wash.) in 2016 during the 116th Congress and subsequently reintroduced in the 117th and 118th Congresses.<sup>30</sup> The objective of the legislation is to eliminate “Zombie” programs that have not been authorized and give members of Congress time to “review, rethink, and possibly eliminate programs that are no longer needed.”<sup>31</sup>

A July 2024 CBO report estimated that there are “1,264 authorizations that expired before the beginning of fiscal year 2022.”<sup>32</sup> There was “\$516 billion in funding for fiscal year 2024 for which authorizations have expired can be attributed to 491 expired authorizations contained in 177 laws—\$395 billion for those authorizations with specified amounts and \$121 billion for indefinite authorizations.”<sup>33</sup>

The USA Act requires unauthorized programs to be put on a rolling path to sunset after three years. Each program would receive 90 percent of funding in the first year after its authorization expired, dropping to 85 percent in the second and third years, and then all funding would be rescinded after the fourth year. The legislation would also require a sunset clause in future reauthorizations.<sup>34</sup>

Unauthorized programs include entire departments, not just small programs. The State Department has not been reauthorized since 2003 and the Bureau of Land Management has not been reauthorized since 1996. In the Department of Veterans Affairs (VA), programs costing more than \$60 billion annually have not been reauthorized, some dating back to 1998.<sup>35</sup>

During his last month as House Budget Committee Chairman, Rep. Tom Price (R-Ga.) proposed six principles for budget reform, including strengthening enforcement, increasing transparency and constitutional authority, and changing the built-in bias toward higher spending. Chairman Price recommended that rather than having the President submit a detailed budget in February, a

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<sup>29</sup> Republican Study Committee (RSC), “FY25 Budget Proposal: Fiscal Sanity to Save America,” p.111, March 20, 2024, [https://hern.house.gov/uploadedfiles/final\\_budget\\_including\\_letter\\_word\\_doc-final\\_as\\_of\\_march\\_25.pdf](https://hern.house.gov/uploadedfiles/final_budget_including_letter_word_doc-final_as_of_march_25.pdf).

<sup>30</sup> Rep. Cathy McMorris Rodgers (R-Wash.), “Unauthorized Spending Accountability (USA) Act of 2019,” <https://mcmorris.house.gov/usaact/>; Unauthorized Spending Accountability Act of 2019, H.R. 2505, 116th Congress (2019), <https://www.congress.gov/bill/116th-congress/house-bill/2505>; Unauthorized Spending Accountability Act of 2021, H.R. 2056, 117th Congress (2021), <https://www.congress.gov/bill/117th-congress/house-bill/2056>; Unauthorized Spending Accountability Act of 2023, H.R. 1518, 118th Congress (2023), <https://www.congress.gov/bill/118th-congress/house-bill/1518>.

<sup>31</sup> Ibid.

<sup>32</sup> Congressional Budget Office (CBO), “Expired and Expiring Authorizations of Appropriations for Fiscal Year 2024” July 2024, [https://www.cbo.gov/publication/60580#\\_idTextAnchor001](https://www.cbo.gov/publication/60580#_idTextAnchor001).

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

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policy-based budget should be sent to Congress on April 30, which would be after the House and Senate Budget Committees report their budget resolutions no later than April 15.<sup>36</sup>

Chairman Price's reforms also required the President's budget to analyze the cost of complying with federal regulations and prevents agencies from issuing a new regulation without terminating a current regulation. It also required CBO and the Office of Management and Budget to establish a regulatory baseline to help estimate regulatory costs across the federal government. His reforms also suggested uniform budget rules for the House and Senate, full cost estimates prior to committee mark-ups, and an end to "gimmicks" like moving spending into or out of the last and first day of a fiscal year.<sup>37</sup>

Other changes that should be made to the budget process include converting the concurrent budget resolution into a joint resolution that would be signed into law by the President; amending House rules to establish a point of order for a rule waiving applicable spending points of order; limiting the growth of entitlement spending to the current inflationary adjustment for each program and population growth; repealing the Gephardt rule that automatically raises the debt ceiling; and providing enhanced rescission authority that would pass constitutional muster and give the President the power to eliminate wasteful spending in appropriations bills.

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

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<sup>36</sup> Eric Maus and Tom Schatz, "Federal Budget: In Dire Need of Reform," Citizens Against Government Waste, January 21, 2025, <https://www.cagw.org/reporting/federal-budget-in-dire-need-of-reform>.

<sup>37</sup> Ibid.

### DEPARTMENT OF DEFENSE

The budget for the Department of Defense (DOD), the government's largest discretionary expenditure, accounts for approximately one-sixth of federal spending.<sup>38</sup> The \$814.4 billion in defense spending in FY 2024 was one of the highest amounts in U.S. history but is set to be eclipsed in FY 2025. Then-President Biden signed the FY 2025 National Defense Authorization Act (NDAA) on December 23, 2024, providing \$895 billion.<sup>39</sup> Members of Congress will need to pass the FY 2025 DOD Appropriations Act prior to the expiration of the continuing resolution on March 14, 2025.

With such a massive outlay, it is imperative that the DOD spend the money effectively and efficiently. Unfortunately, the Pentagon's recent budgetary woes do not inspire confidence. To ensure that Americans receive the best possible return on national security spending, the 119th Congress should focus on two key areas.

#### Financial Disarray

The DOD's financial black hole is nowhere more evident than in its inability to pass a financial review. It remains the sole federal agency that has not undergone a clean audit under the Chief Financial Officers Act of 1990.

On November 15, 2024, the DOD announced that, yet again, it failed its financial examination. Trying to put this failure in the best possible light, DOD Comptroller and Chief Financial Officer Michael McCord said during a press briefing on the report, that, "This result was not a surprise and I know on the surface it doesn't sound like we're making progress, however that is not the case ... I believe the department has turned a corner in its understanding of the challenges and, more importantly, in addressing those challenges. Momentum is on our side."<sup>40</sup>

He listed some reasons for optimism that the DOD may achieve its goal of a clean audit by FY 2028, as mandated by the FY 2024 NDAA. The Defense Threat Reduction Agency had a clean audit in FY 2024, bringing the total to nine out of 28 areas of the DOD to pass the test. The Marine Corps became the first service to complete a clean audit in FY 2023. According to Comptroller McCord, "In addition to reporting entities that already had favorable audit opinions, \$703 billion, or 82% of our DOD-wide, \$856 billion balance is now free of material weaknesses." In FY 2021, only 7 percent of total funding was free of material weaknesses.

DOD officials have stressed patience, but this is hard to reconcile with the fact that this problem does not exist at any other federal agency. It is also difficult to imagine members of Congress allowing such persistent financial ineptitude to exist anywhere else. While it is highly unlikely that the Internal Revenue Service (IRS) would allow private citizens to get away unpenalized

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<sup>38</sup> Congressional Budget Office (CBO), "Defense and National Security," <https://www.cbo.gov/topics/defense-and-national-security>.

<sup>39</sup> Alex Gangitano and Brooke Migdon, "Biden signs \$895B Defense bill despite transgender care provision," *The Hill*, December 24, 2024, <https://thehill.com/homenews/administration/5048580-biden-signs-ndaa-transgender/>.

<sup>40</sup> Jen Judson, "No clean audit yet, but results show 'momentum,' DOD comptroller says," *Defense News*, November 18, 2024, [https://www.defensenews.com/pentagon/2024/11/18/no-clean-audit-yet-but-results-show-momentum-dod-comptroller-says/?utm\\_source=sailthru&utm\\_medium=email&utm\\_campaign=dfn-dnr](https://www.defensenews.com/pentagon/2024/11/18/no-clean-audit-yet-but-results-show-momentum-dod-comptroller-says/?utm_source=sailthru&utm_medium=email&utm_campaign=dfn-dnr).

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with more than 30 years of financial ineptitude, legislators have been far more charitable to the Pentagon.

The necessity for the Pentagon to get its financial house in order is revealed on a regular basis. The Defense Health Agency (DHA) spends approximately \$23 billion annually on the Military Health Benefits program, supporting more than nine million active-duty service members, veterans, and their families. A November 2021 Agency Financial Report for FY 2021 noted that improper payments for the Military Health Benefits program in FY 2021 amounted to \$168 million, a 50.4 percent reduction from \$338.9 million in FY 2020.<sup>41</sup> It expressed a 95 percent level of confidence in the accuracy of its method for identifying improper payments within the program.

However, these results were called into question by a January 11, 2022, DOD OIG report, which found that the DHA “did not have adequate processes to identify improper payments and produce a reliable improper payment estimate.”<sup>42</sup> Because the DHA used inappropriate sampling methodology and did not undertake proper reviews, the agency is “unable to produce a reliable improper payment estimate.”<sup>43</sup>

The OIG report also cast doubt on the veracity of agency-wide improper payment estimates. The Pentagon reported a total of \$2.5 billion in improper payments across nine programs in FY 2021, a decrease of \$8.9 billion from the \$11.4 billion reported in FY 2020.<sup>44</sup> If auditing standards in these analyses were similarly insufficient, then the true amount of improper payments at the DOD would be far higher than reported.

Financial irregularities at the Pentagon have been on the GAO’s list of programs at high risk for waste, fraud, abuse, and mismanagement since 1990. The 2023 High-Risk report contains five areas, including weapon systems acquisition, which has been on the list since 1990, and business systems modernization, first added in 1995.<sup>45</sup>

Taming the bureaucratic beast has always been and will continue to be a challenge because of institutional inertia, contractor resistance, and the Pentagon’s benefactors in Congress. Results will not change unless legislators hold the DOD’s feet to the fire.

### Poor Acquisition Track Record

Federal procurement reform should be at the top of the to-do list for the new Congress, and that need is most evident at the DOD. Unfortunately, there are several procurement disasters that are emblematic of the DOD’s systemic problems, but the foremost example remains the F-35 Joint Strike Fighter (JSF).

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<sup>41</sup> Department of Defense, “Agency Financial Report: Fiscal Year 2021,” November 5, 2021, [https://comptroller.defense.gov/Portals/45/Documents/afir/fy2021/DoD\\_FY21\\_Agency\\_Financial\\_Report.pdf](https://comptroller.defense.gov/Portals/45/Documents/afir/fy2021/DoD_FY21_Agency_Financial_Report.pdf).

<sup>42</sup> Department of Defense Inspector General, “Audit of the Defense Health Agency’s Reporting of Improper Payment Estimates for the Military Health Benefits Program,” January 11, 2022, <https://media.defense.gov/2022/Jan/13/2002921501/-1/-/1/DODIG-2022-052.PDF>.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid., Department of Defense, “Agency Financial Report: Fiscal Year 2021.”

<sup>45</sup> GAO, “High-Risk Series,” April 2023, <https://www.gao.gov/assets/gao-23-106203.pdf>.

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The perennial posterchild of a broken acquisition system, the JSF program has been under continuous development since the contract was awarded in 2001 and has faced innumerable delays and cost overruns. Total acquisition costs now exceed \$428 billion, 84 percent greater than the initial estimate of \$233 billion. According to an April 15, 2024, GAO report, total lifetime costs of the program will now exceed \$2 trillion, or 17.7 percent more than the previous \$1.7 trillion estimate in September 2023.<sup>46</sup>

On April 26, 2016, then-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.”<sup>47</sup> 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.<sup>48</sup>

The JSF has been plagued by a staggering array of persistent issues, many of which were highlighted in the FY 2019 DOD Operational Test and Evaluation Annual Report, which revealed 873 unresolved deficiencies including 13 Category 1 items, involving the most serious flaws that could endanger crew and aircraft.<sup>49</sup> While this is an overall reduction from the 917 unresolved deficiencies and 15 Category 1 items found in September 2018, the report stated that “although the program is working to fix deficiencies, new discoveries are still being made, resulting in only a minor decrease in the overall number of deficiencies.”<sup>50</sup>

Lockheed Martin, the JSF’s prime contractor, is struggling to deliver aircraft with improvements to displays, computers, and processing power known as Technology Refresh 3 (TR-3), which was meant to be ready in April 2023, and is set to run \$1 billion over budget.<sup>51</sup> The Pentagon began to refuse acceptance of new JSFs in July 2023 because of shortcomings in TR-3.<sup>52</sup> After the contractor released a “truncated” version of TR-3, which enabled the aircraft’s use in training, but not combat, the government accepted deliveries again beginning in July 2024. However, the DOD is withholding payment of approximately \$5 million for each aircraft until TR-3 is completed.<sup>53</sup>

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<sup>46</sup> GAO, “F-35 Sustainment: Costs Continue to Rise While Planned Use and Availability Have Decreased,” Q&A Report to Congressional Committees, April 15, 2024, <https://www.gao.gov/assets/d24106703.pdf>.

<sup>47</sup> Ryan Browne, “John McCain: F-35 is ‘a scandal and a tragedy,’” CNN, April 27, 2016, <https://www.cnn.com/2016/04/26/politics/f-35-delay-air-force/>.

<sup>48</sup> Andrea Drusch, “Fighter plane cost overruns detailed,” *Politico*, February 16, 2014, <https://www.politico.com/story/2014/02/f-35-fighter-plane-costs-103579>.

<sup>49</sup> Robert Behler, “Director, Operation Test and Evaluation: FY 2019 Report,” Department of Defense, December 20, 2019, <https://www.cagw.org/sites/default/files/pdf/2019DOTEAnnualReport.pdf>.

<sup>50</sup> *Ibid.*

<sup>51</sup> Audrey Decker, “F-35 tech problems, protracted negotiations hit Lockheed finances,” *Defense One*, October 22, 2024, [https://www.defenseone.com/threats/2024/10/f-35-tech-problems-protracted-negotiations-hit-lockheed-finances/400455/?oref=defenseone\\_today\\_nl&utm\\_source=Sailthru&utm\\_medium=email&utm\\_campaign=Defense%20One%20Today:%20October%2023%2C%202024&utm\\_term=newsletter\\_d1\\_today](https://www.defenseone.com/threats/2024/10/f-35-tech-problems-protracted-negotiations-hit-lockheed-finances/400455/?oref=defenseone_today_nl&utm_source=Sailthru&utm_medium=email&utm_campaign=Defense%20One%20Today:%20October%2023%2C%202024&utm_term=newsletter_d1_today).

<sup>52</sup> Stephen Losey, “New F-35s can fly combat training as DOD holds millions from Lockheed,” *Defense News*, August 30, 2024, <https://www.defensenews.com/air/2024/08/30/new-f-35s-can-fly-combat-training-as-dod-holds-millions-from-lockheed/>.

<sup>53</sup> Stephen Losey, “Lockheed feels financial pinch from F-35 upgrade, contract delays,” *Defense News*, October 22, 2024, [https://www.defensenews.com/air/2024/10/22/lockheed-feels-financial-pinch-from-f-35-upgrade-contract-delays/?utm\\_source=sailthru&utm\\_medium=email&utm\\_campaign=dfn-dnr](https://www.defensenews.com/air/2024/10/22/lockheed-feels-financial-pinch-from-f-35-upgrade-contract-delays/?utm_source=sailthru&utm_medium=email&utm_campaign=dfn-dnr).

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The GAO has long reported on the failures of the JSF program. According to an April 15, 2024, GAO report, “We have consistently found that the F-35 fleet is not meeting its availability goals, which are measured by mission capable rates (i.e., the percentage of time the aircraft can perform one of its tasked missions), despite increasing projected costs. No F-35 variant met its performance goals for mission capable rates from fiscal years 2019 through 2023.”<sup>54</sup>

The plane’s availability has been so abysmal that in September 2023, the DOD F-35 Joint Program Office announced a “War on Readiness,” intended to increase the aircraft’s mission-capable rating by 10 percent by the conclusion of March 2024.<sup>55</sup> It managed an increase of 2.6 percent in that timeframe, ending with a mission-capable rating of 55.7 percent.

This was the Pentagon’s second such push in recent years to increase mission-capable rates. The previous “war on readiness” began with former DOD Secretary Jim Mattis’s September 2018 memo, which directed the Air Force and Navy to increase mission-capable rates of four aircraft (including the JSF) to at least 80 percent by the close of 2019.<sup>56</sup> The initiative did not win the battles to fix the readiness shortcomings and was abandoned by the Air Force in May 2020.<sup>57</sup>

Cost overruns resulting from the ongoing problems have plagued the F-35. The first comprehensive cost review of the program since 2012 found a funding gap of \$10 billion over the next five years. On September 11, 2020, *Bloomberg* reported on an internal DOD review of the JSF program dated June 17, 2020, labeled “For Official Use Only.”<sup>58</sup> The report estimated that \$88 billion for research and development, procurement, and operations and maintenance would be needed over the next five fiscal years, \$10 billion more than the official DOD estimate of \$78 billion.

The report cited uncertainty about the final cost of the JSF because the aircraft had only logged about 2 percent of the total flight hours it will accrue over its lifecycle. In addition, the DOD’s goal to reduce the F-35’s cost per hour of flight by \$10,000 to \$25,000 over the next five years “is likely to prove unachievable” because of “a lack of defined actions” to cut costs.<sup>59</sup>

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 planes that were already assembled, adding to overall costs. Speaking at the Aspen Security Forum on July 24, 2015, then-Air Force Secretary Deborah Lee James stated, “The biggest lesson I have learned from the F-35 is never again should we be flying an aircraft while we’re building it.”<sup>60</sup>

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<sup>54</sup> Ibid, GAO, “F-35 Sustainment: Costs Continue to Rise While Planned Use and Availability Have Decreased.”

<sup>55</sup> Stephen Losey, “Wittman says patience wearing thin on F-35 sustainment plan,” *Defense News*, October 3, 2023, <https://www.defensenews.com/air/2023/10/03/wittman-says-patience-wearing-thin-on-f-35-sustainment-plan/>.

<sup>56</sup> Stephen Losey, “Here’s how bad the military’s aircraft readiness has gotten,” *Defense News*, November 19, 2020, <https://www.airforcetimes.com/news/your-air-force/2020/11/19/heres-how-bad-the-militarys-aircraft-readiness-has-gotten/>.

<sup>57</sup> Valerie Insinna and Stephen Losey, “US Air Force bails on Mattis-era fighter jet readiness goals,” *Defense News*, May 7, 2020, <https://www.defensenews.com/air/2020/05/07/the-air-force-bails-on-mattis-era-fighter-jet-readiness-goal/>.

<sup>58</sup> Anthony Capaccio, “F-35’s \$10 Billion Funding Gap Hints at a Jet Too Costly to Fly,” *Bloomberg*, September 11, 2020, <https://www.bloomberg.com/news/articles/2020-09-11/f-35-is-running-10-billion-short-through-2025-pentagon-finds>.

<sup>59</sup> Ibid.

<sup>60</sup> Richard Sisk, “Air Force Secretary Acknowledges Wide Range of Problems with F-35,” *Military.com*, July 28, 2015, <https://www.military.com/daily-news/2015/07/28/air-force-secretary-acknowledges-wide-range-problems-f35.html>.

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Of course, the program's many problems have not stopped the Pentagon from asking for funding, and members of Congress from supplying it, oftentimes exceeding the request from the DOD. This trend continued in FY 2024, when legislators added \$282,353,000 for the JSF, with the bulk of the funding going toward the acquisition of three JSFs for the Air Force beyond the amount requested by the Pentagon.<sup>61</sup> Upon completion of the development phase, additional funding will be needed to retrofit the JSFs purchased via earmarks, adding to overall program costs. Since FY 2001, members of Congress have added 39 earmarks for the JSF program, costing \$12.4 billion.<sup>62</sup>

The wide distribution of F-35 supply lines across the country is no accident. According to a map showing the local economic impact of the JSF on Lockheed Martin's website, every state in the union has at least one supplier for the aircraft.<sup>63</sup> This gives a lot of incentives for legislators to keep greasing the wheels.

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 problems will continue until members of Congress hold the DOD to a much higher standard of effectiveness and efficiency.

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<sup>61</sup> CAGW, *Congressional Pig Book Summary*, June 12, 2024, <https://www.cagw.org/reporting/pig-book>.

<sup>62</sup> Ibid.

<sup>63</sup> Lockheed Martin, "Strengthening our supply chain. Securing our future," <https://www.f35.com/f35/about/economic-impact.html>.



### EARMARKS

Members of Congress continued to pile on the pork in FY 2024, the third year since they restored the practice.

Released on June 12, 2024, CAGW's *2024 Congressional Pig Book* exposed 8,222 earmarks, 11.2 percent more than the 7,396 in FY 2023, costing \$22.7 billion, 13 percent less than the \$26.1 billion in FY 2023.<sup>64</sup> While the lower cost is moving earmark spending in the right direction, the \$22.7 billion in FY 2024 is the fifth highest total since CAGW released the first *Pig Book* in 1991, behind the \$29 billion in FY 2006, \$27.3 billion in FY 2005, \$26.1 billion in FY 2023, and \$22.9 billion in FY 2004.<sup>65</sup> Since FY 1991, CAGW has identified 132,434 earmarks costing \$460.3 billion.

After an 11-year moratorium, earmarks were revived for FY 2022, first in a favorable vote by House Democrats on February 26, 2021.<sup>66</sup> House Republicans agreed to restore them on March 17, 2021, followed by Senate Democrats on April 26, 2021.<sup>67</sup> Senate Republicans voted to uphold the moratorium on April 21, 2021, but the agreement was nonbinding, and many of them received earmarks.<sup>68</sup> These arrangements were maintained for earmarks in FYs 2023 and 2024.

The revived earmarks, despite a futile attempt to cover them up by designating them as "Community Project Funding," are similar to the old earmarks that were included in the appropriations bills passed by Congress during FYs 2008-2010, which required that the names of the members who received earmarks be listed in each bill. The rules are as follows: each member of the House of Representatives is allowed to request up to 15 projects (senators face no such limitation); requests are posted online; a list of projects funded is published when the subcommittee or committee marks up a bill; for-profit entities are not eligible; and members certify that they, their spouse, and their family have no financial interest in the project.

In order to receive funding, there must be "evidence of community support that were compelling factors" in deciding which projects to request. This limitation is *prima facie* absurd, since it includes every expenditure from building a weapons system to programs and projects funded by hundreds of agencies and programs that include community, development, economic, or similar words in their title.<sup>69</sup> It also describes the normal system of requesting money from competitive grant programs. The projects that would be requested as earmarks were by their very nature not funded because the agencies rejected them based on statutory criteria established by Congress.

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<sup>64</sup> CAGW, *2024 Congressional Pig Book*.

<sup>65</sup> *Ibid.*

<sup>66</sup> Jennifer Shutt, "House appropriators officially bring back earmarks, ending ban," *Roll Call*, February 26, 2021, <https://rollcall.com/2021/02/26/house-appropriators-to-cap-earmarks-at-1-percent-of-topline/>.

<sup>67</sup> Melanie Zanona and Caitlin Emma, "House GOP vote to embrace the return of earmarks," *Politico*, March 17, 2021, <https://www.politico.com/news/2021/03/17/house-gop-ends-earmark-ban-476696>; Lindsay Wise, "Senate Earmarks are Back: Democrats Make It Official," *The Wall Street Journal*, April 26, 2021, <https://www.wsj.com/articles/senate-earmarks-are-back-democrats-make-it-official-11619478322>.

<sup>68</sup> Emily Cochrane, "Senate Republicans agree to keep a symbolic ban on earmarks, by may use them anyway," *The New York Times*, April 21, 2021, <https://www.nytimes.com/2021/04/21/us/senate-republicans-earmarks.html>.

<sup>69</sup> Tom Schatz, "Earmarks are inequitable, corrupt, and costly – they should not be brought back," *The Hill*, January 4, 2021, <https://thehill.com/blogs/congress-blog/politics/532473-earmarks-are-inequitable-corrupt-and-costly-they-should-not-be/>.

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As a result, the end product looked awfully similar to the old system used by members of Congress prior to the establishment of the earmark moratorium.

In an effort to reduce the number and cost of earmarks in the House of Representatives, then-Appropriations Committee Chairwoman Kay Granger (R-Texas) changed the rules for FY 2024 to limit the cost of earmarks to 0.5 percent instead of 1 percent of total discretionary spending, eliminated earmarks for the Labor, Health and Human Services (HHS), and Education, Financial Services, and Defense Appropriations bills, and required a statement demonstrating a federal nexus for earmark requests. However, the Senate maintained the 1 percent threshold and the House added rural water projects for smaller communities if they pay 25 percent of the cost, and port and rail projects were eligible in the Transportation, Housing and Urban Development bill.

But on the other side of the ledger, the increase in the number of earmarks can be explained in part by House Minority Leader Hakeem Jeffries' (D-N.Y.) use of the “legalized bribery” aspect of the process. In exchange for votes to prevent a government shutdown, Leader Jeffries pushed Republican leaders to agree to increase the amount of money for earmarks allotted to Democrats in the Transportation, Housing and Urban Development Appropriations bill. Nearly all Democrats received an earmark in that bill, and according to a CNN analysis, most of them were inflated by \$616,279 above the amount provided in the committee-passed version of the legislation.<sup>70</sup>

The *2024 Congressional Pig Book* also found that,

“Earmarks continue to provide the most benefit to the most powerful legislators. In FY 2024, the 90 members of the House and Senate appropriations committees, making up only 17 percent of Congress, were responsible for 42.2 percent of the earmarks and 35.2 percent of the money. Three of the top five recipients by dollar amount serve on the Senate Appropriations Committee, and a fourth is Senate Majority Leader Chuck Schumer (D-N.Y.).

“Senate Appropriations Committee Ranking Member Susan Collins (R-Maine) claimed the most earmarks in FY 2024. Her 231 earmarks cost \$575,580,000, which is \$109,429,721, or 23.5 percent more than the legislator in second place, Senate Appropriations Committee member Lisa Murkowski (R-Alaska), who received 185 earmarks costing \$466,370,279.

“Three more senators rounded out the top five: Senator Angus King (I-Maine), who received 186 earmarks costing \$453,591,043; Senate Appropriations Committee member Brian Schatz (D-Hawaii), who received 114 earmarks costing \$428,634,250; and Senate Majority Leader Schumer, who received 227 earmarks costing \$421,738,113. These five legislators, constituting just 0.93 percent of the 535 members of Congress, together received \$2,345,913,685, or 10.3 percent of the total cost of the FY 2024 earmarks, the same percentage the top five claimed in FY 2023.

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<sup>70</sup> Lauren Fox and Melanie Zanona, “In fractured GOP majority, Jeffries amasses unusual amount of power as minority leader,” *CNN*, May 22, 2024, <https://www.cnn.com/2024/05/22/politics/house-democratic-leader-jeffries/index.html>.

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“The new system of earmarking benefited senators far more than representatives, with only three of the top 40 recipients by dollar amount coming from the House. They are House Appropriations Committee member Chuck Fleischmann (R-Tenn.) who received 13 earmarks costing \$273,330,940 (including the single largest earmark of any member of Congress), ranking 16th; Rep. Sam Graves (R-Mo.), who received 14 earmarks costing \$161,040,860, ranking 36th; and Rep. Blaine Luetkemeyer (R-Mo.), who received 13 earmarks costing \$146,400,568, ranking 40th.

“Democrats took advantage of the earmarking opportunity far more than Republicans. Of the 261 Democrats, 260, or 99.6 percent took part, receiving 8,571 earmarks totaling \$12,421,518,897. This contrasts to 166 of 266 Republicans, or 62.4 percent, who received 2,931 earmarks costing \$8,974,057,669. Because multiple legislators often requested the same earmark, the combined individual totals exceeded the total number and dollar value of earmarks attributed to members of Congress in the bills.

“Like the earmarks prior to the moratorium, states and territories with smaller populations got a disproportionate amount, especially if they had members on powerful committees. Alaska (\$645.20 per resident) again received the most pork per capita (dollars in earmarks relative to population), followed by Maine (\$434.24 per resident), Hawaii (\$336.35 per resident), the Northern Mariana Islands (\$254.36 per resident), and West Virginia (\$211.95 per resident). In FY 2023, the top five were Alaska, the Northern Mariana Islands, Vermont, Hawaii, and the Virgin Islands.

“While the inclusion of the names of members of Congress is helpful, more than one-third of the cost of the earmarks was added without any attribution. There were 124 such earmarks costing \$8.2 billion, or 36.1 percent of the \$22.7 billion total. Despite the House prohibition on earmarks in the Defense Appropriations Act, CAGW found 107 projects, or 86 percent of the 124 earmarks, costing \$7.6 billion, or 93 percent of the \$8.2 billion, for the Department of Defense (DOD).”<sup>71</sup>

The FY 2024 earmarks were again in omnibus bills containing thousands of pages, which were voted on with minimal time for review. Moreover, the earmarks were in disparate sections of the 12 appropriations bills with varying degrees of legibility. To undertake this analysis, CAGW staff painstakingly created a searchable database, oftentimes entering by hand information that failed to accurately scan because of blurry, barely discernable text. The data released to the public makes a mockery of the searchable database delineated by the earmark guidelines. And rather than being in a single database, the earmark requests reside only on an individual member’s website.

The members of Congress who restored earmarks willfully ignored or forgot why this corrupt, inequitable, and costly practice was first subject to the moratorium. The movement gained traction due to the tireless work of members of Congress like then-Rep. Jeff Flake (R-Ariz.) and the late Sen. John McCain (R-Ariz.); high-profile boondoggles like 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.

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<sup>71</sup> CAGW, *2024 Congressional Pig Book*.

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The impact of earmarks was shown in a September 7, 2007, Department of Transportation (DOT) OIG report, which found 7,724, or 99 percent of the 7,760 projects for FY 2006 reviewed by the OIG worth \$8 billion at three DOT agencies either failed to be “subject to the agencies’ normal review and planning process or bypassed the states’ normal planning and programming processes.”<sup>72</sup> At the Federal Aviation Administration (FAA), nine of the 10 earmarked air traffic control tower replacement projects were low priority, and their funding caused a three-year delay in planning for higher priority projects.<sup>73</sup> There were 16 projects out of 65 at the Federal Highway Administration that failed to meet the statutory requirements of the Interstate Maintenance Discretionary Program.<sup>74</sup>

Reviewing the thousands of earmark requests for FY 2025 by appropriations committee staff will not only bypass the local review and approval process but also usurp the authority Congress provided to federal agencies and their employees, who are charged with deciding how to spend the 99 percent of discretionary spending that is not earmarked.

### The Perilous Future of Earmarks

While CAGW exposed earmarks in the appropriations bills every year since the moratorium, the agreement succeeded in reducing the cost and number of the projects. Members of Congress passed the 12 appropriations bills in nine years during the moratorium, adding on average 192 earmarks costing \$9.4 billion. In the nine years prior to the earmark moratorium, legislators on average added 9,542 earmarks costing \$20.9 billion. In the three years since they repealed the moratorium, members of Congress have added on average 6,919 earmarks costing \$22.6 billion.

The current era of earmarking is the costliest.

Moreover, an increasing number of members of Congress are requesting earmarks. In FY 2022, their first opportunity in 12 years to grab earmarks, 393 legislators, or 73.5 percent of Congress, took part. The percentage of congressional porkers increased to 80.8 percent in FY 2024, when 426 legislators requested earmarks. These included 260 of the 261 Democrats, or 99.6 percent, who received 8,571 earmarks totaling \$12,421,518,897. This contrasts to 166 of 266 Republicans, or 62.4 percent, who received 2,931 earmarks costing \$8,974,057,669.

Ending the earmark moratorium has opened a can of worms. The most probable outcome will be a proliferation in number and cost of earmarks in future years. However, with unified control of the federal government, Republicans have an opportunity to again eliminate earmarks beginning in FY 2025. While this seems like a longshot, some members of Congress have offered legislation that would again ban the practice. This occurred most recently on April 17, 2024, when Rep. Ralph Norman (R-S.C.) introduced H.R. 8051, the Earmark Elimination Act of 2024.<sup>75</sup>

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<sup>72</sup> Department of Transportation Office of the Inspector General, “Review of Congressional Earmarks Within Department of Transportation Programs,” September 7, 2007, [https://www.oig.dot.gov/sites/default/files/Congressional\\_Earmarks- AV-2007-66--508\\_Compliant.pdf](https://www.oig.dot.gov/sites/default/files/Congressional_Earmarks- AV-2007-66--508_Compliant.pdf).

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Earmark Elimination Act, H.R. 8051, 118th Congress, (2024), <https://www.congress.gov/bill/118th-congress/house-bill/8051>.

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In a September 28, 2022, report, CAGW argued that earmarks are a modern extravagance, not an ancient tradition.<sup>76</sup> The Constitution does not give Congress a blank check to spend tax dollars on any particular local project legislators might favor; the Founding Fathers never intended for Congress to behave in this manner.

Legislators often cite Congress's Article I tax and spending power as justification for earmarking. As Sen. Mike Lee (R-Utah) and then-Rep. Jeb Hensarling (R-Texas), co-leaders of the Article I Project, wrote in 2017 regarding earmarks, "Congress needs to assert its power of the purse, but not in this manner." In the past, "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."<sup>77</sup>

Those sentiments echo President James Monroe's May 4, 1822, Special Message to Congress regarding its authority to spend money on internal improvements across the country: "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."<sup>78</sup>

The case against the projects is clear. Earmarks create a handful of winners (appropriators, special interests, and lobbyists) and a great many losers (taxpayers). They contribute to the deficit directly, by tacking on extra funding, and indirectly, by attracting votes to costly legislation that might not otherwise pass. Earmarks corrupt democracy by eclipsing more important matters in the minds of legislators and voters.

The congressional tug-of-war over agencies' budgets dilutes the effectiveness of federal programs and impedes progress toward national policy goals. In the modern era, earmarks were not the last resort for many members of Congress, but rather the primary means to ensure re-election. These problems might very well become worse in the near future as more and more legislators opt for earmarks.

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<sup>76</sup> Sean Kennedy, "All About Earmarks: A Brief History," CAGW, September 28, 2022, <https://www.cagw.org/sites/default/files/pdf/All%20About%20Earmarks%20-%202022%20-%20Final.pdf>.

<sup>77</sup> Sen. Mike Lee and Rep. Jeb Hensarling, "Bringing Back Earmarks Won't Fix Congress," *The Washington Examiner*, February 9, 2017, <https://www.washingtonexaminer.com/tag/donald-trump?source=%2FEarmarks-weaken-congress-wont-drain-the-swamp%2Farticle%2F2614332>.

<sup>78</sup> "Special Message to the House of Representatives Containing the Views of the President of the United States on the Subject of Internal Improvements," The American Presidency Project, University of California, Santa Barbara, <https://www.presidency.ucsb.edu/documents/special-message-the-house-representatives-containing-the-views-the-president-the-united>.

### ENTITLEMENTS

To paraphrase Willie Sutton, Congress needs to go where the money is to reduce the deficit, and it is in mandatory spending, more commonly called entitlement spending. In the mid-1960s, discretionary spending was 67.5 percent of the budget and mandatory, or entitlement spending, was 26.1 percent of the budget. By FY 2027, those figures will essentially be reversed, as entitlement spending is estimated to be 63 percent of the budget and discretionary spending is estimated to be 26.7 percent of the budget.<sup>79</sup> While efforts to reduce waste, fraud, abuse, and mismanagement in discretionary spending to help reduce the deficit are always welcome, based on the percentage of the budget those programs represent, cuts in such spending will be insufficient to provide long-term relief from the impact of the continuously growing national debt and the interest payments thereon.

The three largest entitlement programs are Social Security, Medicare, and Medicaid. Social Security cost \$1.206 trillion in FY 2022, \$1.35 trillion in 2023, and \$1.5 trillion in FY 2024. Medicare cost \$790.13 billion in FY 2022, \$835.9 billion in FY 2023, and \$845.05 billion in FY 2024. Medicaid cost \$592 billion in FY 2022, \$607.7 billion FY 2023, and \$558.1 billion in FY 2024.<sup>80</sup>

#### Social Security

The 2024 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds (OASDI), stated that, “Under the Trustees’ intermediate assumptions, Social Security’s total cost is projected to be higher than its total income in 2024 and all later years. Total costs began to exceed total income in 2021. Social Security’s cost has exceeded its non-interest income since 2010.”<sup>81</sup>

For the long term, “Under the Trustees’ intermediate assumptions, OASDI cost is projected to exceed total income in 2024, and the dollar level of the hypothetical combined trust fund reserves declines until reserves become depleted in 2035.”<sup>82</sup>

It has been known for some time that retiring Baby Boomers would significantly increase the costs of OASDI. Through 2040, “the projected cost of Social Security generally increases faster than projected income ... because the ratio of workers paying taxes to beneficiaries will decline as the baby-boom generation retires and is replaced at working ages with subsequent lower birth-rate generations.”<sup>83</sup>

The trustees addressed the size of the 75-year actuarial deficit by noting, “that for the combined OASI and DI Trust Funds to remain fully solvent throughout the 75-year projection period

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<sup>79</sup> The Heritage Foundation, “Federal Budget in Pictures,” <https://www.federalbudgetinpictures.com/autopilot-spending-devours-budget/>.

<sup>80</sup> Fiscal Year 2024 Budget in Brief, January 24, 2025, P.15, <https://www.hhs.gov/sites/default/files/fy-2024-budget-in-brief.pdf>.

<sup>81</sup> The Board of Trustees, Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, “The 2024 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds,” (Social Security Trustees 2024 Annual Report), May 7, 2024, <https://www.ssa.gov/OACT/TR/2024/tr2024.pdf>.

<sup>82</sup> Ibid., p. 3.

<sup>83</sup> Ibid., p. 26.

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ending in 2098: (1) revenue would have to increase by an amount equivalent to an immediate and permanent payroll tax rate increase of 3.33 percentage points to 15.73 percent beginning in January 2024; (2) scheduled benefits would have to be reduced by an amount equivalent to an immediate and permanent reduction of 20.8 percent applied to all current and future beneficiaries effective in January 2024, or 24.8 percent if the reductions were applied only to those who become initially eligible for benefits in 2024 or later; or (3) some combination of these approaches would have to be adopted. If substantial actions are deferred for several years, the changes necessary to maintain Social Security solvency would be concentrated on fewer years and fewer generations. Significantly larger changes would be necessary if action is deferred until the combined trust fund reserves become depleted in 2035.”<sup>84</sup>

As they have before, the trustees recommended that Congress act to “address the projected shortfalls in a timely way in order to phase in necessary changes gradually and give workers and beneficiaries time to adjust to them. Implementing changes sooner rather than later would allow more generations to share in the needed revenue increases or reductions in scheduled benefits.”<sup>85</sup>

Social Security, along with the Supplemental Security Income (SSI) 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 72.87 million beneficiaries, including SSI, as of November 2024.<sup>86</sup> That is equal to 21.6 percent of the U.S. population of 337,567,342 as of December 17, 2024.<sup>87</sup>

In 1930, the average life expectancy at birth was 58 for men and 62 for women and the retirement age was 65. The younger death rate in the early part of the 20th century was due to high mortality rates in infants and children. While that may have seemed like most people would not have lived long enough to receive Social Security benefits, which would have made the program more financially viable, a better measure for the death rate and its relationship to Social Security is to determine when a person reached adulthood. In 1940, the percentage of population surviving adulthood from ages 21 to 65 for men was 54 percent and 61 percent for women. If a man reached 65, he was expected to live an average of 13 years longer to 77 and a woman reaching 65 was expected to live an average of 15 years longer to 80. If a man reached 65 in 1990, he was expected to live an average of 15 years longer to 80, and a woman an average of 19 years longer to 85.<sup>88</sup>

But life expectancy is now higher, as a man turning 65 in 2025 can be expected to live an average of 19.3 more years to 84.3 and a woman an average of 21 more years to 87.<sup>89</sup> The good news that people are living longer means that improving the long-term financial stability of Social Security is more critical than ever to promoting a sustainable federal budget and ensuring that earned benefits will be paid. Reforms will entail making sacrifices and tough choices, no

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<sup>84</sup> Ibid., p. 5.

<sup>85</sup> Ibid., p. 6.

<sup>86</sup> Social Security Administration (SSA), “Research, Statistics & Policy Analysis,” December 2024, [https://www.ssa.gov/policy/docs/quickfacts/stat\\_snapshot](https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot).

<sup>87</sup> U.S. Census Bureau, “U.S. and World Population Clock,” <https://www.census.gov/popclock/>.

<sup>88</sup> SSA, “Life Expectancy for Social Security,” <https://www.ssa.gov/history/lifeexpect.html>.

<sup>89</sup> SSA, “Retirement & Survivors Benefits: Life Expectancy Calculator,” November 2024, <https://www.ssa.gov/OACT/population/longevity.html>.

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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 75 to 79.6 percent of his or her full-retirement-age monthly benefit, depending on date of birth.<sup>90</sup> 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 in 1960 and beyond is 67.<sup>91</sup>

Because Americans are living longer, Social Security's normal retirement age (NRA) should continue to be raised. Additional changes in retirement and benefit structures must be made so the retirement program can be saved for current and future beneficiaries.

In its July 2022 report, "Summary of Provisions That Would Change the Social Security Program," the Social Security Office of the Chief Actuary provided a series of policy changes that would close or reduce the long-term financing shortfalls in the program. They included reducing the Cost-of-Living Adjustment (COLA), changing the level of the monthly benefits, raising the retirement age, setting benefit levels to inflation rather than wage growth, redirecting some of the funds to an individual retirement account, and taxing benefits.<sup>92</sup>

The most aggressive proposal in COLA adjustments would be to reduce the annual amount by one percentage point for 75 years starting in December 2024. Doing so would reduce the long-range actuarial balance shortfall by 56 percent.<sup>93</sup> That would mean, for example, that the Social Security and SSI benefits for approximately 72.5 million Americans would increase by 7.7 percent instead of the scheduled 8.7 percent in 2024 and 2.5 percent in 2025.<sup>94</sup>

For the NRA, the actuary suggests that after the NRA reaches 67 for those age 62 in 2022, it should be increased by two months per year until it reaches 69 for individuals attaining age 62 in 2034 and thereafter increased by one month every two years. This would reduce the long-term shortfall by 57 percent, the most of any proposed change in the NRA.<sup>95</sup>

In *Critical Waste Issues for the 115th Congress*, CAGW called for and continues to support inflation, or Progressive Price Indexing. Implementing this policy for middle-income and upper income families would eliminate much of Social Security's increases being driven by higher benefit costs.<sup>96</sup>

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<sup>90</sup> SSA, "Retirement Benefits," <https://www.ssa.gov/benefits/retirement/planner/1943.html>.

<sup>91</sup> SSA, "Retirement Age Calculator," <https://www.ssa.gov/benefits/retirement/planner/1960.html>.

<sup>92</sup> SSA, "Summary of Provisions that Would Change the Social Security Program," July 1, 2020, <https://www.ssa.gov/OACT/solvency/provisions/summary.pdf>.

<sup>93</sup> *Ibid.*, p. 4.

<sup>94</sup> SSA, "Cost-of-Living Adjustment (COLA) Information," <https://www.ssa.gov/cola/>.

<sup>95</sup> *Ibid.*, p. 18.

<sup>96</sup> CAGW, *Critical Waste Issues for the 115th Congress*, p. 25, [https://www.cagw.org/sites/default/files/pdf/CAGW\\_2017-CriticalWaste-WebLinks-Active.pdf](https://www.cagw.org/sites/default/files/pdf/CAGW_2017-CriticalWaste-WebLinks-Active.pdf).



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CAGW has also called for several of the changes mentioned in the chief actuary’s report including raising the retirement age and linking benefits to average prices instead of average earnings.<sup>97</sup>

### Social Security Disability Insurance

\$1.35 trillion was spent on Social Security in FY 2023. This accounted for 22 percent of the total federal budget.<sup>98</sup> There was an increase in Social Security spending in 2024, totaling \$1.5 trillion in benefits paid during the year.<sup>99</sup>

A 2015 GAO report showed widespread fraud and poor oversight of the Social Security Disability Insurance (SSDI) program. From 2005 to 2014, the Social Security Administration (SSA) overpaid \$11 billion in SSDI benefits to beneficiaries who had returned to work and received earnings above program limits.<sup>100</sup>

GAO’s March 2019 High-Risk Series report revealed that, “Management attention and efforts are needed across the government to ensure that disability programs provide benefits in a timely manner, reflect current ideas about disability, and achieve positive employment outcomes.”<sup>101</sup> GAO found that SSA and the VA, which also manages a disability program, struggle to meet their programs’ needs, mismanage their workloads, especially appealed claims, and rely on outdated criteria to determine whether individuals qualify for benefits. In 2003, GAO made 35 recommendations to SSDI and as of December 2018, 10 remained open.<sup>102</sup>

GAO’s April 2023 High-Risk Series report found that, “Three of the largest federal disability programs—managed by the Social Security Administration (SSA) and the Department of Veterans Affairs (VA)—paid about \$300 billion in cash benefits through the programs in FY 2021 to 20 million individuals. However, both agencies struggle to manage their workloads and make timely decisions on benefit claims. In addition, both agencies rely on outdated criteria to decide whether individuals qualify for benefits. They also experienced delays in their efforts to update criteria. Beyond these benefit programs, we reported in June 2012 that the government has a patchwork of more than 40 employment support programs, which lack a unified vision, strategy, or set of goals to guide their outcomes.”<sup>103</sup>

In conclusion, the significant increase in Social Security spending to \$1.5 trillion in 2024, following the \$1.35 trillion expenditure in FY 2023, underscores the profound role that Social

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<sup>97</sup> CAGW, “2020 Prime Cuts Database,” <https://www.cagw.org/reporting/prime-cuts/database>.

<sup>98</sup> USA FACTS, How Much Does the US Spend on Social Security? Is it sustainable?, January 2025, <https://usafacts.org/articles/how-much-does-the-us-spend-on-social-security-is-it-sustainable/>.

<sup>99</sup> Social Security Administration, Fact Sheet, January 2025, <https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf>.

<sup>100</sup> GAO, “Disability Insurance: SSA Could Do More to Prevent Overpayments or Incorrect Waivers to Beneficiaries,” GAO-16-24, October 2015, p. GAO Highlights, <https://www.gao.gov/assets/680/673426.pdf>.

<sup>101</sup> GAO, “High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas,” GAO-19-15751, March 2019 (GAO High-Risk Series 2019), p. 259, <https://www.gao.gov/assets/700/697245.pdf>.

<sup>102</sup> Ibid., pp. 259-261.

<sup>103</sup> GAO, “High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas,” GAO-19-15751, April 2023 (GAO High-Risk Series 2023), p. 259, <https://files.gao.gov/reports/GAO-23-106203/index.html>; GAO, “Employment for People with Disabilities: Little Is Known about the Effectiveness of Fragmented and Overlapping Programs,” GAO-12-677, June 29, 2012, <https://www.gao.gov/products/gao-12-677>.

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Security plays in the federal budget.<sup>104</sup> However, reports from GAO highlight ongoing challenges, such as widespread fraud, poor oversight, and outdated criteria in the SSDI program and other federal disability programs, which led to millions in overpayments and processing delays. Despite past recommendations to improve these systems, many issues remain unresolved, emphasizing the need for effective management and modernization to ensure that these vital programs adequately serve beneficiaries while maintaining fiscal responsibility.

### Medicare

The 2024 Annual Report of the Boards of Trustees of the Federal Hospital Insurance (HI) and Federal Supplemental Medical Insurance (SMI) Trust Funds stated, “Expenditures from the HI trust fund exceeded income each year from 2008 through 2015. In 2016 and 2017, however, there were fund surpluses amounting to \$5.4 billion and \$2.8 billion, respectively. In 2018, 2019, and 2020, expenditures again exceeded income, with trust fund deficits of \$1.6 billion, \$5.8 billion, and \$60.4 billion, respectively. The large deficit in 2020 was mostly due to accelerated and advance payments to providers from the trust fund. In 2021, there was a small surplus of \$8.5 billion as these payments began to be repaid to the trust fund, and this continued repayment resulted in a larger surplus in 2022 of \$53.9 billion. Deficits are projected to return beginning in 2030 and to persist for the remainder of the projection period, requiring redemption of trust fund assets until the trust fund’s depletion in 2036.” Medicare’s costs under current law rise steadily from their current level of 3.8 percent of GDP in 2023 to 5.8 percent in 2048. Costs then rise more slowly before leveling off at around 6.2 percent in the final 25 years of the projection period. SMI spending is expected to be 2.4 percent of GDP in 2024, grow to 4.0 percent by 2056, and further increase to 4.3 percent by 2098.<sup>105</sup>

Established in 1965 under Title XVIII of the Social Security Act, Medicare provides health insurance to individuals aged 65 and older and those with disabilities.<sup>106</sup> In 2021, Medicare served 63.8 million people, include 55.5 million aged 65 and older and 8.3 million disabled.<sup>107</sup> The program is run by the Centers for Medicare and Medicaid Services (CMS), which contracts with private entities to process claims, conduct audits, and oversee quality control.

Medicare “helps pay for health care services for the aged, disabled, and individuals with end-stage renal disease (ESRD). It has two separate trust funds, the Hospital Insurance trust fund (HI) and the Supplementary Medical Insurance trust fund (SMI). HI, otherwise known as Medicare Part A, helps pay for inpatient hospital services, hospice care, and skilled nursing facility and home health services following hospital stays. SMI consists of Medicare Part B and Part D. Part B helps pay for physician, outpatient hospital, home health, and other services for individuals who have voluntarily enrolled. Part D provides subsidized access to drug insurance coverage on a voluntary basis for all beneficiaries and premium and cost-sharing subsidies for

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<sup>104</sup> USA FACTS, How Much Does the US Spend on Social Security? Is it sustainable?, January 2025, <https://usafacts.org/articles/how-much-does-the-us-spend-on-social-security-is-it-sustainable/>; Social Security Administration, Fact Sheet, January 2025, <https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf>.

<sup>105</sup> The Board of Trustees, Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds, “The 2024 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds,” (Medicare Trustees 2024 Annual Report), p. 28, <https://www.cms.gov/oact/tr/2024>.

<sup>106</sup> CRS, “Medicare Primer,” CRS Report No. R40425, May 21, 2020, <https://fas.org/sgp/crs/misc/R40425.pdf>.

<sup>107</sup> Medicare Trustees 2022 Annual Report, p. 8.

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low-income enrollees. Medicare also has a Part C, which serves as an alternative to traditional Part A and Part B coverage. Under this option, beneficiaries can choose to enroll in and receive care from private Medicare Advantage and certain other health insurance plans.”<sup>108</sup>

The 2023 GAO High-Risk List included Medicare, which it has since 1990, “[d]ue to its size, complexity, and susceptibility to mismanagement and improper payments.” And the program continues to challenge the federal government because of: “(1) payments, provider incentives, and program management under Medicare fee-for-service (FFS); (2) Medicare Advantage (MA) and other Medicare health plans; and (3) design and oversight of the Medicare program and the effects on beneficiaries.” High-risk areas include payments, provider incentives, and program management under fee-for-service; Medicare Advantage and other Medicare Health Plans; design and oversight of the Medicare program and its effects on beneficiaries; and improper payments.<sup>109</sup>

According to CMS, improper payments for Medicare Fee for Service (FFS), or Parts A and B, were \$31.7 billion in reporting year 2024, an improper payment rate of 5.61 percent. For Medicare Part C, it was \$19.07 billion, an improper payment rate of 6.01 percent. Medicare Part D, which notably is run by the private sector, had \$3.58 billion in improper payments, an improper payment rate of 3.7 percent.<sup>110</sup>

GAO noted that Medicare improper payments do not yet include “the potential for improper payments that may result from inappropriate use of flexibilities given to providers and patients during the COVID-19 public health emergencies. These flexibilities included such things as the use of program waivers for telehealth services and waivers of a number of provider enrollment requirements, such as certain background checks. Many of our recommendations that could further lower improper payment rates remain open. For example, CMS has not implemented our recommendation from April 2016 that it seek legislative authority to permit payment for recovery auditors to conduct prepayment claims reviews. Reviewing Medicare claims before payment can prevent improper payment.”<sup>111</sup>

The “pay and chase” method of sending trillions of dollars out from federal agencies and then going after the money when it is misspent and already in the hands of payees is far less effective than preventing the funds from being paid incorrectly in the first instance. This is as valid for Medicare as it was for unemployment payments and small business programs under the various COVID-19 “relief” bills. But agencies cannot conduct prepayment reviews through recovery auditors without congressional authority, which should be granted as soon as possible in the 119th Congress.

The Medicare Trustees 2024 Annual Report noted that the HI trust fund, which is supported by payroll taxes, is subjected to a greater variation in asset growth because the tax rates do not change, unless a law is passed, to meet expenditures. For SMI, the yearly determination for Parts B and D beneficiary premiums and general revenue financing to cover anticipated costs for the

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<sup>108</sup> Ibid., pp. 1-2, 6.

<sup>109</sup> GAO High-Risk Series 2023.

<sup>110</sup> CMS, “Fiscal Year 2024 Improper Payments Fact Sheet,” <https://www.cms.gov/newsroom/fact-sheets/fiscal-year-2024-improper-payments-fact-sheet>.

<sup>111</sup> GAO High-Risk Series 2019, p. 252.

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following year is subject to current law. Even though both funds are vastly different in how they are paid for, the two programs work and rely on one another to provide benefits to millions of beneficiaries. Thus, any financing changes proposed to one program will affect the other and must be considered before implemented.<sup>112</sup>

In addition, an increasing number of beneficiaries are participating in Medicare Advantage. Most beneficiaries can enroll in this program, which utilizes private health insurers that contract with Medicare to provide both Parts A and B, as well as other benefits not provided in traditional Medicare, like vision, hearing, and dental coverage. Medicare Advantage enrollment has risen from 19 percent in 2007 to 54 percent in 2024.<sup>113</sup> The CBO projects that this figure will rise to 64 percent by 2034.<sup>114</sup>

For SMI, the Trustees believe the fund “is expected to be adequately financed over the next 10 years and beyond because income from premiums and general revenue for Parts B and D are reset each year to cover expected costs and ensure a reserve for Part B contingencies. The monthly Part B premium for 2024 is \$174.70.”<sup>115</sup>

But the HI trust fund is in far worse condition. The Trustees noted, “In 2023, HI income exceeded expenditures by \$12.12 billion. The Trustees project that surpluses will continue through 2029, followed by deficits thereafter until the trust fund becomes depleted in 2036. The assets were \$208.8 billion at the beginning of 2024, representing about 50 percent of expenditures projected for 2024, which is below the Trustees’ minimum recommended level of 100 percent. The HI trust fund has not met the Trustees’ formal test of short-range financial adequacy since 2003.

In the report, the trustees described their “explicit test for short-range financial adequacy” of the HI trust fund as follows: “(i) if the HI trust fund ratio is at least 100 percent at the beginning of the projection period, then it must remain at or above 100 percent throughout the 10-year projection period; (ii) alternatively, if the fund ratio is initially less than 100 percent, it must reach a level of at least 100 percent within 5 years (with no depletion of the trust fund at any time during this period) and then remain at or above 100 percent through the rest of the 10-year period.”<sup>116</sup> The Trustees wrote, “the HI trust fund does not meet this test because estimated assets are below 100 percent of annual expenditures and are not projected to attain this level under the intermediate assumptions. This outlook indicates the need for prompt legislative action to achieve financial adequacy for the HI trust fund throughout the short-range period.”<sup>117</sup>

Looking at the 75-year actuarial outlook, the trustees wrote, “financial outcomes are inherently uncertain, particularly over periods as long as 75 years, such estimates are helpful for assessing

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<sup>112</sup> Medicare Board of Trustees 2024 Annual Report.

<sup>113</sup> Kaiser Family Foundation, “Medicare Advantage in 2024: Enrollment Update and Key Trends,” August 8, 2024, [https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2024-enrollment-update-and-key-trends/#:~:text=More%20than%20half%20of%20eligible,in%202024%20\(Figure%201\).](https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2024-enrollment-update-and-key-trends/#:~:text=More%20than%20half%20of%20eligible,in%202024%20(Figure%201).)

<sup>114</sup> The Board of Trustees, Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds, “The 2024 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplemental Medical Insurance Trust Funds,” (Medicare Trustees 2024 Annual Report), p. 10, <https://www.cms.gov/oact/tr/2024>.

<sup>115</sup> *Ibid.*, p. 8.

<sup>116</sup> *Ibid.*, p. 60.

<sup>117</sup> *Ibid.*, p. 26.

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the trust fund's long-term financial condition.”<sup>118</sup> This is due to comparing dollar values now and into the future. Income levels for determining eligibility for the additional HI tax are not indexed, therefore more employees will be hit with the higher tax. By the end of the long-range projection period, an estimated 80 percent of workers would be subject to the additional tax.<sup>119</sup>

The trustees also offered two examples to “illustrate the magnitude of the changes needed to eliminate the deficit.” For the HI trust fund to remain solvent throughout the 75-year projection period, the Trustees suggested that the two immediate steps to take would be to raise the current 2.9 percent payroll tax to 3.52 percent or cut expenditures by 8 percent.<sup>120</sup>

The trustees admitted that increasing taxes, cutting benefits, or making any significant reforms to Medicare would likely occur gradually; but, unless lawmakers act soon, more severe adjustments will be necessary in the future.

An October 2017 CBO report said a premium support 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, like Medicare Advantage, would save money 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. If grandfathering was allowed, enabling beneficiaries to choose to stay in the current Medicare program after the premium support program began would reduce spending by \$50 billion between 2022 and 2026.<sup>121</sup>

Keeping Medicare “off the table” during the 119th Congress will not do any favors for taxpayers, beneficiaries, or future generations. Decisions need to be made and pushing reforms to future Congresses and administrations will only make it more difficult to maintain the benefits that have helped hundreds of millions of Americans since Medicare was established in 1965.

### Medicaid

Medicaid is the largest public health program serving low-income individuals and families. Like the wildly inaccurate estimates for Medicare, the figures for Medicaid were way off. 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. By 1971, Medicaid spending reached \$6.5 billion, far more than anyone estimated. In 1969, the Senate Finance Committee reported that, “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.”<sup>122</sup>

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<sup>118</sup> Ibid., p. 28.

<sup>119</sup> Ibid., p. 29.

<sup>120</sup> Ibid., pp. 31.

<sup>121</sup> CBO, “A Premium Support System for Medicare: Updated Analysis of Illustrative Options,” October 2017, p. 1, <https://www.cbo.gov/system/files?file=115th-congress-2017-2018/reports/53077-premiumsupport.pdf>.

<sup>122</sup> John Daniel Davidson, “50 Years Later, Medicaid and Medicare Still Spend Us Into Oblivion,” *The Federalist*, July 31, 2015, <https://thefederalist.com/2015/07/31/medicare-medicaid-same-problems-50-years-ago>.

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In August 2024, Medicaid enrollment was 79.44 million, consisting of 72.28 million in Medicaid and 7.15 million in the Children’s Health Insurance Program (CHIP).<sup>123</sup> 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 after it was expanded to include able-bodied adults under the Affordable Care Act (ACA).<sup>124</sup>

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. The minimum matching rate is 50 percent, which was temporarily increased by 6.2 percentage points to 56.2 percent between 2020-2022 due to the COVID-19 pandemic.<sup>125</sup>

Medicaid is not only expensive but also invites fraud. In 2023, the HHS OIG was able to obtain 1,143 convictions for Medicaid fraud and patient abuse or neglect, get 436 civil settlements and judgments, ban 795 individuals or entities from federal funded health programs, and recover \$1.2 billion in civil and criminal payments, with a return on investment of \$3.35 for every dollar spent.<sup>126</sup> Improper payments were \$31.10 billion for Medicaid in 2024, a rate of 5.09 percent. CHIP had \$1.07 billion in improper payments and a rate of 6.11 percent.<sup>127</sup>

The ACA 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 ACA 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.<sup>128</sup>

According to CBO’s estimates, the share of people without health insurance reached an all-time low of 7.2 percent in 2023. The rate in 2034 is projected to be 8.9 percent—higher than it was during the 2021–2023 period but lower than the rate of 10.0 percent in 2019, before the coronavirus pandemic. CBO attributes much of the increase over the next 10 years to the end of Medicaid’s continuous eligibility provisions in 2023 and 2024 and the expiration of enhanced marketplace subsidies after 2025. And the largest increase in the uninsured population between 2024 and 2034 will be among adults who are 19 to 44 years old.<sup>129</sup> As of November 12,

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<sup>123</sup> Ibid., Medicaid.gov “August 2024 Medicaid & CHIP Enrollment Data High Lights,”

<https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html>.

<sup>124</sup> Medicaid.gov, “Program History,” <https://www.medicaid.gov/about-us/program-history/index.html>.

<sup>125</sup> Kaiser Family Foundation, “Federal Medical Assistance Percentage (FMAP) for Medicaid and Multiplier,”

<https://www.kff.org/medicaid/state-indicator/federal-matching-rate-and-multiplier/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

<sup>126</sup> Department of Health and Human Services Office of Inspector General, “Medicaid Fraud Control Units Fiscal Year 2023 Annual Report,” March 2024, <https://oig.hhs.gov/documents/evaluation/9821/OEI-09-24-00200.pdf>.

<sup>127</sup> CMS, “PERM Error Rate Findings and Reports,” <https://www.cms.gov/data-research/monitoring-programs/improper-payment-measurement-programs/payment-error-rate-measurement-perm/perm-error-rate-findings-and-reports>.

<sup>128</sup> Kaiser Family Foundation, “Summary of the Affordable Care Act,” April 25, 2013, <https://www.kff.org/health-reform/fact-sheet/summary-of-the-affordable-care-act>.

<sup>129</sup> CBO, “CBO Publishes New Projects Related to Health Insurance for 2024 to 2034,” June 2024, <https://www.cbo.gov/publication/60383>.

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2024, 12 states have not adopted Medicaid expansion while 41 states and Washington, D.C., have expanded or will soon be implementing expansion.<sup>130</sup>

Brian Blase, a former special assistant to President Trump at the National Economic Council and now a policy consultant, noted that the “massive expansion of Medicaid – a welfare program that traditionally served low-income children, pregnant women, seniors, and individuals with disabilities – is not what the ACA’s proponents talked about when selling the law to the American people. Medicaid expansion crowds out services for more vulnerable populations on the program and has generally had disappointing health results. The expansion increased the number of services provided to recipients and generally boosted financial protection but also led to an increase in unnecessary emergency department use. The impact on the health of enrollees is less clear. One study found that expanding the population of Medicaid enrollees has led to longer waiting times for care. Another study found that states that expanded Medicaid had a significant slowdown in ambulance response time. For some people with pressing medical conditions, this slowdown could be life-threatening.”<sup>131</sup>

A January 23, 2020, *Forbes* article, “Medicaid Spending is Taking Over State Budgets,” discussed how the program has increased from an average of 12 percent of state budgets in 2000 to an average of 17 percent and is still growing. States that spent the largest percentage of their state revenue on Medicaid in 2017 were Louisiana, Massachusetts, Missouri, New York, Pennsylvania, and Rhode Island. New York spent almost 30 percent and Massachusetts spent 22 percent, with the other states’ percentages between these two figures. Only four states spent less than 10 percent of their budgets on Medicaid in 2017: Hawaii at 8.2 percent, Idaho at 9.9 percent, Nevada at 9.4 percent, and Utah at 5.8 percent.<sup>132</sup>

Using the 90 percent FMAP for Medicaid expansion would both save money and pass responsibility back to the states. In December 2018, the CBO provided this option to reduce the national debt.<sup>133</sup> During the deficit reduction talks in 2011, former President Obama offered this option as a budget pay-for, worth \$100 billion over 10 years.<sup>134</sup>

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 and 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 ideas in the Health Care Choices Proposal and the RSC’s, “The RSC Health Care Plan: A Framework for Personalized, Affordable Care,” which are discussed in the healthcare reform section of this publication.

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<sup>130</sup> Kaiser Family Foundation, “Status of State Action on the Medicaid Expansion Decisions,” November 12, 2024, <https://www.kff.org/status-of-state-medicaid-expansion-decisions/>.

<sup>131</sup> Brian Blase, “The Disappointing Affordable Care Act,” *Forbes Apothecary*, September 23, 2020, <https://www.forbes.com/sites/theapothecary/2020/09/23/the-disappointing-affordable-care-act>.

<sup>132</sup> Adam Millsap, “Medicaid Spending is Taking Over State Budgets,” *Forbes*, January 23, 2020, <https://www.forbes.com/sites/adammillsap/2020/01/23/medicaid-spending-is-taking-over-state-budgets/?sh=30385b94dfd0>.

<sup>133</sup> CBO, “Options for Reducing the Debt: 2019–2028,” December 13, 2018, <https://www.cbo.gov/budget-options/2018/54728>.

<sup>134</sup> Avik Roy, “Governors’ Worst Nightmare: Obama Proposed Shifting Costs of Obamacare’s Medicaid Expansion to the States,” *Forbes*, July 19, 2012, <https://www.forbes.com/sites/theapothecary/2012/07/19/governors-worst-nightmare-obama-proposed-shifting-costs-of-obamacares-medicaid-expansion-to-the-states/#633ae7a52572>.

### FEDERAL REAL PROPERTY

The federal government is the largest property owner in the United States. According to the GAO, the federal government’s real estate portfolio included “about 130,000 domestic civilian buildings as of fiscal year 2019 that cost billions of dollars annually to operate and maintain.”<sup>135</sup> A 2022 Congressional Research Service (CRS) report found that, “In FY2021, federal agencies owned 7,697 buildings that were vacant (unutilized), and another 2,265 that were partially empty (underutilized).”<sup>136</sup>

The federal government has repeatedly shown that it can neither manage its existing properties nor justify the amount of empty land it owns, which are among the reasons why the GAO has had federal real property management on its High-Risk List since 2003.<sup>137</sup>

The April 2023 High-Risk Series report noted, “federal agencies have long struggled with excess and underutilized space, which costs millions of dollars. The amount of space identified as excess is likely to increase as agencies re-evaluate their space needs after the COVID-19 pandemic. However, the process of disposing of federal assets remains complex. The General Services Administration’s (GSA) efforts to improve the accuracy of addresses in its Federal Real Property Profile database have yet to show tangible results.”<sup>138</sup>

A July 23, 2023, GAO report found “that 17 of the 24 federal agencies in GAO’s review used an average 25 percent or less of their headquarters’ buildings’ capacity in a three-week sample period across January, February and March of 2023.”<sup>139</sup> The report also found that agencies used only 39 to 49 percent of their headquarters’ office space on average.<sup>140</sup>

In December 2023, Sen. Joni Ernst (R-Iowa) released an investigation into telework policies in federal agencies and the impact those policies are having on taxpayers. Her investigation revealed that “the average occupancy rate in more than 20 headquarters is a mere 12 percent, according to the Public Buildings Reform Board, an independent agency created to reduce unnecessary government property.”<sup>141</sup> The report also found that the Wilbur J. Cohen federal building, located directly next to the National Mall, had an occupancy rate of just 2 percent.<sup>142</sup> Offloading excess federal real property has been mentioned as an objective of the DOGE.<sup>143</sup>

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<sup>135</sup>GAO, “Managing Federal Real Property,” <https://www.gao.gov/highrisk/managing-federal-real-property>.

<sup>136</sup> CRS “The Federal Assets Sale and Transfer Act: Background and Implementation,” November 16, 2022, <https://crsreports.congress.gov/product/pdf/R/R47308>.

<sup>137</sup> GAO, “High-Risk Series: An Update,” GAO-03-119, January 2003, <https://www.gao.gov/assets/240/237063.pdf>.

<sup>138</sup> GAO, “High-Risk Series: Efforts Made to Achieve Progress Need to Be Maintained and Expanded to Fully Address All Areas,” GAO-23-106203, April 20, 2023, [https://files.gao.gov/reports/GAO-23-106203/index.html?\\_gl=1\\*7webn6\\*\\_ga\\*MTQyNjMyMTY2My4xNzZzOTUwMjYz\\*\\_ga\\_V393SNS3SR\\*MTczNDAzMDUyMC4yLjAuMTczNDAzMDUyMC4wLjAuMA..#appendix6](https://files.gao.gov/reports/GAO-23-106203/index.html?_gl=1*7webn6*_ga*MTQyNjMyMTY2My4xNzZzOTUwMjYz*_ga_V393SNS3SR*MTczNDAzMDUyMC4yLjAuMTczNDAzMDUyMC4wLjAuMA..#appendix6).

<sup>139</sup> GAO, “Federal Real Property: Preliminary Results Show Federal Buildings Remain Underutilized Due to Longstanding Challenges and Increased Telework,” GAO-23-106200, July 13, 2023, <https://www.gao.gov/assets/gao-23-106200.pdf>.

<sup>140</sup> Ibid.

<sup>141</sup> Sen. Joni Ernst (R-Iowa), “Out of Office: Bureaucrats on the beach and in bubble baths but not in office buildings,” December, 2023, [https://www.ernst.senate.gov/imo/media/doc/final\\_telework\\_report.pdf](https://www.ernst.senate.gov/imo/media/doc/final_telework_report.pdf).

<sup>142</sup> Ibid.

<sup>143</sup> Jory Heckman, “DOGE amplifies federal disposal board’s plan to save billions,” *Federal News Network*, December 13, 2024, <https://federalnewsnetwork.com/facilities-construction/2024/12/doge-amplifies-federal-buildings-disposal-boards-plan-to-save-billions/>.



## Critical Waste Issues for the 119th Congress

An October 28, 2022, GAO report found that a lack of proper maintenance of federal real property has led to deferrals and a backlog that may “diminish the performance of these systems and...shorten their useful lives.”<sup>144</sup> Between 2017 and 2021, the costs arising from deferred maintenance and repairs increased by \$61 billion, or 406 percent, from \$15 billion to \$76 billion. The dramatic increase was caused by funding constraints at the agencies responsible for property maintenance, increased costs to repair real property, deliberate deferrals of repairs and maintenance, and changes in data collection.<sup>145</sup> It clearly demonstrates that federal agencies lack the capacity or willingness to adequately maintain the real property under their control.

The McKinney-Vento Homeless Assistance Act of 1987 (McKinney-Vento Act) 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.<sup>146</sup> In addition, under the status quo, empty office buildings cannot be sold without agencies first undergoing a complex and rigorous review by the GSA. When the GSA Public Buildings Service reports a property as excess, that property must first be screened for use by other federal agencies. If another agency wants it, that agency gets it. If the property remains unclaimed by every eligible agency, according to Title 40 of the U.S. Code and Title V of the McKinney-Vento Act, it must be screened for use by providers of homeless shelters, who can use the property for free. 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.<sup>147</sup>

If shelters are not interested, the property is screened for other public uses and sold for up to a 100 percent discount of market value. Finally, if no public service can be identified, the property is auctioned and sold.<sup>148</sup>

A February 2016 CRS report found that this requirement can add months or years to the divestment process.<sup>149</sup> 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.”<sup>150</sup>

Rep. Denham was the sponsor of the Federal Asset Sale and Transfer Act of 2016 (FASTA), which created the Public Buildings Reform Board (PBRB). The board was tasked with identifying up to \$7.25 billion in potential opportunities to sell, consolidate, dispose of, or redevelop underutilized and vacant federal properties over five years, including \$750 million in

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<sup>144</sup> GAO, “Federal Real Property: Agencies Attribute Substantial Increases in Reported Deferred Maintenance to Multiple Factors,” GAO-23-106124, October 28, 2022, p. 2, <https://www.gao.gov/assets/gao-23-106124.pdf>.

<sup>145</sup> Ibid.

<sup>146</sup> General Services Administration, “Resources for the McKinney-Vento Homeless Assistance Program,” January 23, 2019, <https://disposal.gsa.gov/s/homelessassistance>.

<sup>147</sup> GAO, “FEDERAL REAL PROPERTY: Current Efforts, GAO Recommendations, and Proposed Legislation Could Address Challenges,” GAO-15-688T, June 16, 2015, <https://www.gao.gov/assets/680/671497.pdf>.

<sup>148</sup> Citizens Against Government Waste, *Prime Cuts*, October 2020, <https://www.cagw.org/reporting/prime-cuts>.

<sup>149</sup> Garrett Hatch, “Disposal of Unneeded Federal Buildings: Legislative Proposals in the 114th Congress,” CRS, February 12, 2016, <https://fas.org/sgp/crs/misc/R44377.pdf>.

<sup>150</sup> Sarah D. Wire, “The government spends \$1.7 billion a year on 770,000 empty buildings, and one Central Valley congressman is fed up,” *Los Angeles Times*, March 3, 2016, <https://www.latimes.com/politics/la-pol-ca-jeff-denham-government-property-bill-20160303-story.html>.

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the first six months after FASTA was signed into law in December 2016. The law also requires GSA to provide and maintain a public database of federal property assets.<sup>151</sup>

A January 29, 2021, GAO report on the PBRB questioned the evaluation process for the sale of these properties as “vague or incomplete” and recommended increased documentation and transparency for future decisions.<sup>152</sup> The report noted that even with increased efficacy in the evaluation process, the PBRB’s ability to find appropriate properties would be challenging since there is a lack of reliable data from the Federal Real Property Profile Management System (FRPP). For example, the FRPP listed the GSA Auburn, Washington Complex as being utilized by five agencies, yet a trip to the property revealed that the “warehouses were vacant and few staff were available at the buildings.”<sup>153</sup> This report was issued 11 months after a February 2020 GAO report on the accuracy and usefulness of FRPP data, which includes about 398,000 buildings, structures, and land, determined 67 percent of property addresses were incomplete or improperly formatted.<sup>154</sup> The GAO cited water towers in Maryland and antennas on top of buildings in Alexandria, Virginia, and Washington, D.C., as among the inaccurately identified properties.<sup>155</sup>

Another proposal to resolve longstanding issues regarding federal property assets was made by the RSC’s February 6, 2020, Government Efficiency, Accountability, and Reform (GEAR) Task Force report, which recommended selling excess space that is either unused or underutilized by agencies of the federal government.<sup>156</sup> In an effort to turn that proposal into law, in the 116th Congress Rep. Greg Murphy (R-N.C) introduced H.R. 6128, the Eliminate Agency Excess Space Act, and reintroduced the bill, H.R. 1254, in the 117th Congress.<sup>157</sup>

This legislation would streamline the approval process for eliminating excess federal property, including removing the requirement for agencies to have access to them before screening for other potential transactions. CAGW President Tom Schatz said of H.R. 6128, “There is nothing more sensible than getting rid of excess property, which is why the Eliminate Agency Excess Space Act should be supported by every member of Congress. The legislation will give the tools to identify and eliminate unneeded real estate and save taxpayers \$15 billion over five years.”<sup>158</sup>

In a May 2024 letter to GSA, the GAO noted that many of their recommendations to improve federal real property management have not been implemented by GSA. The GAO recommended

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<sup>151</sup> Federal Asset Sale and Transfer Act, Pub. L. No. 114-287, H.R. 4465, 114th Congress (2016), <https://www.congress.gov/114/plaws/publ287/PLAW-114publ287.pdf>.

<sup>152</sup> GAO, “FEDERAL REAL PROPERTY: Additional Documentation of Decision Making Could Improve Transparency of New Disposal Process,” GAO-21-233, January 29, 2021, p. What GAO Found, <https://www.gao.gov/assets/720/712107.pdf>.

<sup>153</sup> *Ibid.*, p. 27.

<sup>154</sup> GAO, “FEDERAL REAL PROPERTY: GSA Should Improve Accuracy, Completeness, and Usefulness of Public Data,” GAO-20-135, February 2020, pp. What GAO Found, 5, <https://www.gao.gov/assets/710/704358.pdf>.

<sup>155</sup> *Ibid.*, p. 13.

<sup>156</sup> RSC GEAR Task Force, “Power, Practices, Personnel: 100 + Commonsense Solutions To A Better Government,” February, 6, 2020, [https://rsc-banks.house.gov/sites/republicanstudycommittee.house.gov/files/GEAR%20Report\\_Single%20Spread%20FINAL.pdf](https://rsc-banks.house.gov/sites/republicanstudycommittee.house.gov/files/GEAR%20Report_Single%20Spread%20FINAL.pdf).

<sup>157</sup> Eliminate Agency Excess Space Act, H.R. 6128, 116th Congress (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6128>; Eliminate Agency Excess Space Act, H.R. 1254, 117th Congress (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1254>.

<sup>158</sup> Thomas Schatz and Cody Leach, “Reducing the Cost of Government Through Effective Management Reforms,” CAGW, December 2020, <https://www.cagw.org/sites/default/files/pdf/ReducingGovernmentCosts.pdf>.

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that GSA develop a process to develop a plan to share information on office utilization with other federal agencies to make data collection more cost effective and better inform decisions on changes to federal real property usage. Another recommendation that GAO made is for GSA to work more closely with stakeholders, including Congress, to address challenges to disposing federal real property.<sup>159</sup> This would make both federal agencies and Congress better informed on how much federal office space is being utilized and would allow lawmakers to make more informed decisions on how to get rid of excess federal real property.

Another piece of legislation that would improve oversight of unused federal real property is H.R. 6276, the Utilizing Space Efficiently and Improving Technologies Act of 2023, introduced by Rep. Scott Perry (R-Pa.) and passed by the House of Representatives in the 118th Congress. This bill would require OMB and GSA to establish methodologies and use technologies to measure federal building utilization. The legislation would also require OMB and GSA to ensure that building occupancy rates average at least 60 percent, including consolidating federal agency headquarters so that they reach an average occupancy rate of 60 percent. Federal tenants whose utilization falls below 60 percent for 6 months must return the office space to GSA and federal agencies must report certain buildings that do not reach a utilization rate of 20 percent.<sup>160</sup>

The divestiture of federal property should be simple, but instead it has been complex, convoluted, and costly. Commonsense reforms like those proposed in H.R. 6128, along with the implementation of GAO recommendations, would improve real property maintenance and more efficiently dispose of excess federal property across the country, saving taxpayers \$15 billion dollars over five years.<sup>161</sup>

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<sup>159</sup> GAO, “Priority Open Recommendations: General Services Administration,” May 30, 2024, <https://www.gao.gov/assets/gao-24-107316.pdf>.

<sup>160</sup> Utilizing Space Efficiently and Improving Technologies Act of 2023, H.R. 6276, (2023), <https://www.congress.gov/bill/118th-congress/house-bill/6276>.

<sup>161</sup> Citizens Against Government Waste, *Prime Cuts*, October 2024, <https://www.cagw.org/reporting/prime-cuts>.

### HEALTHCARE

Healthcare costs have long been a significant concern for taxpayers and voters across the country. During the 2024 election cycle, it was the number two issue among voters after the economy in a Pew Research Center poll.<sup>162</sup>

The 117th Congress's most significant action on healthcare was included in the Inflation Reduction Act (IRA).<sup>163</sup> The legislation included an extension of ACA premium subsidies and the establishment of price controls on pharmaceuticals, the latter of which has been the subject of numerous comments and reports by CAGW.<sup>164</sup> The price control provisions have already reduced the research and development needed to find cures and treatments for deadly diseases as many analysts predicted. However, the IRA did not include the Medicare for All Act or similar bills that would have substantially expanded the role of the federal government across the entire healthcare system.

CAGW has long advocated for comprehensive healthcare reform. Some of the organization's key recommendations were laid out in the 1998 investigative report, "Patient-Centered Healthcare: The Road to Wellville," which described how patients should be allowed to take control of their healthcare decisions. The report called for individuals to be given the same tax break that is enjoyed by employers, so they can buy health insurance with pre-tax dollars, which would both increase competition for quality healthcare and give patients more decision-making power.<sup>165</sup> CAGW has since promoted similar patient-centered recommendations in many blog posts, op-eds, and publications, including the 2021 issue brief, "Government-Run Healthcare Will Harm Patients and Eliminate Consumer Choice."<sup>166</sup>

When politicians discuss healthcare, they conflate healthcare and health insurance. While these two concepts are interwoven, they are dissimilar. The United States offers some of the best quality healthcare in the world, yet the arguments surrounding the delivery systems for insurance and who should pay for it vary. One school of thought demands a national healthcare system riddled with layers of bureaucracy, while the other envisions a patient-centric approach to healthcare reform.

Unfortunately, government bureaucracies, subsidies, and red tape have distorted the medical marketplace, resulting in higher prices and less access for patients. The artificially lower costs

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<sup>162</sup> "Issues and the 2024 election," Pew Research Center, September 9, 2024, <https://www.pewresearch.org/politics/2024/09/09/issues-and-the-2024-election/>.

<sup>163</sup> Inflation Reduction Act of 2022, Pub. L. No. 117-169, H.R. 5376, <https://www.congress.gov/bill/117th-congress/house-bill/5376>.

<sup>164</sup> Christina Herrin, "The Inflation Reduction Act is a Death Sentence for Patients," *The WasteWatcher*, Citizens Against Government Waste (CAGW), August 22, 2022, <https://www.cagw.org/thewastewatcher/inflation-reduction-act-death-sentence-patients>; Christina Herrin, "The Inflation Reduction Act Will Raise Drug Costs and Reduce Cures," *The WasteWatcher*, CAGW, August 5, 2022, <https://www.cagw.org/thewastewatcher/inflation-reduction-act-will-raise-drug-costs-and-reduce-cures>; Thomas Schatz, "The Senate Must Reject Price Controls on Pharmaceuticals," *The WasteWatcher*, CAGW, July 7, 2022, <https://www.cagw.org/thewastewatcher/senate-must-reject-price-controls-pharmaceuticals>.

<sup>165</sup> CAGW, "Citizens Against Government Waste Releases Investigative Report on Patient-Centered Healthcare," November 3, 1998, CAGW, <https://www.cagw.org/media/press-releases/citizens-against-government-waste-releases-investigative-report-patient>.

<sup>166</sup> Elizabeth Wright and Thomas Schatz, "Government-Run Healthcare Will Harm Patients and Eliminate Consumer Choice," CAGW, September 2021, <https://www.cagw.org/reporting/government-run-healthcare>.

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subsidized by taxpayers are part of an unsustainable system. Medicare for All and other universal healthcare proposals would shift even more decision-making power to bureaucrats, while the current federal healthcare system, the ACA, is a costly one-size-fits-all approach that has reduced options and raised premiums. America's healthcare system should promote competition and innovation and give patients more choice and control.<sup>167</sup>

### Reform the Affordable Care Act

The establishment of Medicare and Medicaid in 1965 was one of the major milestones promoting a government-run health system in the U.S.<sup>168</sup> Coverage was provided for the elderly, disabled, and low-income individuals.

The passage of the ACA was the next largest government takeover of healthcare in the United States. While the ACA increased the number of insured Americans, it also increased costs to taxpayers and left fewer options for patients with private insurance coverage. As of August 2020, 70 percent of U.S. counties either had no insurer options or only two choices, compared to 36 percent in 2016.<sup>169</sup>

The national average monthly premium paid by those with private healthcare coverage in 2013 was \$244, and by 2019 it increased by 129 percent to \$558.<sup>170</sup> The negative effects the ACA has had on private coverage could not be clearer. Nearly doubling the cost of insurance and subsidizing the market through tax dollars for those on government insured plans is not a viable long-term solution.<sup>171</sup>

Yet, many ACA proponents want to both spend more money and steer all Americans into so-called "free healthcare" through a government-run healthcare system. The Veterans Health Administration (VHA) is a good example of how a government-run healthcare system that lacks competition and incentives to improve care will fail.

The VHA system has long wait times, price controls that have led to denial of care, bureaucratic inertia, fraud, and abuse.<sup>172</sup> A March 7, 2018, VA OIG report found \$92 million in overpriced medical supplies, more than 10,000 pending appointments for prosthetics, and a lack of consistently clean storage areas for medical supplies and equipment.<sup>173</sup> A VA OIG report found that 215 veterans died while waiting for medical care at the VA hospital in Phoenix, Arizona. This included 87 deceased patients with 116 open consults from a report that identified patients who had open consults and a date of death associated with their medical record. The report

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<sup>167</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, H.R. 3590, <https://www.congress.gov/bill/111th-congress/house-bill/3590>.

<sup>168</sup> Barry M. Strobe, M.D., "A Role for Government," *American Journal of Preventive Medicine*, January 3, 2013, [https://www.ajpmonline.org/article/S0749-3797\(12\)00631-9/fulltext](https://www.ajpmonline.org/article/S0749-3797(12)00631-9/fulltext).

<sup>169</sup> The Heritage Foundation, "Solutions," 2021, <https://www.heritage.org/solutions/>.

<sup>170</sup> Edmund Haislmaier, "Obamacare Has Doubled The Cost Of Individual Health Insurance," The Heritage Foundation, March 21, 2021, <https://www.heritage.org/health-care-reform/report/obamacare-has-doubled-the-cost-individual-health-insurance>.

<sup>171</sup> Ibid.

<sup>172</sup> Curtis Kalin, "The VA Scandal Refuses to End," *The WasteWatcher*, CAGW, March 9, 2018, <https://www.cagw.org/thewastewatcher/va-scandal-refuses-end>.

<sup>173</sup> Department of Veterans Affairs, Office of Inspector General, "Veterans Health Administration: Critical Deficiencies at the Washington, D.C. VA Medical Center," Report #17-02644-130, March 7, 2018, <https://www.va.gov/oig/pubs/VAOIG-17-02644-130.pdf>.

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determined that untimely care may have contributed to the death of one of the patients.<sup>174</sup> This is the sad reality for veterans today and a warning sign against further expansion of the government's responsibility for everyone's healthcare.

Since its enactment in 2010, several unsuccessful efforts have been made in Congress to repeal the ACA. During the 117th Congress, Rep. Andy Biggs (R-Ariz.) introduced H.R. 6515, the Responsible Path to Full Obamacare Repeal Act, which would fully repeal the ACA.<sup>175</sup> However, the legislation has only six cosponsors, there is no Senate companion bill, and Republican candidates for Congress in 2024 did not call for repeal of the ACA.<sup>176</sup>

Even if President Trump and the Republican majority in Congress agreed to repeal the ACA, they would need seven Senate Democrats to vote with them. Since that will not occur, the best options are therefore reforming the program and shifting more power over healthcare to the states. The diversity of the U.S. population requires such state-based options instead of the failed one-size-fits-all approach required by the ACA.

ACA reforms should include lowering out-of-pocket costs, premiums, and deductibles, along with increasing private coverage options. These reforms would increase patient choice and control and lead to better healthcare outcomes.

### Eliminate Price Controls

The price controls on pharmaceuticals that were included in the IRA have already proven to be devastating to research and development of new life-saving medicines, which will significantly reduce future treatments and cures. CAGW has released numerous reports on the damaging impact of price controls since 2000, including the provisions of the IRA.<sup>177</sup>

An August 2021 CBO report on the Simulation Model of New Drug Development projected that H.R. 3, on which the price control provisions of the IRA are based, would decrease the number of new drugs entering the marketplace by 8 percent in the third decade following enactment, resulting in at least 60 lost treatments.<sup>178</sup>

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<sup>174</sup> Department of Veterans Affairs, Office of Inspector General, "Veterans Health Administration: Review of Alleged Consult Mismanagement at the Phoenix VA Health Care System," October 4, 2016, <https://www.vaog.gov/sites/default/files/reports/2016-10/VAOIG-15-04672-342.pdf>.

<sup>175</sup> Responsible Path to Full Obamacare Repeal Act, H.R. 6515 (2022), <https://www.congress.gov/bill/117th-congress/house-bill/6515>.

<sup>176</sup> Sahil Kapur, "Republicans abandon Obamacare Repeal," October 2, 2022, NBC News, <https://www.nbcnews.com/politics/congress/republicans-abandon-obamacare-repeal-rcna49538>.

<sup>177</sup> Thomas Schatz, "The Senate Must Reject Price Controls on Pharmaceuticals," *The WasteWatcher*, CAGW, July 7, 2022, <https://www.cagw.org/thewastewatcher/senate-must-reject-price-controls-pharmaceuticals>; Christina Smith, "Senators Need to Check Their Conscience Before Voting for Price Controls," *The WasteWatcher*, CAGW, July 28, 2022, <https://www.cagw.org/thewastewatcher/senators-need-check-their-conscience-voting-price-control>; Christina Smith, "The Inflation Reduction Act Will Raise Drug Prices and Reduce Cures," *The WasteWatcher*, CAGW, July 28, 2022, <https://www.cagw.org/thewastewatcher/inflation-reduction-act-will-raise-drug-costs-and-reduce-cures>; Christina Smith, "The House Should Avoid Making the Senate's Terrible Mistake on Healthcare," *The WasteWatcher*, CAGW, August 8, 2022, <https://www.cagw.org/thewastewatcher/house-should-avoid-making-senates-terrible-mistake-healthcare>.

<sup>178</sup> CBO, "CBO'S Simulation Model Of New Drug Development," August 2021, <https://www.cbo.gov/system/files/2021-08/57010-New-Drug-Development.pdf>.

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Another analysis of government price controls over the pharmaceutical marketplace deemed the CBO projection too conservative, finding the potential loss of future cures to be much greater.<sup>179</sup> In a November 29, 2021 issue brief, University of Chicago economists Dr. Thomas Philipson and Troy Durie found that H.R. 5376 would reduce research and development spending by \$663 billion and that “188 new indications will not get new prevention, treatment, or cures through 2039 ... and lead to 331.5 million fewer life years through 2039 ... 31 times as large as the 10.7 million life years lost from COVID-19 to date.”<sup>180</sup> These estimated effects on the number of new drugs brought to market are 27 times larger than projected by CBO,<sup>181</sup> which finds only five drugs will be lost through 2039, equaling a 0.63 percent reduction.”<sup>182</sup>

CAGW has long been concerned about the push toward increased government overreach into the medical marketplace and the negative consequences price controls have on research and development. Congress has continually attempted to implement price control legislation disguised as “negotiations” for Medicare Part D coverage, like the language included in both H.R. 3 and the Build Back Better Act, and enacted in the IRA during the 117th Congress, which will have a significant negative impact on future cures, leaving “an invisible graveyard of patients.”<sup>183</sup> Instead of imposing additional price controls on the innovative biopharmaceutical marketplace, Congress should instead incentivize new drug development by creating an environment that encourages innovation and remove burdensome regulatory barriers, including a more expedited drug approval process that would bring pharmaceuticals to market sooner and at a lower cost.

Congress should also repeal the price controls that were included in the IRA, as proposed by Sen. Mike Lee (R-Utah) in S. 4953, the Protection Drug Innovation Act.<sup>184</sup> Sen. Lee said, “Price controls never work. Instead, they exacerbate the problems they seek to resolve. Mandating fixed prescription drug prices will ultimately result in the shortening of American lives. Instead of repeating past mistakes, it’s time we address what’s driving the cost of prescription medications and adopt a regulatory environment that works to everyone’s advantage.”<sup>185</sup>

The negative impact of the IRA on research and development was swift, as less than three months after it was signed into law, Eli Lilly and Company announced that it was stopping research on a \$40 million cancer drug, which “in light of the Inflation Reduction Act, ... no longer meets our threshold for continued investment,” and research on a drug to treat Stargardt disease, a rare eye disorder, was suspended by Alnylam because the company needed “to

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<sup>179</sup> Thomas Philipson and Troy Durie, “Issue Brief: The Impact of HR 5376 on Biopharmaceutical Innovation and Patient Health,” The Kenneth C. Griffin Department of Economics, University of Chicago, November 29, 2021, <https://ecchc.economics.uchicago.edu/2021/11/30/issue-brief-the-impact-of-hr-5376-on-biopharmaceutical-innovation-and-patient-health/>.

<sup>180</sup> Ibid., pp. 7-8.

<sup>181</sup> CBO, “Estimated Budgetary Effects Of Title XIII, Committee On Ways And Means, H.R. 5376, The Build Back Better Act,” November 18, 2021, <https://www.cbo.gov/publication/57626>.

<sup>182</sup> Ibid., Philipson and Durie, “Issue Brief: The Impact of HR 5376 on Biopharmaceutical Innovation and Patient Health.”

<sup>183</sup> Christina Smith, “Price Controls Will Create an Invisible Graveyard of Americans,” *The WasteWatcher*, CAGW, December 17, 2021, <https://www.cagw.org/thewastewatcher/price-controls-will-create-invisible-graveyard-americans>.

<sup>184</sup> Protect Drug Innovation Act, S. 4953, 117th Congress (2022), <https://www.congress.gov/bill/117th-congress/senate-bill/4953>.

<sup>185</sup> Mike Lee, US Senator for Utah, “Lee Introduces Bill to Roll Back Price Controls,” press release, September 27, 2022, <https://www.lee.senate.gov/2022/9/lee-introduces-bill-to-roll-back-price-controls#:~:text=Washington%2C%20D.C.%20%E2%80%93%20Sen.%20Mike%20Lee%20%28R-UT%29%20introduced,passed%20through%20Congress%20without%20a%20single%20Republican%20vote>.

## Critical Waste Issues for the 119th Congress

evaluate the impact of the Inflation Reduction Act.”<sup>186</sup> Passage of Sen. Lee’s legislation or a similar bill would help to eliminate the adverse impact of price controls and ensure continued access to future cures and treatments for all Americans.

### Reform the 340B Program

The 340B Drug Pricing Program created in 1992 by Congress, is overseen by the Health Resources and Services Administration (HRSA), an agency within the HHS. It requires pharmaceutical manufacturers that want to participate in Medicaid to provide heavily discounted outpatient pharmaceuticals (as much as 50 percent) to certain healthcare facilities, called “covered entities,” which include federally qualified health centers; Ryan White HIV/AIDS grantees; children’s, disproportionate share, free standing cancer, and sole community hospitals; and specialized clinics.<sup>187</sup>

The covered entity, or its contract pharmacy, is supposed to pass along the savings from the discounted drugs to their low-income patients, but that has not occurred due to vague language in the law and regulations along with other factors. The abuse of the program accelerated beginning in 2014, after the ACA expanded the type and number of entities that could benefit from the program.

The costs associated with the 340B program have increased substantially over the past 10 years. In 2014, 340B discounted purchases were \$9 billion, but by 2020, they reached \$38 billion, or 322 percent more than in 2014, and a 27 percent increase from the \$29.9 billion spent in 2019.<sup>188</sup> On April 14, 2023, the healthcare data analytics firm IQVIA released its study, “The 340B Drug Discount Program Exceeds \$100B in 2022,” which described the massive increase in spending, noting how the misuse of the funds by hospitals and contract pharmacies is ongoing, and patients are still not getting the benefits Congress intended them to receive.<sup>189</sup>

A January 2018 House Energy and Commerce Committee report on 340B identified insufficient oversight, unreliable data, and inadequate reporting requirements. The program’s failures were the result of several factors, including the lack of clear statutory intent and definition of an eligible patient, as well as lax requirements to report savings and how that money is being used. The committee’s reform recommendations included an increase in HRSA’s regulatory authority and resources to oversee and administer the program, clarification by Congress of the intent of the program, and greater transparency on charity care provided by covered entities.<sup>190</sup>

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<sup>186</sup> Joe Grogan, “The Inflation Reduction Act Is Already Killing Potential Cures,” *The Wall Street Journal*, November 3, 2022, <https://www.wsj.com/articles/the-inflation-reduction-act-killing-potential-cures-pharmaceutical-companies-treatment-patients-drugs-prescriptions-ira-manufacturers-11667508291>.

<sup>187</sup> Health Resources and Services Administration (HRSA), “340B Eligibility,” <https://www.hrsa.gov/opa/eligibility-and-registration>.

<sup>188</sup> Drug Channels, “The 340B Program Soared to \$38 Billion in 2020-Up 27% vs. 2019 (rerun),” September 22, 2021, <https://www.drugchannels.net/2021/09/exclusive-340b-program-soared-to-38.html>.

<sup>189</sup> IQVIA, “The 340B Drug Discount Program Exceeds \$100B in 2022,” April 14, 2023, <https://www.iqvia.com/locations/united-states/library/white-papers/the-340b-drug-discount-program-exceeds-uds100b-in-2022>.

<sup>190</sup> House Energy and Commerce Committee, “New E&C Report Examines the 340B Drug Pricing Program,” press release, January 10, 2018, <https://republicans-energycommerce.house.gov/news/press-release/new-ec-report-examines-340b-drug-pricing-program/>.



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A November 2021 Xcenda study found that since 2004, newly registered 340B disproportionate share hospitals tend to be in higher-income communities compared to hospitals that previously joined the 340B program and profits from the program were not being used to help patients. The report noted that this conclusion was consistent with a 2018 *New England Journal of Medicine* study that found, “no evidence of hospitals using the surplus monetary resources generated from administering discounted drugs to invest in safety-net providers, provide more inpatient care to low-income patients, or enhance care for low-income groups in ways that would reduce mortality. These results suggest hospital responses that are contrary to the goals of the program and have a number of important policy implications.”<sup>191</sup>

In a wide-ranging analysis of Richmond Community Hospital, owned by Bon Secours, which was supposed to reinvest profits from 340B drug sales into its facilities and improve patient care, a September 24, 2022, *The New York Times* article reported that the money was being used instead to invest in facilities in the city’s wealthier neighborhoods. Dr. Lucas English, who worked in the hospital’s emergency department until 2018, said, “Bon Secours was basically laundering money through this poor hospital to its wealthy outposts ... It was all about profits.”<sup>192</sup> Dr. Peter B. Bach, who has written about the increased number of clinics opened in wealthier areas using 340B profits, said the hospitals are “nakedly capitalizing on programs that are intended to help poor people.”<sup>193</sup>

Today, more than half of the entire U.S. pharmacy industry is contracted to dispense 340B drugs, there are more than 33,000 contract pharmacy locations nationwide. Of these pharmacies only 23 percent are in medically underserved areas.<sup>194</sup>

A November 25, 2024, Minnesota Department of Health (DOH) report, which was the first state-based analysis of its kind for 340B, found that hospitals in the state received at least \$630 million in 340B revenue in 2023.<sup>195</sup> But that may only be half of total 340B revenue in the state based on national data for the program.

The report found that the largest hospitals, which equal 13 percent of the participating hospitals, received more than \$500 million, or 80 percent of the revenue. The highest profit from 340B was \$129 million at M Health Fairview University of Minnesota Medical Centers. That was not the case for federal safety-net grantee clinics, which generated the least net 340B revenue, and some showed a loss.<sup>196</sup>

The Minnesota DOH report provides more transparency and exposes the abuses of the program. It should be a wake-up call not only for Congress to move forward with 340B reform

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<sup>191</sup> Sunita Desai, Ph.D., and J. Michael McWilliams, M.D., Ph.D., “Consequences of the 340B Drug Pricing Program,” *The New England Journal of Medicine*, January 24, 2018, <https://www.nejm.org/doi/full/10.1056/nejmsa1706475>.

<sup>192</sup> Katie Thomas and Jessica Silver-Greenberg, “How a Hospital Chain Used a Poor Neighborhood to Turn Huge Profits,” *The New York Times*, September 24, 2022, <https://www.nytimes.com/2022/09/24/health/bon-secours-mercy-health-profit-poor-neighborhood.html>.

<sup>193</sup> Ibid.

<sup>194</sup> AIR340B contract pharmacies, “Pharmacy Benefit Managers and Contract Pharmacies Place Profits Over Patients”, October 16, 2024, <https://340breform.org/air340b-contract-pharmacies/#:~:text=Today%2C%20more%20than%20half%20of,than%2033%2C000%20contract%20pharmacy%20locations.>

<sup>195</sup> MN Department of Health, “340B Covered Entity Report,” November 25, 2024, <https://www.health.state.mn.us/data/340b/docs/2024report.pdf>.

<sup>196</sup> Ibid.

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as the Council for Citizens Against Government Waste (CCAGW) has recommended, including a clear definition of a patient and verification of patient eligibility by covered entities, but also for states to stop meddling with the program until they perform their own analysis of how it is impacting patients and taxpayers within their borders.<sup>197</sup> Making the 340B program more efficient should also be taken up by the DOGE.

Reforms for the 340B drug discount program should include defining “a patient as an uninsured, low-income individual that does not qualify for Medicare or Medicaid. This would tighten the loose interpretation of eligibility that has gone on for far too long and help to ensure that the program operates closer to the way it was originally intended. Duplicate discounting for 340B is another ongoing problem that could be addressed with increased oversight from CMS. Improving reporting requirements will help to ensure that the patients benefit from the program as intended.”<sup>198</sup>

There have been sufficient reports by Congress, the media, and outside organizations about the corruption, cost, failure, and abuse of the 340B program, which is clearly not working as intended by Congress when it was established 33 years ago. Profits have grown exponentially at large hospitals while small hospitals suffer, and much-needed reforms are not moving forward. The new Congress and Trump administration should act quickly to prevent further abuse of 340B and help patients get the discounts they need and deserve.

### Stop Overregulation of Pharmacy Benefit Managers

Pharmacy benefit managers (PBMs) were established in the 1960s as part of the claims administration process for health insurance companies and employer health plans. They helped to simplify and reduce the cost of administering benefits through the development of plastic drug benefit cards, pharmacy networks, and mail order/delivery for medications.

PBMs serve more than 275 million Americans nationwide who obtain their health insurance from employers, unions, state governments, insurers, and other entities. They save an average of \$1040 per patient annually.<sup>199</sup> The number of patients PBMs serve is growing due to the efficiencies and savings that they provide.

PBMs use a variety of tools like rebates, pharmacy networks, drug utilization review, formularies, specialty pharmacies, mail-order and audits to drive down drug costs, improve quality, increase patient medication adherence, and prevent fraud. PBMs can negotiate on behalf of large groups to lower prices for their customers. Employers, governments, and unions looking to offer competitive healthcare insurance packages to their employees and members have the

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<sup>197</sup> Christina Smith, “The 340B Drug Pricing Program Needs a New Prescription,” CCAGW, 2024, <https://www.ccagw.org/reporting/The-340B-Drug-Pricing-Program-Needs-a-New-Prescription>.

<sup>198</sup> Council for Citizens Against Government Waste, “Testimony of Thomas A. Schatz House Energy and Commerce Subcommittee on Investigations,” June 4, 2024, <https://www.ccagw.org/legislative-affairs/letters-officials/testimony-thomas-schatz-house-energy-and-commerce-subcommittee>.

<sup>199</sup> PCMA, “The Value of PBMs: PBMs Are Committed to Helping Their Patients,” Pharmaceutical Care Management Association, <https://www.pcmnet.org/value-of-pbms/#:~:text=PBMs%20administer%20prescription%20drug%20plans,%2C%20state%20government%20employee%20plans%2C>.

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option to use PBMs and voluntarily choose to do so because of the many benefits including cost savings.

A July 2019 GAO report, “Medicare Part D: Use of Pharmacy Benefit Managers and Efforts to Manage Drug Expenditures and Utilization,” examined how PBMs are used in voluntary Medicare Part D drug plans in response to a request for such a study from Sen. Susan Collins (R-Maine) and Rep. Richard Neal (D-Mass.). GAO examined the delivery of benefits, revenue, rebates and price concessions, discounts, savings, and management services used in Part D plans.<sup>200</sup>

In 2016, which was the most recent year for which GAO could get such information, PBMs were used by drug plan sponsors, like insurers, to provide 74 percent of drug management services, while the sponsors provided the remaining 26 percent.<sup>201</sup> Total gross expenditures in Part D were \$145 billion, with PBM-negotiated rebates and other price concessions offsetting that amount by \$29 billion, or 20 percent, to \$116 billion.<sup>202</sup>

GAO noted that while rebates and other price concessions grew faster than Part D net expenditures from 2014 to 2016, at 66 percent and 13 percent respectively, PBMs retained less than 1 percent of the rebates and passed the rest to their plan sponsors.<sup>203</sup> The plans use these savings to help offset the growth in drug costs and keep drug benefit premiums low for Medicare beneficiaries. GAO also found PBMs are primarily compensated by fees obtained from plan sponsors, not the rebates.

Despite the evidence of PBMs’ valuable role in the competitive healthcare industry, legislation is being considered that would interfere in these private agreements by imposing price controls and rate regulations. This would move power away from patients and put it in the hands of government. Price controls of any kind decrease competition and result in higher costs.

Regulatory interference would also reduce the ability of PBMs to provide proven savings. As CAGW noted in its May 25, 2022, comments to the Federal Trade Commission (FTC) on the agency’s proposed review of the impact of PBMs’ business practices, “CAGW has for many years been involved in the debate over the regulation of pharmacy benefit managers (PBMs) as part of the effort to lower drug costs. The organization has consistently argued that government meddling in this area does the exact opposite and raises costs. ... Since PBMs provide benefits for multitudes of employers and millions of patients, they are able to bring to bear increased negotiating power and get substantial price discounts from pharmaceutical companies based on volume. The savings are passed on to health plan sponsors, like employers, and consumers. The perceived need for a new review of PBMs is puzzling since the FTC has previously and repeatedly determined that PBMs benefit consumer welfare and that restrictions on PBMs would

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<sup>200</sup> GAO, “Medicare Part D: Use of Pharmacy Benefit Managers and Efforts to Manage Drug Expenditures and Utilization,” July 2019, p. 2, <https://www.gao.gov/assets/gao-19-498.pdf>.

<sup>201</sup> Ibid., p. 14.

<sup>202</sup> Ibid., p. 18.

<sup>203</sup> Ibid.

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be anticompetitive and raise prices. Other government and private sector studies have drawn similar conclusions.”<sup>204</sup>

An October 2024 report analyzing the criticism of PBMs revealed that they encourage greater competition in the prescription drug supply chain and lower drug costs for plan sponsors, including insurance plans, employers of all sizes, labor unions, and government programs. The report found that the pass-through rate for rebates and administrative fees was close to 100 percent in 2020 and 2021, and 100 percent of rebates were provided to a majority of small and large employers.<sup>205</sup>

The report noted that the operating margins for PBMs have been below 5 percent on average in recent years and were lower in 2022 than in 2017. This means that if plan sponsors paid PBMs only enough to cover their operating costs of providing service, as some have argued they should do, patient drug costs would only be lowered by 5 percent. It is unrealistic to believe that PBMs, or any business for that matter, would or could continue providing services without some sort of profit margin.<sup>206</sup>

The report also contradicts claims made in the hearing that PBMs put independent pharmacies out of business. According to the report, “The gross margins of independent pharmacies have not fallen over time, holding at roughly 23 percent from 2011 through 2021.”<sup>207</sup>

Other reports confirm the benefits of using PBMs, including a March 31, 2023, Department of Labor (DOL) OIG Office of Audit report, which found that the DOL overspent \$321.3 million in six years (FYs 2015-2020) on prescription drugs for the Federal Employees’ Compensation Act (FECA) program because the Office of Workers’ Compensation Programs (OWCP) did not use a PBM. There are approximately 2.6 million federal and postal workers in the FECA program. Prior OIG audits determined that OWCP did not have a PBM “to help contain costs.”<sup>208</sup>

PBMs are not the cause of high drug prices. Overregulating them or mandating how they should provide their services would not only drive-up prices but also be a disservice to the 275 million Americans that receive the benefits provided to them by PBMs. Instead of interfering in this successful process, Congress should continue to encourage private-sector negotiations to create an environment that will spur competition, innovation, and increase healthcare quality for patients.

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<sup>204</sup> CAGW, “CAGW Provides Comments to FTC on Pharmacy Benefit Managers,” May 25, 2022,

<https://www.cagw.org/legislative-affairs/agency-comments/cagw-comments-ftc-pharmacy-benefit-managers>.

<sup>205</sup> Dennis W. Carlton, Mary Coleman, Nauman Ilias, Theresa Sullivan, and Nathan Wilson, “PBMS and Prescription Drug Distribution: An Economic Analysis of Criticisms Levied Against Pharmacy Benefit Managers,” October 2024, Compass Lexicon, <https://compass-lexecon.files.svcdcdn.com/production/files/documents/PBMs-and-Prescription-Drug-Distribution-An-Economic-Consideration-of-Criticisms-Levied-Against-Pharmacy-Benefit-Managers.pdf?dm=1728503869>.

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> U.S. Department of Labor, “OWCP Did Not Ensure Best Prices and Allowed Inappropriate, Potentially Lethal Prescriptions in the FECA Program,” March 31, 2023, <https://www.oig.dol.gov/public/reports/oa/2023/03-23-001-04-431.pdf>.

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### Expand Association Health Plans

Expanding the opportunities to shop for and purchase health insurance would improve the healthcare system. Even though the manner in which Americans work today has evolved with the ability to work in the gig economy, contracting, or other self-employment options, the primary method of obtaining health insurance is through employers.<sup>209</sup>

Attaching health insurance to employment is an archaic process that has left millions of Americans with few options. This issue was exacerbated during the COVID-19 pandemic, when nearly 12 million Americans lost employer-sponsored coverage.<sup>210</sup> Linking employment to healthcare no longer makes sense and puts Americans at risk. Instead, healthcare insurance should be easily shopped and purchased like home and auto insurance, not offered mostly through one's employer or the government.

Marketplace choices for consumers should include Association Health Plans (AHP), which allow patients to group as members of an association to access health insurance coverage and care, thus lowering costs and increasing options. This allows small companies, freelancers (like those engaged in the gig economy), and self-employed individuals to access health insurance savings, like those available to large group medical insurance coverage.<sup>211</sup>

On September 11, 2024, House Committee on Education and the Workforce members voted in favor of H.J Res. 181 which would maintain the current status of AHPs.<sup>212</sup> The bill stops the Biden administration rule limiting access to AHPs by allowing non-industry groups to offer AHPs and for self-employed individuals to fully participate in an AHP. According to Rep. Tim Walberg (R-Mich.), AHPs would have given coverage to 400,000 uninsured Americans and 3.6 million would have chosen AHPs over their current plan.<sup>213</sup>

### Expand Health Savings Accounts

Health savings accounts (HSAs) offer tax advantages for healthcare expenses by allowing pre-tax contributions up to \$4,150 for individuals and \$8,300 for families with high deductible health plans (HDHP) in 2024.<sup>214</sup> HSAs must be coupled with a HDHP. More than 87 million, just over

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<sup>209</sup> Ramtin Arablouei and Rund Abdelfatah, "History of Employer-Based Health Insurance in the U.S.," National Public Radio, October 7, 2020, <https://www.npr.org/2020/10/07/921287295/history-of-employer-based-health-insurance-in-the-us#:~:text=In%20the%201940s%2C%20the%20government,it%20much%20cheaper%20for%20employers.>

<sup>210</sup> Annie Nova, "Millions Of Americans Have Lost Health Insurance In This Pandemic-Driven Recession. Here Are Their Options," CNBC, August 28, 2020, <https://www.cnbc.com/2020/08/28/millions-of-americans-lost-health-insurance-amid-pandemic-here-are-options.html>.

<sup>211</sup> Kev Coleman, "What Is an Association Health Plan?," Association Health Plans.com, November 18, 2020, <https://www.associationhealthplans.com/ahp/what-is/>.

<sup>212</sup> H.J. Res.181- Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Labor relating to "Definition of 'Employer'-Association Health Plans". (2024), <https://www.congress.gov/bill/118th-congress/house-joint-resolution/181/all-actions>

<sup>213</sup> Brittany Madni, Anthony Campau, Kev Colman, "Blocking the Biden-Harris Rule to Kill AHPs: A Case Study in Effectively Using the CRA," Economic Policy Innovation Center (EPIC), September 10, 2024, <https://epicforamerica.org/education-workforce-retirement/blocking-the-biden-harris-rule-to-kill-ahps/>.

<sup>214</sup> CMS, "What's a Health Savings Account," September 2024, <https://www.cms.gov/marketplace/outreach-and-education/health-savings-account.pdf>.

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51 percent of the American workforce in 2023 have HDHP's and access to HSAs. But millions of Americans don't have access to an HSA, including Medicare Advantage beneficiaries.<sup>215</sup>

Expanding HSAs to all Americans would improve their ability to save and make more affordable healthcare choices available to all. Eliminating the requirement that HSAs be coupled with HDHPs is a clear and simple fix. By casting a broader net to include all Americans, and allowing them to save and invest in an HSA, patients will be empowered to make their own medical decisions, while pursuing financial independence instead of relying on the government.

### Increase the Availability of Telehealth

Telehealth offers the opportunity for access to medical care online through smartphones, computers, or tablets to patients across the country. This is especially helpful to patients in underserved communities, rural or remote areas of the country, and senior citizens. Telehealth is not intended as a substitute for in-person care, but it provides an alternative pathway for patients to connect with their doctor and other providers.

Since the passage of the ACA in 2010, 129 rural hospitals in the United States have closed.<sup>216</sup> On August 3, 2020, President Trump issued an executive order, "Improving Rural Health and Telehealth Access," to further expand telehealth services and ensure continued access to healthcare for rural Americans during the pandemic.<sup>217</sup> Following the release of the Executive Order, more than 60 services were added to the Medicare telehealth list.<sup>218</sup>

The administration also called upon Congress to further expand telehealth options across the country. Former CMS Administrator Seema Verma stated, "Telehealth has long been a priority for the Trump Administration, so we started paying for short virtual visits in rural areas long before the pandemic struck. But the pandemic accentuated just how transformative it could be. Several months in, it's clear that the healthcare system has adapted seamlessly to a historic telehealth expansion that inaugurated a new era in healthcare delivery."<sup>219</sup>

The COVID-19 pandemic opened Americans' eyes to successes and failures in the medical marketplace, as well as the critical need for alternative healthcare options during times of crisis. During the height of the pandemic, 41 percent of patients abstained from necessary medical care

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<sup>215</sup> U.S. Bureau of Labor Statistics, April 11, 2024, <https://www.bls.gov/ebs/factsheets/high-deductible-health-plans-and-health-savings-accounts.htm>.

<sup>216</sup> CMS, "Trump Administration Drives Telehealth Services in Medicaid and Medicare," October 14, 2020, <https://www.cms.gov/newsroom/press-releases/trump-administration-drives-telehealth-services-medicare-and-medicare>.

<sup>217</sup> White House Archives, "President Donald J. Trump Is Expanding Access to Telehealth Services and Ensuring Continued Access to Healthcare for Rural Americans," The White House, August 3, 2020, <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-expanding-access-telehealth-services-ensuring-continued-access-healthcare-rural-americans/>.

<sup>218</sup> CMS, "Trump Administration Finalizes Permanent Expansion of Medicare Telehealth Services And Improved Payment for Time Doctors Spend with Patients," December 1, 2020, <https://www.cms.gov/newsroom/press-releases/trump-administration-finalizes-permanent-expansion-medicare-telehealth-services-and-improved-payment>.

<sup>219</sup> Susan Morse, "Congressional Action Is Needed for Telehealth Not To Return To A Rural Benefit, CMS Administrator Seema Verma Says," *Healthcare Finance News*, December 1, 2020, <https://www.healthcarefinancenews.com/news/congressional-action-needed-telehealth-not-return-rural-benefit-cms-administrator-seema-verma>.

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due to restrictions imposed to help avoid the spread of the disease.<sup>220</sup> To help increase access for these patients, the Trump administration expanded coverage for Medicare telehealth services and providers.<sup>221</sup>

In April 2020, the Federal Communications Commission (FCC) launched a program to promote telehealth opportunities in response to the COVID-19 pandemic, providing more than \$200 million to providers under the CARES Act to assist in starting up telehealth programs for their patients.<sup>222</sup> As of January 26, 2022, 447 awardees had received funding through the program, with commitments totaling \$256,378,567.<sup>223</sup>

H.R. 7623, the Telehealth Modernization Act, introduced by Rep. Buddy Carter (R-Ga.) during the 118th Congress, would have extended telehealth services by making certain COVID-19-related telehealth services permanent for Medicare.<sup>224</sup> However, no action was taken by Congress before it adjourned. Unleashing American innovation and permanently expanding telehealth will offer more opportunities to obtain advice from doctors and providers and should be prioritized as an approach to patient-centered care.

### Increase Patient Choices and Control

Healthcare decisions should be made by individuals along with their healthcare providers, rather than by a cumbersome federal bureaucracy forcing them to rely on programs fraught with waste, fraud, and abuse. Federal government programs must be reformed and utilized as originally intended for the most vulnerable in society. Adopting free market reforms that increase competition and spur innovation should be a top priority. Improving the delivery and administration of federal healthcare programs should be a high priority for the DOGE.

The U.S. healthcare system is at a tipping point. The recommendations in this report will help to avoid increased government control of the healthcare system and provide patients with greater choice and control.

The Health Policy Consensus Group, facilitated by the Galen Institute, and composed of healthcare policy analysts who provide recommendations on a variety of healthcare policy issues released, “Health Care Choices 2020: A Vision for the Future.”<sup>225</sup> The plan encompasses free market solutions to healthcare problems including continued use of health reimbursement accounts; expanding HSAs, building off of the Trump administration’s successful plan to give states more control over federal healthcare dollars by instituting high-risk pools, “invisible risk

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<sup>220</sup> Mark E. Czeisler, Kristy Marynak, MPP, Kristie E.M. Clarke, MD, et al., “Delay or Avoidance of Medical Care Because of COVID-19-Related Concerns – United States, June 2020,” Centers for Disease Control and Prevention, September 11, 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6936a4.htm>.

<sup>221</sup> CMS, “President Trump Expands Telehealth Benefits For Medicare Beneficiaries During COVID-19 Outbreak,” March 17, 2020, <https://www.cms.gov/newsroom/press-releases/president-trump-expands-telehealth-benefits-medicare-beneficiaries-during-covid-19-outbreak>.

<sup>222</sup> Federal Communications Commission (FCC), “COVID-19 Telehealth Program (Invoices & Reimbursements),” <https://www.fcc.gov/covid-19-telehealth-program-invoices-reimbursements>.

<sup>223</sup> FCC, “FCC Announces Final Set of Commitments for COVID-19 Telehealth Program,” January 26, 2022, <https://www.fcc.gov/document/fcc-announces-final-set-commitments-covid-19-telehealth-program>.

<sup>224</sup> The Telehealth Modernization Act, H.R. 7623, (2024), <https://www.congress.gov/bill/118th-congress/house-bill/7623>.

<sup>225</sup> Health Policy Consensus Group, “Health Care Choices 20/20: A Vision for the Future,” November 2020, [https://www.healthcarechoices2020.org/wp-content/uploads/2020/11/HealthCareChoices2020\\_Proposal.pdf](https://www.healthcarechoices2020.org/wp-content/uploads/2020/11/HealthCareChoices2020_Proposal.pdf).

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pools,” reinsurance, and other risk adjustments that provide specialized care for people with chronic or preexisting conditions; more regulatory flexibility for the states; expanding telehealth; providing an alternative to the No Surprise Billing Act; and lowering federal regulatory burdens that hinder competition and innovation.<sup>226</sup>

Patients have been stripped of their healthcare choices and left with either a big government socialist program that is failing, or a private coverage market that has been heavily distorted by government manipulation. If Congress works to unleash the free market, competition will drive down costs, and American ingenuity will bring about the best choices and give more control to patients.

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<sup>226</sup> Ibid.



### INTELLECTUAL PROPERTY RIGHTS

Intellectual property (IP) is the only property right protected in the Constitution, in 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.<sup>227</sup>

The Founding Fathers understood that the best way to encourage creation and dissemination of new inventions and artistic works to the benefit of both the public good and individual liberty is to protect IP rights. In his January 8, 1790, State of the Union Address to Congress, President George Washington stated, “nothing ... can better deserve your patronage than the promotion of science and literature.”<sup>228</sup> 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 as well by 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 then moved forward and passed H.R. 43, the Copyright Act of 1790, which was signed into law on May 31, 1790.<sup>229</sup>

The Act established both the U.S. Copyright Office and the U.S. Patent and Trademark Office (USPTO). These agencies are tasked with cataloguing, analyzing, and protecting IP rights.

IP is not always seen or heard directly, and its value is therefore not as visible as other forms of property. Most Americans think of property as something they own, meaning personal and real property, but they are likely unaware that someone came up with an idea or an invention to create and build those possessions, and that the protection of IP rights enables the development of new ideas and inventions.

The COVID-19 pandemic demonstrated how critical the protection of IP is to the development of new cures for diseases. As shutdowns and lockdowns occurred, drug manufacturers stepped up to the plate and developed vaccines to combat the disease and treatments to help mitigate the severity of the illness. Without IP protection and the full support of the U.S. government, the breakneck speed of developing safe and effective drugs would not have occurred. These same protections remain critical to future cures and the creation of new technologies that improve everyone’s lives and provide significant economic benefits. (The devastating impact of price controls on IP rights and pharmaceutical research and development is discussed in the healthcare chapter of this publication.)

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<sup>227</sup> U.S. Constitution, Article 1, Section 8, National Archives, <https://www.archives.gov/founding-docs/constitution-transcript>.

<sup>228</sup> William F. Patry, *Copyright Law and Practice*, Bureau of National Affairs, 1994, 2000, <http://digital-law-online.info/patry/patry5.html>.

<sup>229</sup> *Ibid.*

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According to the USPTO’s 2021 report on IP and the U.S. economy, IP-intensive industries “directly accounted for more than 47 million U.S. jobs,” and “supported an additional 15.5 million jobs in other industries that supply them intermediate goods and services” in 2019.<sup>230</sup> The report stated that of the \$7.76 trillion contributed to the Gross Domestic Product (GDP) in 2019 by IP-intensive industries, utility patent-industries contributed \$4.43 trillion, design patent-intensive industries provided \$4.46 trillion, trademark-intensive industries contributed \$6.91 trillion, and copyright-intensive industries contributed \$1.29 trillion.<sup>231</sup>

In December 2022, the International Intellectual Property Alliance released its study of the impact of copyright-related industries on the U.S. economy between 2019-2021. Even with pandemic restrictions in place during much of the period the study was conducted, copyright-related industries, including entertainment, gaming, movie, music, and business applications, continued to produce new and innovation products and services. According to the report, core copyright industries added “more than \$1.8 trillion” to the U.S. GDP in 2021, and directly “employed 9.6 million workers in 2021 accounting for 4.88 percent of the entire U.S. workforce.”<sup>232</sup>

The economic impact of copyright-intensive industries extends well beyond direct employment. According to the Motion Picture Association (MPA), when the movie *Black Panther* was filmed in 2018, more than 3,100 local workers in Georgia received more than \$26.5 million in wages supporting the local economy.<sup>233</sup> The 2022 sequel *Black Panther: Wakanda Forever*, was filmed in multiple locations in Georgia, contributing more than \$314 million in the local economy, and providing 1,885 local workers’ wages totaling more than \$88 million.<sup>234</sup> In 2020, the industry paid a total of “\$49 billion to more than 280,000 businesses in cities and small towns across the country.”<sup>235</sup>

Given the significant economic benefit demonstrated by these reports, enforcement and protection of IP globally is critical to future innovation and creativity. The U.S. Chamber of Commerce 2024 International IP Index report, published by the Global Innovation Policy Center (GIPC), is used as a guide to help nations review and evaluate how their current IP protections help or hinder their national economy.<sup>236</sup> Reviewing IP rights and protections across 55 national economies using 50 unique criteria, GIPC evaluates how well each country protects overall IP rights, provides copyright protections, and enforces laws against physical IP-infringing goods.

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<sup>230</sup> Andrew A. Toole, Ph.D., Richard D. Miller, Ph.D., and Nicholas Rada, Ph.D., “Intellectual property and the U.S. economy: Third edition,” U.S. Patent and Trademark Office, 2021, <https://www.uspto.gov/sites/default/files/documents/uspto-ip-us-economy-third-edition.pdf>.

<sup>231</sup> Ibid., p. 3, “Figure 1: GDP of the IP-intensive industries, 2019,” (because some industries are cross classified, the individual values do not sum to the total value).

<sup>232</sup> Robert Stoner and Jéssica Dutra, “Copyright Industries in the U.S. Economy,” International Intellectual Property Alliance®, December 2022, [https://www.iipa.org/files/uploads/2022/12/IIPA-Report-2022\\_Interactive\\_12-12-2022-1.pdf](https://www.iipa.org/files/uploads/2022/12/IIPA-Report-2022_Interactive_12-12-2022-1.pdf).

<sup>233</sup> Motion Picture Association (MPA), “What We Do: Driving Economic Growth,” February 25, 2020, <https://www.motionpictures.org/what-we-do/driving-economic-growth/>.

<sup>234</sup> MPA, “Marvel Studios Black Panther: Wakanda Forever Generated Over \$314 Million for Georgia’s Economy,” November 15, 2022, <https://www.motionpictures.org/press/marvel-studios-black-panther-wakanda-forever-generated-over-314-million-for-georgias-economy/#:~:text=Its%20economic%20benefits%20include%3A,%2413.8%20million%20spent%20on%20lodging>.

<sup>235</sup> Ibid.

<sup>236</sup> Global Innovation Policy Center, “2024 International IP Index: Compete for Tomorrow, U.S. Chamber International IP Index,” 12th ed., U.S. Chamber of Commerce, February 2024, <https://www.uschamber.com/intellectual-property/2024-ip-index>.

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The United States continues to rank at the top of the list of countries with the best IP protections with a score of 95.48 percent; followed by the United Kingdom (94.12 percent); France (93.12 percent); Germany (92.46 percent); Sweden (92.12 percent); and Japan (91.26 percent). The countries with the least IP protections were Venezuela (14.10 percent); Russia (25 percent); Algeria (26.36 percent); Pakistan (27.42 percent); Kuwait (28.42 percent); and Ecuador (29.58 percent).<sup>237</sup>

While the significance of IP seems evident, there are some elected officials and non-governmental organizations that have downplayed its value and tried to undermine its impact. CAGW's 2014 book, *Intellectual Property: Making It Personal*, cited four myths and realities surrounding IP that address several of their claims:

1. Myth: The price of information and ideas should be zero because products should be priced at marginal cost.  
Reality: Economists reject marginal cost pricing because such policies destroy investment.
2. Myth: Intellectual property rights result in information and ideas being 'locked down' by their owners.  
Reality: The creators of art, books, movies, and inventions want their creations to reach as many people as possible, so long as they are compensated.
3. Myth: Intellectual property rights are monopolies that give their owners too much economic power.  
Reality: Patents or copyrights support competition by encouraging inventors and creators to enter new markets; IP gives its owners no more economic power than any other asset.
4. Myth: Intellectual property rights benefit big firms at the expense of 'the little guy.'  
Reality: Patents are often the best protection that a small inventor has against large firms; copyright benefits creative ventures of many sizes, from solo musicians to big studios.<sup>238</sup>

### Promoting IP in Trade Agreements

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

The Office of the U.S. Trade Representative (USTR) releases an annual Special 301 Report identifying trading partners that "do not adequately or effectively protect and enforce intellectual property (IP) rights or otherwise deny market access to U.S. innovators and creators that rely on protection of their IP rights." The 2024 Special 301 Report identified 27 countries on its Priority Watch List and Watch List out of the 100 countries reviewed.<sup>239</sup>

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<sup>237</sup> Ibid.

<sup>238</sup> Thomas Schatz and Deborah Collier, *Intellectual Property: Making It Personal*, CAGW, November 2014, p. 5, [https://www.cagw.org/Intellectual\\_Property](https://www.cagw.org/Intellectual_Property).

<sup>239</sup> Office of the United States Trade Representative (USTR), "2024 Special 301 Report," April 1, 2024, <https://ustr.gov/sites/default/files/2024%20Special%20301%20Report.pdf>.

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Placement on either of these lists indicates inadequate IP protection, enforcement, and/or market access. The Priority Watch List includes Argentina, Chile, China, India, Indonesia, Russia, and Venezuela. The Watch List includes Algeria, Barbados, Belarus, Bolivia, Brazil, Bulgaria, Canada, Colombia, Ecuador, Egypt, Guatemala, Mexico, Pakistan, Paraguay, Peru, Thailand, Trinidad and Tobago, Türkiye, Turkmenistan, and Vietnam.<sup>240</sup> Due to the continuing conflict in Ukraine, the USTR did not provide an analysis of that country, but it was on the Priority Watch List in 2021.<sup>241</sup>

Unfortunately, challenges to IP protection also come from within the United States. In an effort to obtain the IP rights to the vaccines that were created for COVID-19 at no cost, India and South Africa proposed a waiver of certain provisions of the WTO Trade-Related Aspects of Intellectual Property Rights Agreement. Despite objections from IP rights holders throughout the U.S. (and groups supporting IP rights like CAGW), the USTR’s press release announcing the issuance of the 2022 Special 301 Report noted that the Biden administration “supports a waiver of IP protections for COVID-19 vaccines under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).”<sup>242</sup>

Waiving licensed vaccinations and medical treatments creates a system of compulsory licensing of COVID-19 vaccines and other treatments and allows governments seeking the waiver to manufacture generic versions of the vaccines and treatments using the research and development of a company for no cost, essentially stealing the IP that is supposed to be protected under U.S. and international laws. The WTO decided on June 17, 2022, to grant a 5-year waiver for COVID-19 vaccines, which will allow eligible WTO members to use “patented inventions necessary for COVID-19 vaccine production and supply, without the right holder’s consent.”<sup>243</sup> The waiver is not only a violation of IP rights, but also unnecessary, since beginning in August 2020, there were 172 countries in discussions to obtain vaccines through COVAX, which is run through the World Health Organization and has for many years provided equitable distribution of vaccines around the world.<sup>244</sup>

The U.S. should begin all negotiations for bilateral and multilateral agreements by insisting the IP rights be protected at the same level they are in America. Any decisions to depart from those standards on the part of any administration should not be made without the advice and consent of Congress, particularly if those decisions impact the IP rights of individuals and companies within

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<sup>240</sup> Ibid.

<sup>241</sup> USTR, “USTR Releases Annual Special 301 Report on Intellectual Property Protection and Enforcement,” April 30, 2021, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/april/ustr-releases-annual-special-301-report-intellectual-property-protection>.

<sup>242</sup> USTR, “USTR Releases 2022 Special 301 Report on Intellectual Property Protection and Enforcement,” April 27, 2022, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/april/ustr-releases-2022-special-301-report-intellectual-property-protection-and-enforcement>; CAGW, “CAGW Requests the U.S. International Trade Commission Should not Expand the TRIPS Waiver,” May 4, 2023, <https://www.cagw.org/legislative-affairs/agency-comments/cagw-requests-us-international-trade-commission-should-not>.

<sup>243</sup> Sheyerah I. Akhtar, “World Trade Organization: ‘TRIPS Waiver’ for COVID-19 Vaccines,” Congressional Research Service, August 31, 2022, <https://crsreports.congress.gov/product/pdf/R/R47231#:~:text=trade%20issues.34-,TRIPS%20Waiver%20Decision%20for%20COVID%2D19%20Vaccines,CLs%20for%20COVID%2D19%20vaccines>.

<sup>244</sup> World Health Organization, “172 countries and multiple vaccine candidates engaged in COVID-19 vaccine Global Access Facility,” August 24, 2020, <https://www.who.int/news/item/24-08-2020-172-countries-and-multiple-candidate-vaccines-engaged-in-covid-19-vaccine-global-access-facility>.

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the U.S. And every nation's track record on IP should be evaluated using tools provided by the Special 301 report and sources like the GIPC's Global IP index to ensure that America's global leadership in creativity, innovation, and technology is enhanced and protected.

### The Battle Against Counterfeits and Piracy

In 2016, the Trade Facilitation and Trade Enforcement Act was signed into law, strengthening the ability of federal officials to interdict and seize suspected infringing goods at the border.<sup>245</sup>

According to the Department of Homeland Security, the number of IP rights seizures decreased from 34,143 in FY 2017 to 33,810 in FY 2018.<sup>246</sup> Based on the estimated manufacturer's suggested retail price, had the seized goods been genuine, they were worth \$1.4 billion.<sup>247</sup> In FY 2019, there were 27,599 seizures, with an estimated value of more than \$1.5 billion. In FY 2020, there were 26,503 seizures with an estimated manufacturer's suggested retail value of \$1.3 billion.<sup>248</sup> There were 27,000 seizures in FY 2021, with an estimated manufacturer's suggested retail value of more than \$3.3 billion, a 152 percent increase over the FY 2020 value.<sup>249</sup> In 2023, those seizures had decreased to 19,722, with a total of 102,646 items seized with an estimated manufacturer's suggested retail value of more than \$2.7 billion.<sup>250</sup>

However, the value of these seizures does not reflect their full economic impact. A February 2017 Commission on the Theft of American Intellectual Property report estimated the economic loss of IP due to counterfeits, trade secret theft, and pirated software is between \$225 billion to \$600 billion annually.<sup>251</sup> The report found that 87 percent of the counterfeit goods came from China.<sup>252</sup>

In addition to counterfeit goods, there is a significant threat to IP rights from counterfeit and pirated content online. According to a June 2019 GIPC report, there were "more video streaming subscribers than paid-TV subscribers worldwide, accessing more than 500 licensed online video portals."<sup>253</sup> The report noted that the online video industry employed "up to 2.6 million workers

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<sup>245</sup> Meir Pugatch, Rachel Chu, and David Torstensson, "Create: U.S. Chamber International IP Index, 6th edition," Global Innovation Policy Center, U.S. Chamber of Commerce, February 2018, [http://www.theglobalipcenter.com/wp-content/uploads/2018/02/GIPC\\_IP\\_Index\\_2018.pdf](http://www.theglobalipcenter.com/wp-content/uploads/2018/02/GIPC_IP_Index_2018.pdf).

<sup>246</sup> Department of Homeland Security (DHS), "Intellectual Property Rights Seizure Statistics, Fiscal Year 2018," August 9, 2019, [https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/IPR\\_Annual-Report-FY-2018.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/IPR_Annual-Report-FY-2018.pdf).

<sup>247</sup> Ibid.

<sup>248</sup> DHS, "Intellectual Property Rights Fiscal Year 2020 Seizure Statistics," September 30, 2021, [https://www.cbp.gov/sites/default/files/assets/documents/2021-Sep/101808%20FY%202020%20IPR%20Seizure%20Statistic%20Book%2017%20Final%20spreads%20ALT%20TEXT\\_FINAL%20%28508%29%20REVISED.pdf](https://www.cbp.gov/sites/default/files/assets/documents/2021-Sep/101808%20FY%202020%20IPR%20Seizure%20Statistic%20Book%2017%20Final%20spreads%20ALT%20TEXT_FINAL%20%28508%29%20REVISED.pdf).

<sup>249</sup> DHS, "Intellectual Property Rights Fiscal Year 2021 Seizure Statistics," September 29, 2022, <https://www.cbp.gov/sites/default/files/assets/documents/2022-Sep/202994%20-%20FY%202021%20IPR%20Seizure%20Statistics%20BOOK.5%20-%20FINAL%20%28508%29.pdf>.

<sup>250</sup> U.S. Customs and Border Patrol, DHS, "Intellectual Property Rights (IPR) Seizures," FY 2023, <https://www.cbp.gov/newsroom/stats/intellectual-property-rights-ipr-seizures>.

<sup>251</sup> The Commission on the Theft of American Intellectual Property, "The Theft of American Intellectual Property: Reassessments of the Challenge and United States Policy, Update to the IP Commission Report," National Bureau of Asian Research, February 2017, [http://www.ipcommission.org/report/IP\\_Commission\\_Report\\_Update\\_2017.pdf](http://www.ipcommission.org/report/IP_Commission_Report_Update_2017.pdf).

<sup>252</sup> Ibid.

<sup>253</sup> David Blackburn, Jeffrey A. Eisenach, and David Harrison, "Impacts of Digital Video Piracy on the U.S. Economy," Global Innovation Policy Center, U.S. Chamber of Commerce, June 2019, <https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>.

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in the U.S.” and provided “\$229 billion in annual economic benefits to the U.S. economy.”<sup>254</sup> As legal streaming has increased, so has piracy of digital movies, music, and software applications, which is not only anticompetitive but also a harbinger of malware and other attacks on unsuspecting businesses and consumers.

According to the MPA, in 2018 “[t]here were an estimated 32.5 billion visits to streaming piracy sites worldwide across both desktops and mobile devices. One out of four content theft sites exposed consumers to malicious content.”<sup>255</sup> In 2020, GIPC President and Chief Executive Officer (CEO) David Hirshmann noted that, “Global digital piracy costs the U.S. economy \$29.2 billion a year, money that would otherwise be spent to create more, safe access to new content generated by American creators and workers.”<sup>256</sup>

One of the devices used to download and view illegal content is the set-top box. The movie industry has filed several piracy lawsuits against set-top box manufacturers to reduce the availability of pirated digital goods on such devices from being downloaded. One 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.<sup>257</sup> The industry has also implemented various voluntary initiatives to prevent illegal theft and distribution of pirated content.

During the 116th Congress, two provisions of the Consolidated Appropriations Act, 2021, strengthened the laws against illegal distribution of pirated content.<sup>258</sup> The first provision was the Protecting Lawful Streaming Act, which eliminates a loophole in criminal copyright law by making it a criminal offense for illegally streaming, downloading and distributing pirated content by large criminal enterprises, with sentences of up to 10 years.<sup>259</sup> Prior to enactment, these crimes were considered misdemeanors.<sup>260</sup>

The second provision was intended to help small creators obtain a remedy for copyright infringement. It included language from H.R. 2426, the Copyright Alternative in Small-Claims Enforcement Act of 2019, to create a Copyright Claims Board within the U.S. Copyright Office to decide copyright infringement disputes from individual creators and small businesses that would otherwise not be able to afford to defend themselves in federal court. Awards for damages

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<sup>254</sup> Ibid.

<sup>255</sup> Motion Picture Association, “Safeguarding Creativity,” <https://www.motionpictures.org/what-we-do/safeguarding-creativity/>.

<sup>256</sup> U.S. Immigration and Customs Enforcement, “Motion Picture Association signs up to assist the IPR Center with anti-piracy efforts,” September 16, 2020, <https://www.ice.gov/news/releases/motion-picture-association-signs-assist-ipr-center-anti-piracy-efforts#:~:text=Global%20digital%20piracy%20costs%20the,the%20U.S.%20Chamber%20of%20Commerce>.

<sup>257</sup> *DISH Network L.L.C. and NagraStar LLC v. Nelson Johnson, Jason Labossiere, Set Broadcast LLC, Streaming Entertainment Technology LLC, Doe 1, as Trustee for Chateau Living Revocable Trust and Doe 2, as Trustee for Macromint Trust, individually and collectively d/b/a www.setvnow.com*, Civil Case No. 8:18-cv-1332-T-33AAS, Final Judgment and Permanent Injunction, October 24, 2018, <https://torrentfreak.com/images/DISH-v-SET-judgment.pdf>.

<sup>258</sup> Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 116th Congress, (2020), <https://www.congress.gov/bill/116th-congress/house-bill/133>.

<sup>259</sup> Sen. Tom Tillis, “Protecting Lawful Streaming Act,” *Congressional Record*, Volume 166, Number 218, U.S. Senate, December 21, 2020, pp. S7931-S7932, <https://www.congress.gov/congressional-record/2020/12/21/senate-section/article/s7931-1?q=%7B%22search%22%3A%5B%22Protecting+Lawful+Streaming%22%5D%7D&s=2&r=1>.

<sup>260</sup> U.S. Patent and Trademark Office, “Protecting Lawful Streaming Act of 2020,” <https://www.uspto.gov/ip-policy/enforcement-policy/protecting-lawful-streaming-act-2020>.

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are capped at \$30,000, and participation in the board’s proceedings is voluntary with an opt-out procedure for defendants, while the parties are still able to have their dispute heard in court.<sup>261</sup>

In both the 117th and 118th Congresses, the American Music Fairness Act was introduced to equalize the discrepancies in current law surrounding copyright royalties for recorded performances of music by allowing copyright owners of sound recordings to have effective and enforceable rights to their creative product when it is distributed through terrestrial radio. Current law gives terrestrial broadcast radio stations the right to broadcast sound recordings without appropriate compensation, even though compensation is provided by other broadcast media, including satellite radio and digital streaming services. The legislation was not enacted during either Congress.<sup>262</sup> The 119th Congress has the opportunity to correct this inequity in the treatment of recorded performances by copyright owners with appropriate compensation for their work regardless of the medium in which it is distributed.<sup>263</sup>

Another issue affecting IP rights is the rapid development of artificial intelligence (AI), especially generative AI, has both opened opportunities for increased creativity and potential threats to IP rights, including the use of an individual’s voice or image. Consumers of music, or of any recording, expect that what they are listening to is truly the work of the performer, product promotion is that person’s endorsement, and personal advice offered through a chat is from a person, not a bot. However, AI is increasingly creating confusion in the recording and streaming marketplace, as voices are duplicated and songs are created and broadcast that were never sung by the performers.<sup>264</sup> A person’s voice and their image are unique to them, but as AI programs develop, the frequency of fake performances and other recordings will increase.

These issues have not only arisen in music but also in politics and other industries. AI voice cloning technology was used in New Hampshire to create fake robocalls from “President Biden,” and in Maryland to create a false racist statement by a school principal.<sup>265</sup>

An online search on “AI replication of music” features many YouTube videos offering AI programs that can replicate music styles of performers who are both deceased and alive. These unauthorized recordings not only hurt consumers by misleading them into purchasing what they believe to be genuine recordings but also hurt the performers who receive no compensation for the unauthorized use of their voice or image.

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<sup>261</sup> Copyright Alternative in Small-Claims Enforcement Act of 2019, H.R. 2426, 116th Congress (2019), <https://congress.gov/bill/116th-congress/house-bill/2425>.

<sup>262</sup> Council for Citizens Against Government Waste, “CCAGW Leads Coalition Supporting H.R. 4130, the American Music Fairness Act,” June 8, 2022, <https://www.ccagw.org/legislative-affairs/letters-officials/ccagw-leads-coalition-supporting-hr-4130-american-music>.

<sup>263</sup> American Music Fairness Act of 2022, H.R. 4130, 117th Congress (2022), <https://www.congress.gov/bill/117th-congress/house-bill/4130>; American Music Fairness Act, S. 253, 118th Congress (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/253>; American Music Fairness Act of 2023, H.R. 791, 118th Congress (2023), <https://www.congress.gov/bill/118th-congress/house-bill/791>.

<sup>264</sup> Nick Breen and Josh Love, “Attack of the Clones: AI Soundalike Tools Spin Complex Web of Legal Questions for Music (Guest Column),” *Billboard Pro*, May 19, 2023, <https://www.billboard.com/pro/ai-music-tools-copy-artists-voices-legal-questions/>.

<sup>265</sup> Holly Ramer, “Political consultant behind fake Biden robocalls says he was trying to highlight a need for AI rules,” AP, February 26, 2024, <https://apnews.com/article/ai-robocall-biden-new-hampshire-primary-2024-f94aa2d7f835ccc3cc254a90cd481a99>; Ben Finley, “Athletic director used AI to frame principal with racist remarks in fake audio clip, policy say,” AP, April 25, 2024, <https://apnews.com/article/ai-artificial-intelligence-principal-audio-maryland-baltimore-county-pikesville-853ed171369bcb88eb54f55195cb9c>.

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Generative AI allowing for the recreation of someone’s voice for new uses can be beneficial. For example, former-Rep. Jennifer Wexton (D-Va.), who lost her ability to speak due to progressive supranuclear palsy, is able to use the technology to help her speak in her own voice.<sup>266</sup> The health applications of such technology will help improve the lives of those who for various health reasons have lost their speaking ability, as well as those who suffer from other diseases and conditions.

But the unauthorized use of an individual’s thoughts or voice can have far-reaching ramifications, including economic and societal harm.<sup>267</sup> While some individuals may accept another’s use of their likeness post-duplication, the right to maintain control over thoughts, words, and appearance should be determined by the individual, not by a random AI developer who can live anywhere around the world.<sup>268</sup> This is one of the reasons that the bipartisan Nurture Originals, Foster Art, and Keep Entertainment Safe (NO FAKES) Act was introduced in the Senate on July 31, 2024.<sup>269</sup> The legislation would give digital control to individuals on how their voices, likenesses, and words are used.

According to one of the lead sponsors of the legislation, Sen. Chris Coons (D-Del.), the NO FAKES Act would help prevent the “use of non-consensual digital replications in these kinds of audiovisual works, images, or sound recordings” by holding companies liable for unauthorized use; holding platforms liable for unauthorized hosting; exclude some digital replications from the bill based on First Amendment Rights; and preempt state laws intended to address the same issues.<sup>270</sup>

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 led to 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.<sup>271</sup>

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<sup>266</sup> Danya Gainor and Haley Talbot, “Wexton makes history as first member to use AI voice on House floor,” CNN, July 25, 2024, <https://www.cnn.com/2024/07/25/politics/jennifer-wexton-ai-voice-house-floor/index.html>.

<sup>267</sup> Mohar Chatterjee, “A New Kind of AI Copy Can Fully Replicate Famous People. The Law is Powerless,” Politico, December 30, 2023, <https://www.politico.com/news/magazine/2023/12/30/ai-psychologist-chatbot-00132682>.

<sup>268</sup> Jarrid Outlaw, “Can I Be Protected Against Myself? Artificial Intelligence and Voice Replication,” University of Richmond School of Law, Journal of Law & Technology, May 17, 2024, <https://jolt.richmond.edu/2024/05/17/can-i-be-protected-against-myself-artificial-intelligence-and-voice-replication/>.

<sup>269</sup> NO FAKES Act, S. 4875, 118th Congress, Senate, 2024, <https://www.congress.gov/bill/118th-congress/senate-bill/4875>.

<sup>270</sup> Sen. Chris Coons (D-Del.), “Nurture Originals, Foster Art, and Keep Entertainment Safe (NO FAKES) Act Bill Summary,” [https://www.coons.senate.gov/imo/media/doc/no\\_fakes\\_act\\_one-pager.pdf](https://www.coons.senate.gov/imo/media/doc/no_fakes_act_one-pager.pdf).

<sup>271</sup> James Madison, “Federalist Papers: Primary Documents in American History, Federalist Paper No. 43, The Same Subject Continued: The Powers Conferred by the Constitution Further Considered,” For the *Independent Journal*, The Library of Congress, last updated August 13, 2019, <https://guides.loc.gov/federalist-papers>.



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If the Founding Fathers had not codified IP protection, the light bulb, the telephone, the cell phone, and the microchip might never have been invented. Continued vigilance by Congress and the executive branch in both domestic policy and trade negotiations is essential to keeping America's engine of ingenuity and innovation on track and maintaining the nation's creative and economic advantage over the rest of the world.

### 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 following the 2016 elections when it was revealed that Cambridge Analytica used ill-gotten personal data from Facebook, now known as Meta, for targeted political ads. In 2021, the overall number of major data compromises reached 1,862 incidents, a 68 percent increase from 2020, and a 23 percent increase over the previous all-time high of 1,506 data compromises that occurred in 2017.<sup>272</sup> According to Statista, the number of data compromises in 2023 reached 3,205 cases, and “over 353 million individuals were affected by data compromises, including data breaches, leakage, and exposure.”<sup>273</sup>

Consumers are asking for protection for their personal information. While companies have been working to strengthen data security and consumer privacy, a national framework enacted into law by Congress would eliminate the costly and confusing patchwork of state laws and ensure that businesses and individuals have a single set of rules to follow for protecting data and privacy when using online services.

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 (ECPA), 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, and the 118th Congress did not pass any privacy legislation.

Options for federal privacy legislation included provisions like those adopted in Europe or states like California. On April 14, 2016, the European Parliament adopted the General Data Protection Regulation (GDPR), which began applying to all European Union (EU) member states on May 25, 2018. The GDPR imposes onerous and costly 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.<sup>274</sup> This includes U.S. companies conducting business in the EU.

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<sup>272</sup> “Identity Theft Resource Center’s 2021 Annual Data Breach Report Sets New record for Number of Compromises,” Identity Theft Resource Center, January 24, 2022, <https://www.idtheftcenter.org/post/identity-theft-resource-center-2021-annual-data-breach-report-sets-new-record-for-number-of-compromises/>.

<sup>273</sup> Ani Petrosyan, “Number of data compromises and impacted individuals in U.S. 2005-2023,” Statista, February 12, 2024, <https://www.statista.com/statistics/273550/data-breaches-recorded-in-the-united-states-by-number-of-breaches-and-records-exposed/>.

<sup>274</sup> Roslyn Layton, “The GDPR: What It Really Does and How the U.S. Can Chart a Better Course,” *Federalist Society Review*, Volume 19, October 29, 2018, <https://fedsoc.org/commentary/publications/the-gdpr-what-it-really-does-and-how-the-u-s-can-chart-a-better-course>.

## Critical Waste Issues for the 119th Congress

On June 28, 2018, the California Consumer Privacy Act (CCPA) was signed into law by Gov. Jerry Brown (D).<sup>275</sup> The bill, which was rushed through the legislature in a few days, echoes the GDPR by imposing extremely burdensome requirements on how companies must store and provide access to consumers' personal information, and according to an estimate by the California Department of Finance would have an economic impact of more than \$50 million due to compliance and reporting related costs for all businesses within the state, impacting both resident and non-resident businesses operating in California. The number of businesses impacted by the CCPA are between 15,000 to 400,000 including large and small businesses as well as nonprofits. While the Department of Finance expected 261 jobs to be created because of the CCPA, it also expected 9,776 jobs to be eliminated.<sup>276</sup>

On November 4, 2020, California voters approved a ballot measure to adopt the California Privacy Rights Act (CPRA).<sup>277</sup> CPRA amends the CCPA to extend business exemptions for personal information; create a higher threshold for the definition of a business effective January 1, 2023; create a new definition for "sharing" personal information for "cross-context behavioral advertising," and provide the right to opt-out with a requirement to include a "Do Not Sell or Share My Personal Information" link. CPRA also imposes limits on the use of sensitive personal information similar to the GDPR; creates new notice requirements at the point of data collection; imposes new requirements on service provider agreements; expands private rights of action; improves exemptions for clinical trials; and creates a new state agency dedicated to privacy enforcement, funded with \$5 million for 2020-2021 and \$10 million each following year.<sup>278</sup>

Other states have enacted or are reviewing laws that would protect personal information, including children's online privacy, website privacy policies, and monitoring employee e-mail communications. Without the adoption of a consistent national privacy protection regime that preempts state and local laws, more states will continue to enact their own rules, some of which could be as strict as California's, further complicating the privacy regulatory environment with which companies and individuals must comply.

At the outset of the 2023 to 2024 legislative sessions, California, Colorado, Connecticut, Utah, and Virginia had enacted comprehensive consumer data privacy laws. Lawmakers in 29 other states considered 55 data privacy bills, seven of which were signed into law in both 2023 and 2024. The Montana Consumer Data Privacy Act, the Oregon Consumer Privacy Act, and the Texas Data Privacy and Security Act went into effect in 2024, eight state laws become effective in 2025, and the Indiana Consumer Data Protection Act, Kentucky Consumer Data Protection Act, and Rhode Island Data Transparency and Privacy Protection Act will take effect in 2026.

Some of the laws are comprehensive while others address a limited area of privacy, like Montana Constitutional Amendment 48, which was approved on November 8, 2022, by 82 percent to 18

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<sup>275</sup> California Consumer Privacy Act of 2018, SB-1121 (2017-2018), Title 1.81.5 added by Stats. 2018, Ch. 55, Sec. 3), [http://leginfo.ca.gov/faces/codes\\_displayText.xhtml?division=3.&part=4.&lawCode=CIV&title=1.81.5](http://leginfo.ca.gov/faces/codes_displayText.xhtml?division=3.&part=4.&lawCode=CIV&title=1.81.5).

<sup>276</sup> State of California Department of Finance, Economic and Fiscal Impact Statement (Regulations and Orders), Economic Impact Statement California Consumer Privacy Act (CCPA) Regulations, August 14, 2019, <https://oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-std399.pdf>.

<sup>277</sup> Secretary of State Alex Padillo, "California General Election Results," Tuesday, November 3, 2020, <https://electionresults.sos.ca.gov/returns/ballot-measures>.

<sup>278</sup> Steven A. Hengeli, Jr., "California Privacy Rights Act: Latest Update, Impact and Next Steps," *The National Law Review*, July 2, 2020, <https://www.natlawreview.com/article/california-privacy-rights-act-latest-update-impact-and-next-steps>.

## Critical Waste Issues for the 119th Congress

percent. Modeled on a proposal adopted by Michigan voters in 2020, the amendment prohibits unreasonable searches and seizures of private electronic data and communications and requires a search warrant before accessing an individual's electronic data and communications, thereby giving the same protection to these communications as to a person's physical property.<sup>279</sup>

The increasing number of conflicting data privacy rules is creating uncertainty and significant costs for compliance, especially for small businesses. According to the Information Technology and Innovation Foundation, compliance with 50 different state privacy laws could cost consumers and industry \$239 billion annually, while a targeted federal law that preempts the state patchwork would cost \$6 billion annually.<sup>280</sup>

During the 117th Congress several bills were introduced to protect consumer data privacy. The American Data Privacy Protection Act (ADPPA), H.R. 8152, which would create a national standard for protecting consumer's private information, was ordered to be reported by the House Energy and Commerce Committee on July 20, 2022, by a vote of 53-2.<sup>281</sup> The bill would establish requirements for companies, including nonprofits and common carriers, on how to handle personal data, including personal identifying information (PII). It would require companies to limit the collection, processing, and transfer of PII only to that which is strictly necessary to provide a requested product or service and prohibits companies from transferring PII without affirmative consent provided. H.R. 8152 also spells out the enforcement authority for the FTC and state attorneys general.

Several provisions in the bill reflected CAGW's recommendations for consumer data privacy, which were provided to the National Telecommunications and Information Administration (NTIA) on November 2, 2018,<sup>282</sup> and included in CAGW's report, "The Path to a National Privacy Framework," published in March 2022.<sup>283</sup> These provisions include transparency, right to consent and object, data security and protection of covered data, and unified opt-out mechanisms. But the legislation included several objectionable provisions, like a strong private right of action that would unleash a plethora of lawsuits against companies and individuals and exceptions to the bill's preemption of state privacy laws like the Illinois biometric law and the California Consumer Privacy Act. In addition, the bill would impose onerous biennial impact statement reporting requirements on all covered entities, including small businesses.<sup>284</sup> The core concept of a national privacy framework is to make it apply uniformly across the country, which

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<sup>279</sup> John Riley, *KTVH News*, Helena, Montana, Montana passes electronic data privacy ballot measure, November 9, 2022, <https://www.ktvh.com/news/montana-passes-electronic-data-privacy-ballot-measure>.

<sup>280</sup> Ash Johnson, *Innovation Files*, "The Impending Patchwork of Privacy Is Bad for Business and Consumers," March 27, 2023, <https://itif.org/publications/2023/03/27/the-impending-patchwork-of-privacy-is-bad-for-business-and-consumers/>.

<sup>281</sup> American Data Privacy Protection Act, H.R. 8152, 117th Congress (2022), <https://www.congress.gov/bill/117th-congress/house-bill/8152>.

<sup>282</sup> Citizens Against Government Waste, "Comments to NTIA on Developing the Administration's Approach to Consumer Privacy," November 2, 2018, <https://www.ccagw.org/legislative-affairs/agency-comments/comments-ntia-developing-administrations-approach-consumer>.

<sup>283</sup> Deborah Collier and Tom Schatz, "The Path to a National Privacy Framework," Citizens Against Government Waste, March 2022, <https://www.cagw.org/reporting/national-privacy-framework>.

<sup>284</sup> Amy Olivero, "Reviewing the House Committee changes to the proposed ADPPA," International Association of Privacy Professionals, September 16, 2022, <https://iapp.org/news/a/reviewing-the-house-committee-changes-to-the-proposed-american-data-privacy-and-protection-act/>.

## Critical Waste Issues for the 119th Congress

H.R. 8152 failed to achieve. The bill was not passed by the House or Senate before the end of the 117th Congress.

The effort to enact a comprehensive data privacy bill continued into the 118th Congress. House Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-Wash.) made privacy legislation a top priority, and on April 7, 2024, she and Senate Committee on Commerce, Science and Transportation Chair Maria Cantwell (D-Wash.) released a draft bill to address consumer data privacy.<sup>285</sup> On May 24, 2024, Chair Rodgers introduced H.R. 8818, the American Privacy Rights Act of 2024 (APRA), which contained many of the same provisions as ADPPA, including a broad private right of action and limited preemption of state laws.<sup>286</sup>

Making matters more complicated, on August 10, 2022, FTC Chair Lina Khan stuck her agency into the middle of the privacy debate by released the Advanced Notice of Proposed Rulemaking (ANRPM) on Commercial Surveillance and Data Security.<sup>287</sup>

CAGW's comments on the ANRPM noted, "A regulation of this size and scope, absent Congressional authorization, would likely see a successful challenge in the court, pursuant to the U.S. Supreme Court decision in *West Virginia vs. Environmental Protection Agency*, which sets a precedent for overruling agency regulations that exceed their congressionally delegated authority, under the "major questions" doctrine, wherein a clear statement from Congress is necessary to prove that Congress intended the delegate authority "of this breadth to regulate a fundamental sector of the economy."<sup>288</sup> CAGW's position was strengthened by the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, to reverse *Chevron U.S.A, Inc. v. Natural Resources Defense Council, Inc.* which had given federal agencies broad discretionary authority in interpreting laws enacted by Congress.<sup>289</sup>

The FTC's ANRPM remains outstanding and could be brought up for a final rule at a moment's notice as long as Chair Khan is in charge. If it is adopted, it is likely to meet the same fate as several other FTC regulations that have been thrown out in federal court for several reasons, including exceeding the agency's statutory authority.

For the 119th Congress and the Trump administration, with the retirement of Chair Rodgers, another legislator will need to step up and take on the challenge of enacting a national consumer data privacy framework. CCAGW offers the following recommendations as guidance for consumer data privacy legislation:

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<sup>285</sup> "Committee Chairs Rodgers, Cantwell Unveil Historic Draft Comprehensive Data Privacy Legislation," House Energy and Commerce Committee, April 7, 2024, <https://energycommerce.house.gov/posts/committee-chairs-rodgers-cantwell-unveil-historic-draft-comprehensive-data-privacy-legislation>.

<sup>286</sup> American Privacy Rights Act of 2024, H.R. 8818, 118th Congress (2024), <https://www.congress.gov/bill/118th-congress/house-bill/8818>.

<sup>287</sup> Federal Trade Commission, "Trade Regulation Rule on Commercial Surveillance and Data Security, Advance notice of proposed rulemaking; request for public comment; public forum," 16 CFR Part 464, August 10, 2022, [https://www.ftc.gov/system/files/ftc\\_gov/pdf/commercial\\_surveillance\\_and\\_data\\_security\\_anpr.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/commercial_surveillance_and_data_security_anpr.pdf).

<sup>288</sup> Deborah Collier, "FTC Is Invading Privacy by Overreaching on Regulations," Citizens Against Government Waste, August 19, 2022, <https://www.cagw.org/thewastewatcher/ftc-invading-privacy-overreaching-regulations>.

<sup>289</sup> U.S. Supreme Court, "Loper Bright Enterprises et al., v. Raimondo, Secretary of Commerce, et al.," No. 22-451, Argued January 17, 2024, decided June 28, 2024, [https://www.supremecourt.gov/opinions/23pdf/22-451\\_7m58.pdf](https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf).

## Critical Waste Issues for the 119th Congress

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 provide consumers with an opt-out choice to use their non-sensitive customer information for personalized third-party marketing. 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.
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 will 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 Internet Protocol address. Therefore, policies must be consistent with the type of data being collected and how it is to be used.
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 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.<sup>290</sup>

These six recommendations provide the groundwork for a national privacy policy in a technology- and industry-neutral manner that should be included in legislation that will be considered in the 119th Congress.

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<sup>290</sup> Ibid., "Comments to NTIA on Developing the Administration's Approach to Consumer Privacy."

### TECHNOLOGY

The federal government is one of the largest purchasers of information technology (IT) software, hardware, maintenance and operations. According to the GAO, the federal government spends more than \$100 billion annually for technology, with approximately 75 percent used for operations and maintenance.<sup>291</sup> In FY 2024, the planned spending for IT investments included \$44.95 billion for standard IT investments; \$34.1 billion for mission delivery investments; and \$15.9 billion for mission support services. This spending level was maintained in the FY 2025 continuing resolution enacted at the end of the 118th Congress.<sup>292</sup>

While taxpayers might think this money is being used to upgrade and keep federal IT systems operating with the same efficiency and innovation as the private sector, more than 80 percent is used for legacy systems, some of which are so old that it is difficult, if not impossible, to find anyone to maintain them.

The disproportionate expenditure in legacy systems requires a stronger effort by Congress to ensure that taxpayer dollars are not wasted on such antiquated and duplicative systems. Beyond that needed oversight and new investment in government systems, Congress and the executive branch must not enact laws or adopt regulations that would impede the development and use of new tools and technologies to keep the U.S. at a global competitive advantage.

#### Federal IT Procurement

Improving and modernizing federal IT systems has long been an essential need across the federal government. From the FAA to the VA, aging and obsolete federal IT systems are at risk of becoming unusable, unserviceable, and unable to function.<sup>293</sup>

During a May 10, 2023, House Oversight and Accountability Subcommittee on Cybersecurity, Information Technology, and Government Innovation hearing, the GAO spotlighted issues with IT modernization. Noting that 80 percent of the \$100 billion spent on IT investments going toward operations and maintenance of existing IT, including legacy systems, the GAO reviewed and identified 10 critical federal legacy IT systems that in 2019 ranged in age from 8 to 51 years old, and at the time “collectively cost about \$337 million annually to operate and maintain.”<sup>294</sup> The consequences of not updating these legacy systems include security risks, unmet mission needs, staffing issues, and increased costs, including critical agencies like the IRS.

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<sup>291</sup> GAO, Information Technology: Federal Agencies Are Making Progress in Implementing GAO Recommendations, GAO-24-106693, December 12, 2023, <https://www.gao.gov/assets/870/864541.pdf>.

<sup>292</sup> To authorize appropriations for fiscal year 2025 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes, H.R. 5009, (2024), House, <https://www.congress.gov/bill/118th-congress/house-bill/5009>.

<sup>293</sup> GAO, Air Traffic Control: Urgent FAA Actions Are Needed to Modernize Aging Systems, GAO-25-107917, December 12, 2024, <https://www.gao.gov/products/gao-25-107917>; GAO, Veterans Affairs: Action Needed to Address Continuing IT Management Challenges, GAO-25-107963, December 12, 2024, <https://www.gao.gov/products/gao-25-107963>.

<sup>294</sup> GAO, Testimony, Before the Subcommittee on Cybersecurity, Information Technology, and Government Innovation, Committee on Oversight and Accountability, House of Representatives, “Information Technology : Agencies Need to Continue Addressing Critical Legacy Systems,” GAO-23-106821, May 10, 2023, <https://www.gao.gov/assets/gao-23-106821.pdf>.

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In January 2023, GAO “reported that about 33 percent of the IRS applications, 23 percent of the software instances in use, and 8 percent of hardware assets were considered legacy. This included applications ranging from 25-64 years in age, as well as software up to 15 versions behind the current version.”<sup>295</sup>

The IRA provided the IRS with \$80 billion, including \$4.8 billion over 10 years to modernize its legacy IT systems, some of which are the oldest in the federal government.<sup>296</sup> They include the 60-year-old Individual Master File, which has been on the IRS’s list to be replaced since at least 2009.<sup>297</sup>

In addition to failing to modernize and upgrade existing systems, federal agencies are spending hundreds of millions of dollars trying to duplicate IT solutions for products that already exist in the private sector. The most wasteful and concerning effort is the creation by the IRS of its own software for tax preparation services.

The new system emanated from provisions of the IRA providing the IRS with \$15 million for the sole purpose of conducting a study to discern how and if the agency could develop software to prepare tax returns for all taxpayers. Instead, the IRS developed and deployed its own software program called DirectFile, which was not only a violation of the IRA but also now competes with FreeFile, a public-private partnership between the IRS and private sector tax preparation services that was established in 2003.<sup>298</sup>

The IRS claimed that its flouting of the IRA was appropriate because a “survey” demonstrated support for having the agency provide software services.<sup>299</sup> However, an October 2, 2023 Treasury Inspector General for Tax Administration (TIGTA) report noted defects in both the design and results of the survey, including the failure to use a five-point scale that would include a neutral choice to support or oppose the new system. This only gave respondents a choice of “yes” or “no” rather than “no opinion.” TIGTA also reported that, “the survey prompt may have led taxpayers to believe that the tool would have more options than it will immediately have available, such as the ability to file State tax returns.”<sup>300</sup>

The IRS is now offering DirectFile to taxpayers for residents in 24 states for the 2024 tax year.<sup>301</sup> The 119th Congress should hold the IRS accountable for spending the funding to create the software instead of conducting a study, as the agency positions itself to not only be the tax

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<sup>295</sup> Ibid.

<sup>296</sup> GAO, “Information Technology: IRS Needs to Complete Planning and Improve Reporting for Its Modernization Programs,” GAO-24-106566, March 19, 2024, <https://www.gao.gov/assets/d24106566.pdf>.

<sup>297</sup> Natalie Alms, “IRS has some of the oldest tech in government – it’s trying to change that,” *NextGov/FCW*, March 19, 2024, <https://www.nextgov.com/modernization/2024/03/irs-has-some-oldest-tech-government-its-trying-change/395056/>.

<sup>298</sup> Alec Mena, “IRS Continues to Live Down its Reputation,” *CAGW*, April 16, 2024, <https://www.cagw.org/thewastewatcher/irs-continues-live-down-its-reputation>.

<sup>299</sup> Deborah Collier, “IRS Survey on Tax Preparation Software Misleads Taxpayers,” *CAGW*, November 23, 2023, <https://www.cagw.org/thewastewatcher/irs-survey-tax-preparation-software-misleads-taxpayers>.

<sup>300</sup> TIGTA, “Inflation Reduction Act: Assessment of a Free and Direct Tax Filing System,” October 2, 2023, Report No. 2024-408-002, <https://www.tigta.gov/sites/default/files/reports/2023-10/2024408002fr.pdf>.

<sup>301</sup> Internal Revenue Service, “IRS Direct File: File taxes for free directly with IRS,” <https://www.irs.gov/filing/irs-direct-file-for-free>.



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enforcer for millions of Americans, but also the tax preparer and biller, which is clearly a conflict of interest and will give the IRS more power than it has ever had.<sup>302</sup>

One of the longest standing and problematic federal IT modernization projects in the federal government is the Electronic Health Records Modernization (EHRM) program at the VA. There have been multiple vendors, an open-source software system that allowed individual hospitals and clinics within the VA to develop their own modifications that are not compatible with the rest of the system, and a stove-piped approach to changes in the system that has created more harm than good for the nation's veterans.

The modernization effort began in 1982, when the VA and the DOD were charged by Congress to share patient information for servicemembers transitioning from DOD into the VA health care system. This process had been anything but seamless, with medical records being attached to gurneys each time a patient was moved, and hundreds of millions of dollars being wasted trying to develop an interoperable medical records system between the two departments.

Challenges to this objective included the use by VA medical centers of their own customized open-source code underpinning the VA's VistA electronic health records (EHR) system, which lead to multiple layers of programming disconnected to any centralized planning or system. In 2008, Congress directed the DOD and the VA to develop a joint interoperable health record system by September 30, 2009.<sup>303</sup> By March 2009, DOD and VA managed to share and use certain health information for some servicemembers, including pharmacy and drug allergy data. The agencies increased the exchange of such data to more than 27,000 patients, an increase of approximately 9,000 patients, between June 2008 and January 2009.<sup>304</sup> But full interoperability was not achieved.

After several starts and stops to create a new VA EHR, DOD and VA agreed in March 2011 to create a new joint iEHR to be fully implemented by 2017. After spending more than \$1 billion on the new system, the two departments announced on February 5, 2013, they were terminating the program due to its excessive costs.<sup>305</sup>

By June 2017, the VA decided to phase out the VistA EHR and adopt DOD's new system, known as MHS GENESIS, being developed by Cerner.<sup>306</sup> After its initial rollout in the Pacific Northwest on February 7, 2017, DOD launched its final site deployment at the Captain James A. Lovell Federal Health Care Center in North Chicago, Illinois on March 9, 2024.<sup>307</sup>

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<sup>302</sup> Eric Maus, "IRS Errs in Moving its Own Tax Preparations System Forward," CAGW, January 24, 2024, <https://www.cagw.org/the-wastewatcher/irs-errs-moving-its-own-tax-preparation-system-forward>.

<sup>303</sup> GAO, "Electronic Health Records: DOD and VA Efforts to Achieve Full Interoperability Are Ongoing; Program Office Management Needs Improvement," GAO-09-775, July 28, 2009, <https://www.gao.gov/assets/gao-09-775.pdf>.

<sup>304</sup> GAO, Testimony Before the Subcommittee on Military Construction, Veterans' Affairs, and Related Agencies; House Committee on Appropriations, "Information Technology: Challenges Remain for VA's Sharing of Electronic Health Records with DOD," GAO-09-427T, March 12, 2009, <https://www.gao.gov/assets/gao-09-427t.pdf>.

<sup>305</sup> House Committee on Veterans' Affairs, Oversight Hearing, "Electronic Health Record U-Turn: Are VA and DOD Headed in the Wrong Direction?" 113<sup>th</sup> Congress, First Session, February 27, 2013, <https://www.govinfo.gov/content/pkg/CHRG-113hhrg79941/html/CHRG-113hhrg79941.htm>.

<sup>306</sup> Department of Veterans Affairs News, "VA Secretary announces decision on next-generation Electronic Health Record," June 5, 2017, <https://news.va.gov/press-room/va-secretary-announces-decision-on-next-generation-electronic-health-record/>.

<sup>307</sup> Janet A. Aker, "MHS GENESIS 7-Year Rollout Enters New Phase After Final Go-Live," Health.mil, April 29, 2024, <https://health.mil/News/Dvids-Articles/2024/04/29/news469758>.

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The rollouts of the joint EHRM project have not been without problems. A July 8, 2021, VA OIG report on the Cerner EHR rollout at Mann-Grandstaff VA Medical Center in Spokane, Washington, acknowledged the complexities of implementing an EHR in the largest healthcare system in the U.S. The OIG noted that the governance structure of the EHR deployment unit did not have representation from the VHA, which possibly contributed to the failure of clinical training requirements at the facility.<sup>308</sup>

On June 7, 2022, Cerner was purchased by Oracle for \$28.3 billion.<sup>309</sup> At the July 20, 2022, Senate VA Committee hearing, Oracle Executive Vice President Mike Sicilia, noted that some of the technology in the Cerner EHR system was 20 years old and announced plans to move the Cerner EHR project to a modern, hyperscale cloud data center in the following six to nine months.<sup>310</sup> While the VA halted further deployments of the EHRM program on April 21, 2023, while it made developmental improvements to the existing sites, the deployments were reinstated on March 13, 2024.<sup>311</sup> On December 20, 2024, the VA announced advanced planning for rolling out the EHRM to four additional facilities in Michigan in 2026.<sup>312</sup>

The long saga of federal IT issues is not limited to the IRS or the VA. In the May 10, 2023, GAO testimony regarding the 10 most critical systems that needed to be modernized, “two of them – the Department of Transportation and the Office of Personnel Management – haven’t fully implemented our prior recommendations.”<sup>313</sup> A December 10, 2024, GAO report on the state of the FAA’s IT systems spotlighted 17 unsustainable systems that were “especially concerning.” Three of the systems are at least 30 years old, and many of the systems have “critical operational impacts on the safety and efficiency of the national airspace.”<sup>314</sup>

The 119th Congress must refocus its oversight efforts on IT modernization across all government agencies to ensure the funding issued to these agencies is spent appropriately. The investment must be made to first update the oldest IT systems, including the migration of 30-60-year-old IT systems to new modern systems that will meet the technology needs of government now and well into the future. Congress must act as well to rein in the overreach and flouting of the law by the IRS with its DirectFile system.

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<sup>308</sup> Department of Veterans Affairs Office of Inspector General, “Training Deficiencies with VA’s New Electronic Health Record System at the Mann-Grandstaff VA Medical Center in Spokane, Washington,” Report #20-01930-183, July 8, 2021, <https://www.vaog.gov/sites/default/files/reports/2021-07/VAOIG-20-01930-183.pdf>.

<sup>309</sup> Heather Landi, “Oracle closes \$28B deal to buy HER giant Cerner,” Fierce Healthcare, June 7, 2022, <https://www.fiercehealthcare.com/health-tech/oracle-gets-european-approval-28m-cerner-deal-set-close-next-week>.

<sup>310</sup> Hannah Nelson, “Oracle Exec Announces Cloud Migration of Cerner EHR at VA Hearing,” TechTarget, July 26, 2022, <https://www.techtarget.com/searchhealthit/news/366578562/Oracle-Exec-Announces-Cloud-Migration-of-Cerner-EHR-at-VA-Hearing>.

<sup>311</sup> VA, “VA announces reset of Electronic Health Record project,” April 21, 2023, <https://news.va.gov/press-room/va-announces-reset-of-electronic-health-record-project/>; VA, “VA, DOD, and FEHRM roll out Federal Electronic Health Record in North Chicago,” March 13, 2024, <https://digital.va.gov/ehr-modernization/news-releases/va-dod-and-fehrm-roll-out-federal-electronic-health-record-in-north-chicago/>.

<sup>312</sup> VA, “VA begins early-stage planning for the next Federal Electronic Health Record rollout in mid-2026, continues ongoing improvement efforts at existing sites,” December 20, 2024, <https://digital.va.gov/ehr-modernization/news-releases/va-begins-early-stage-planning-for-the-next-federal-electronic-health-record-rollout-in-mid-2026-continues-ongoing-improvement-efforts-at-existing-sites/>.

<sup>313</sup> Ibid., GAO, Testimony, Before the Subcommittee on Cybersecurity, Information Technology, and Government Innovation, Committee on oversight and Accountability, House of Representatives.

<sup>314</sup> Ibid., GAO, Air Traffic Control: Urgent FAA Actions Are Needed to Modernize Aging Systems, GAO-25-107917.

## Critical Waste Issues for the 119th Congress

### Artificial Intelligence

AI technology and machine learning (ML) are becoming more ubiquitous and getting more attention from lawmakers and regulators. Programs like ChatGPT, Bing Chat, Open AI, and others are being used in classrooms, businesses, and government and across industries like banking and healthcare.

AI's benefits also reach into the environment. A Belgian company, BeeOdiversity, is currently studying bee nectar from flowers and other plants using AI to compile and analyze the data to determine factors that might be harming the environment and causing the bee population to dwindle, including invasive species, heavy metals, and pesticide application and use.<sup>315</sup> An October 19, 2024, CBS News report demonstrated how this data is helping an Oregon farmer better manage his 400 acre farm.<sup>316</sup> Among the changes the farmer made based on the feedback he received from the data collected from his hives were increasing wetlands areas which created more biodiversity in native plants, and safer application processes for herbicide use.

While the positive impact of AI is recognized, the potential misuse, including misinformation, lower quantitative human research, and less dependence on people in the workplace has drawn a lot of attention. These concerns run from blue collar workers being concerned about AI operated equipment eliminating their jobs to users of social media platforms who find it increasingly difficult to discern that information presented is from a person rather than a machine to artists and creators trying to protect their IP from the artificial recreation of their recordings, voices and writings.

AI also is attracting the attention of federal and state governments. The arguments over whether industries that use AI should establish their own rules or if the government should step in echo the same discussions that have occurred in the past over the role of laws and regulations in balancing the need for innovation with the need for protection.

On October 30, 2023, President Joe Biden issued an Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.<sup>317</sup> It included requirements for developers to share safety test results with the U.S. government; for the National Institute of Standards and Technology to set standards for testing to ensure safety before public release; and several other measures will purportedly protect the public against the potential misuse of this technology.<sup>318</sup> The order was the start of a top down review by federal agencies, in particular the FTC to pursue rulemaking to create enforceable regulations surrounding the use of AI across all industries. However, the order invoked the Defense Production Act to compel major technology companies like Amazon, Google, Microsoft and OpenAI to share information about the products

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<sup>315</sup> BeeOdiversity, YouTube, September 16, 2022, <https://www.youtube.com/watch?v=YIohP7JGCqk&t=1s>.

<sup>316</sup> "How honeybees can be used to collect environmental data," CBS News, October 19, 2024, <https://www.cbsnews.com/video/how-honeybees-can-be-used-to-collect-environmental-data/>.

<sup>317</sup> Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, The White House, October 30, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>.

<sup>318</sup> Fact Sheet: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence, The White House, October 30, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>.

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they were developing with the federal government if their AI tools met a certain threshold. On January 21, 2025, President Donald Trump rescinded the Biden AI order.<sup>319</sup>

The Cybersecurity and Infrastructure Security Agency has developed a roadmap for a national strategy to use “AI to enhance cybersecurity capabilities, ensure AI systems are protected from cyber-based threats, and deter malicious use of AI capabilities to threaten the critical infrastructure Americans rely on every day.”<sup>320</sup> The HHS has created an AI strategy that is “intended to encourage AI adoption; enable HHS-wide familiarity, comfort, and fluency with artificial intelligence (AI) technology and its potential; promote AI scaling with the application of best practices and lessons learned from piloting and implementing AI capabilities to additional domains and use cases across HHS; and spark AI acceleration by increasing the speed at which HHS adopts and scales AI and ML.”<sup>321</sup>

While there is encouragement for innovation, there has also been efforts to stop it in its tracks. During the Biden administration, the FTC actively pursued companies that are developing and using AI under its Operation AI Comply program. According to FTC Chair Lina Khan, “Using AI tools to trick, mislead, or defraud people is illegal. The FTC’s enforcement actions make clear that there is no AI exemption from the laws on the books. By cracking down on unfair or deceptive practices in these markets, FTC is ensuring that honest businesses and innovators can get a fair shot and consumers are being protected.”<sup>322</sup> Like her other broadsides against various industries, Chair Khan’s attacks on AI will deter innovation rather than providing reasonable guidance to protect consumers.

The Trump administration is taking a different approach to AI, including the announcement on January 21, 2025, of a joint venture among MGX, OpenAI, Oracle, and Softbank to invest up to \$500 billion of their own money in AI infrastructure and development, with \$100 billion expected to be invested in the first year alone. It will be known as Stargate, and the funds will be used for data centers, research and development, and the facilities needed for electricity generation required for developing AI technology.<sup>323</sup> The announcement made at the White House demonstrates the new administration’s prioritization over maintaining U.S. leadership in technology research and development.

The 119th Congress should ensure that any new laws or regulations relating to the use of AI be flexible to allow for innovation under a light touch regime, similar to how the Clinton administration provided for the internet when it was an emerging technology.

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<sup>319</sup> Matt O’Brien, “Trump rescinds Biden’s executive order on AI safety in attempt to diverge from his predecessor,” Associated Press, January 22, 2025, <https://apnews.com/article/trump-ai-repeal-biden-executive-order-artificial-intelligence-18cb6e4ffd1ca87151d48c3a0e1ad7c1>.

<sup>320</sup> “Roadmap for AI,” Cybersecurity & Infrastructure Security Agency, October 1, 2024, <https://www.cisa.gov/resources-tools/resources/roadmap-ai>.

<sup>321</sup> HHS Artificial Intelligence (AI) Strategy, Department of Health and Human Services, June 6, 2024, <https://www.hhs.gov/programs/topic-sites/ai/strategy/index.html>.

<sup>322</sup> Federal Trade Commission, “FTC Announces Crackdown on Deceptive AI Claims and Schemes,” September 25, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces-crackdown-deceptive-ai-claims-schemes>.

<sup>323</sup> Clare Duffy, “Trump announces \$500 billion AI infrastructure investment in the US,” *CNN*, January 21, 2025, <https://www.cnn.com/2025/01/21/tech/openai-oracle-softbank-trump-ai-investment/index.html>.

### TELECOMMUNICATIONS

There are few areas of the U.S. economy where federal laws have failed to keep up with new developments than telecommunications, which is particularly concerning given the significance of the industry. The first major law was the Communications Act of 1934, which combined regulation of the radio, telephone, and telegraph industries under the new FCC. The next comprehensive update of the 1934 Act was the Telecommunications Act of 1996, while specific areas of the industry were covered under the Cable Act of 1992, the Satellite Television and Localism Act Reauthorization Act of 2014, and the RAY BAUM's Act of 2018 (spectrum).

As CAGW noted in its 2014 telecommunications report, prior legislation did not foresee a “rapidly changing innovative marketplace, nor did they account for any future changes in technology that will greatly expand communications. While the communications industry continues to rapidly evolve, the federal government moves at a snail’s pace to adapt, leaving in place old models governing technology and communications that should no longer apply to modern times. Unfortunately, these obsolete telecommunications regulations are stifling innovation and putting taxpayers and consumers at risk.”<sup>324</sup> The report concluded, “It is time to move forward with commonsense reform measures to ensure that this vital industry continues to grow and innovate.”<sup>325</sup>

Comprehensive legislation to update telecommunications laws should be a priority for the 119th Congress. The update should be based on the light-touch approach that has been the underpinning of the success of the industry. As President Bill Clinton said, the Internet, “should be a place where government makes every effort ... not to stand in the way, to do no harm.”<sup>326</sup> The telecommunications industry moves much faster than the government, and legislation must be written with sufficient flexibility to enable future innovations that address the communications needs of businesses, families, and every other aspect of the U.S. economy.

The overhaul of the Communications Act should include consolidating broadband programs, undoing the FCC’s digital discrimination and net neutrality rules, revising the NTIA’s Broadband Equity Access and Deployment (BEAD) Notice of Funding Opportunity (NOFO), reauthorizing the FCC’s spectrum auction authority, and balancing licensed and unlicensed spectrum in manner that allows the U.S. to maintain and enhance its role as a global leader in telecommunications.

The 119th Congress should also address issues related to the Universal Service Fund (USF), which relies on what the Fifth Circuit Court of Appeals has determined to be an “illegal tax,” as well as reforming the distribution of USF funding.<sup>327</sup>

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<sup>324</sup> Deborah S. Collier and Thomas A. Schatz, “Telecom Unplugged: Ushering a New Digital Era,” CAGW, 2014, pp. ii-iii, <https://www.cagw.org/telecom-unplugged>.

<sup>325</sup> Ibid, p. 74.

<sup>326</sup> Sandra Sobieraj, “Clinton Issues ‘Hands-Off’ Policy on Internet Commerce,” *The New York Times*, July 2, 1997, <https://archive.nytimes.com/www.nytimes.com/library/cyber/week/070297commerce.html>.

<sup>327</sup> United States Court of Appeals for the Fifth Circuit, *Consumers’ Research; Cause Based Commerce, Incorporated; Kersten Conway; Suzanne Bettac; Robert Kull; Kwang Ja Kerby; Tom Kirby; Joseph Bayly; Jeremy Roth; Deanna Roth; Lynn Gibbs; Paul Gibbs; Rhonda Thomas, v. Federal Communications Commission, United States of America*, No. 22-60008, July 24, 2024, <https://www.ca5.uscourts.gov/opinions/pub/22/22-60008-CV2.pdf>.

### Broadband Programs

Broadband Internet Access Service providers continue to expand their broadband offerings to include 10-gigabit networks that will provide symmetrical speeds, lower latencies, enhanced reliability, higher computing capabilities, and improved security. According to USTelecom's annual investment report, private sector investment in broadband was \$94.7 billion in 2023, the second highest in more than 20 years, bringing the total to nearly \$2.2 trillion since 1996 and leading to better service at a lower cost.<sup>328</sup> The USTelecom's 2024 Broadband Pricing Index report found that prices for high-speed broadband internet service have declined while upload and download speeds have increased, with real Broadband Performance Index speed prices dropping annually by an average of 9.4 percent and a total of 60 percent since 2015.<sup>329</sup>

Ensuring that every household or business that wants to connect to the internet can do so has been a primary concern in prior Congresses, leading to the enactment of several initiatives to expand internet access to all Americans. However, there remains a significant number of Americans who remain on the other side of the digital divide despite vast amounts of funding available across the federal government to help. This situation is made worse by the lack of coordination of federal broadband programs.

According to the GAO, there are 133 broadband programs across 15 federal agencies.<sup>330</sup> The programs are not coordinated and need to be evaluated to determine if they are operating as intended; duplicate or overlap with another program or another agency; spend money outside of its statutory authority; have an objective that is compatible with current market conditions or can be achieved by the private sector; or can be consolidated with a better managed program in another agency.<sup>331</sup> As noted by incoming FCC Chairman Brendan Carr, at the beginning of 2022, there was as much as \$800 billion that could be used for broadband infrastructure. More than half of that money was provided between the beginning of 2019 and the end of 2021. He noted that at that time about \$80 billion would be sufficient to connect every American who was not already connected and wished to have broadband access.<sup>332</sup>

The 119th Congress should hold oversight hearings about the efficacy of these programs and take the necessary steps to consolidate and eliminate those that are duplicative or failing to function as intended. The hearings should start with the BEAD program, which was provided with \$42.5 billion in the Infrastructure Investment and Jobs Act (IIJA), the largest single amount ever specifically appropriated for broadband.<sup>333</sup> Release of the NOFO was delayed and when it was finalized, there were numerous provisions that contravened the IIJA, and the NTIA was then

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<sup>328</sup> USTelecom, "Broadband Companies Invested \$84.7 Billion in U.S. Communications Infrastructure in 2023," October 18, 2024, <https://www.ustelecom.org/broadband-companies-invested-94-7b-in-u-s-communications-infrastructure-in-2023-second-highest-annual-capex-in-22-years/>.

<sup>329</sup> USTelecom, "2024 Broadband Pricing Index," December 17, 2024, <https://www.ustelecom.org/research/2024-bpi/>.

<sup>330</sup> GAO, "BROADBAND A National Strategy Needed to Coordinate Fragmented, Overlapping Federal Programs," <https://www.gao.gov/assets/gao-23-106818.pdf>.

<sup>331</sup> Deborah S. Collier, "133 Broadband Programs May Be 132 More Than Necessary," *The WasteWatcher*, CAGW, December 5, 2024, <https://www.cagw.org/thewastewatcher/133-broadband-programs-may-be-132-more-necessary>.

<sup>332</sup> Deborah Collier, "Federal Broadband Funds Must Not Be Wasted," *The WasteWatcher*, CAGW, February 7, 2022, <https://www.cagw.org/thewastewatcher/federal-funds-broadband-must-not-be-wasted>.

<sup>333</sup> Infrastructure Investment and Jobs Act, Public Law No. 117-58, H.R. 3684, 117th Congress, 2021, <https://www.congress.gov/bill/117th-congress/house-bill/3684>.

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slow in approving state applications for funding from NTIA for BEAD.<sup>334</sup> More than three years after the IJA was signed into law on November 15, 2021, not a single household or business has been connected to the internet using this funding.<sup>335</sup>

Incoming Senate Commerce, Science, and Transportation Committee Chairman Ted Cruz (R-Texas) suggested that BEAD funding be frozen and committed to investigating the program's failure to adhere to the IJA's provisions that do not favor a particular technology, along with the NTIA's "imposition of rate regulation, unionized workforce and DEI labor requirements, climate change assessments, and other central planning mandates."<sup>336</sup> His November 21, 2024, letter to NTIA Administrator Alan Davidson noted that more than \$250 million was spent "or rather, wasted ... hiring government employees and contractors to 'administer' a program that, in practical terms, hasn't even launched."<sup>337</sup>

Another example of the duplication cited by GAO that should be investigated by Congress is related to the October 25, 2021, Department of Agriculture announcement of a funding opportunity for the ReConnect program, in which the Rural Utilities Service (RUS) permitted recipients of the FCC's Rural Digital Opportunities Fund to apply for ReConnect funding.<sup>338</sup> Double-dipping into funding sources means fewer unserved areas could receive funds to help with broadband infrastructure in their communities.

Congress should also exercise greater oversight on the RUS broadband grant and loan program. While eliminating the RUS would save taxpayers \$8.4 billion in one year, and \$42 billion over five years, Congress has no intention of eliminating the entire program, which is even more reason to make it function more effectively.<sup>339</sup> In the 2018 Farm Bill, Congress increased RUS broadband funding by \$350 million annually, supposedly to help rural unserved communities bridge the digital divide.

Taxpayers should be concerned not only about the lack of sufficient oversight of federal broadband programs, but also conflicting guidance and regulations that are making it more difficult to bridge the digital divide.

For example, NTIA included several provisions in its BEAD guidance that will discourage, rather than encourage broadband deployment. Despite Congress establishing a technology neutral requirement in the IJA, the NTIA guidance in its BEAD NOFO encouraged symmetrical 100/100 Mbps speed thresholds for new infrastructure deployment, which preferences one technology over others and may reduce the amount of funding available for unserved

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<sup>334</sup> Deborah Collier, "A Disturbing Trend for Broadband Deployment," *The Waste Watcher*, CAGW, August 11, 2023, <https://www.cagw.org/thewastewatcher/disturbing-trend-broadband-deployment>.

<sup>335</sup> Alec Mena and Tom Schatz, "BEAD: Broadband or Bust," CAGW, October 2024, [https://www.cagw.org/sites/default/files/CAGW\\_BEAD.pdf](https://www.cagw.org/sites/default/files/CAGW_BEAD.pdf).

<sup>336</sup> Sen. Ted Cruz (R-Texas), "Sen. Cruz Warns Biden-Harris NTIA: Big Changes Ahead for Multi-Billion-Dollar Broadband Boondoggle," press release, November 22, 2024, <https://www.commerce.senate.gov/2024/11/sen-cruz-warns-biden-harris-ntia-big-changes-ahead-for-multi-billion-dollar-broadband-boondoggle>.

<sup>337</sup> Sen. Ted Cruz, Letter to NTIA Administrator Alan Davidson, November 21, 2024, <https://www.commerce.senate.gov/services/files/C32B6A16-3088-437E-A227-6F72650A081C>.

<sup>338</sup> USDA, Rural Utilities Service, Rural eConnectivity Program, Funding opportunity announcement, *Federal Register*, October 25, 2021, p. 58860, <https://www.govinfo.gov/content/pkg/FR-2021-10-25/pdf/2021-23128.pdf>.

<sup>339</sup> CAGW, "Prime Cuts 2020 Database," [https://www.cagw.org/reporting/prime-cuts/database?title=Rural+Utilities+Service&field\\_pc\\_item\\_source\\_value=All&field\\_agency\\_value=1](https://www.cagw.org/reporting/prime-cuts/database?title=Rural+Utilities+Service&field_pc_item_source_value=All&field_agency_value=1).

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communities as efforts are made to bring existing broadband networks “up to speed.”<sup>340</sup> It also promoted government-owned networks (GON) and preferences for unionized workforces, even when the private sector was better equipped to deploy networks, or when unionized workforces were either unavailable or untrained to do the job.

The complexity and cost of compliance with the BEAD guidance, including the need for waivers, is causing problems for small broadband providers. Minnesota Telecom Alliance Chairman and CEO Brent Christianson said, “The way that BEAD is structured, I don’t know how anybody’s going to participate.”<sup>341</sup>

The RUS ReConnect funding notice also included preferences for governmental or quasi-governmental entities and entities who agree to unrelated policy requirements like net neutrality.<sup>342</sup> The Treasury’s American Rescue Plan Act guidance set preferences for fiber and either GON or nonprofit broadband networks.<sup>343</sup>

CAGW’s May 2021 report, *The Folly of Government-Owned Networks*, cited a 2004 letter from CCAGW regarding a GON in Concord, Massachusetts, that governments “undertake an enormous amount of financial risk to enter these types of businesses. The systems end up being far more expensive than originally expected and the towns find it difficult to remain competitive, to upgrade, and to market their product within budgetary constraints. It is common for municipal electric customers to end up subsidizing broadband customers, causing electric rates and taxes to increase.”<sup>344</sup>

The 119th Congress must resolve significant overlap and duplication across federal broadband programs by consolidating or eliminating them in a manner that will make them more effective and move closer to bridging the digital divide.

### Net Neutrality

The saga of regulating the internet began when the 1996 Telecommunications Act established that the internet was an information service under Title I of the Communications Act of 1934 and not a common carrier telephone service under Title II. The Clinton administration’s 1997 Framework for Global Electronic Commerce established light-touch principles that included allowing the private sector to lead with limited government intervention, acknowledging the unique qualities of the internet, and enabling global electronic commerce.<sup>345</sup>

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<sup>340</sup> National Telecommunications Information Administration, Broadband Equity, Access, and Deployment Program, “Notice of Funding Opportunity, Executive Summary,” <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>341</sup> Jericho Casper, “Minnesota Providers Not Participating in BEAD Program,” Broadbandbreakfast.com, December 2, 2024, <https://broadbandbreakfast.com/minnesota-providers-not-participating-in-bead-program/>.

<sup>342</sup> Ibid.

<sup>343</sup> Department of the Treasury, “Coronavirus State and Local Fiscal Recovery Funds: Overview of the Final Rule,” January 2022, p. 39, <https://home.treasury.gov/system/files/136/SLFRF-Final-Rule-Overview.pdf>.

<sup>344</sup> Deborah Collier and Thomas A. Schatz, *The Folly of Government-Owned Networks*, CAGW, May 2021, p. 5, <https://www.cagw.org/sites/default/files/pdf/TheFollyofGovernmentOwnedNetworks.pdf>.

<sup>345</sup> National Archives, Historical Material from the Administration of President William J. Clinton, “The Framework for Global Electronic Commerce,” The White House, July 1, 1997, <https://clintonwhitehouse4.archives.gov/WH/New/Commerce/read.html>.



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In 2004, then-FCC Chairman Michael Powell built on the framework by establishing four principles that encouraged broadband deployment across the internet and provided consumers the ability to choose their own provider and applications. The FCC unanimously endorsed these principles when it adopted the Internet Policy Statement in 2005.<sup>346</sup>

The internet remained under Title I until February 26, 2015, when the FCC voted 3-2 along party lines in favor of the Open Internet Order to reclassify the internet as a common carrier telecommunications service under Title II.<sup>347</sup> That strict regulation of the internet remained in effect until the FCC voted 3-2, on December 17, 2017 again along party lines, in favor of the Restoring Internet Freedom Order to again regulate the internet under Title 1.<sup>348</sup> The next chapter in the whipsaw of regulations occurred on May 22, 2024, when the FCC adopted, again along party lines, the Safeguarding and Securing the Open Internet; Restoring Internet Freedom Order.<sup>349</sup> The rule restored Title II rules and expanded upon the 2015 Open Internet Order, despite the evidence that it substantially impeded broadband investment and innovation.<sup>350</sup>

The challenge to the FCC's safeguarding the internet rule was immediate and acted upon quickly. On December 31, 2024, the United States Court of Appeals for the Sixth Circuit overturned the rule in *Ohio Telecom Association, et al., v. Federal Communications Commission*. The decision referenced the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* and found that, "the FCC lacks the statutory authority to impose its desired net-neutrality policies through the 'telecommunications service' provision of the Communications Act, id. § 153(51). Nor does the Act permit the FCC to classify mobile broadband – a subset of broadband Internet services – as a 'commercial mobile service' under Title III of the Act (and then similarly impose net-neutrality restrictions on those services). Id. § 332 (C)(1)(A). We therefore grant the petitions for review and set aside the FCC's Safeguarding Order."<sup>351</sup>

It is long past time and far too important for regulation of the internet to be changed based on which party controls the White House and therefore the majority on the FCC. Congress must bring this costly process to a close by codifying the four principles adopted by the FCC in 2005, including allowing consumers to access and choose their own lawful content, have their choice

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<sup>346</sup> FCC, "Principles for encouraging an Open Internet," CC Docket No. 02-33; CC Docket No. 01-337; CC Docket Nos. 95-20, 98-10; GN Docket No. 00-185; CS Docket No. 02-52, FCC 05-151, Adopted August 5, 2005, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-05-151A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-05-151A1.pdf).

<sup>347</sup> FCC, In the Matter of Protecting and Promoting the Open Internet, GN Docket No. 14-28, FCC 15-24, February 26, 2015, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-24A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A1.pdf).

<sup>348</sup> FCC, "In the Matter of Restoring Internet Freedom," Adopted December 17, 2017, [https://docs.fcc.gov/public/attachments/FCC-17-166A1\\_Rcd.pdf](https://docs.fcc.gov/public/attachments/FCC-17-166A1_Rcd.pdf).

<sup>349</sup> Safeguarding and Securing the Open Internet; Restoring Internet Freedom, Federal Communications Commission (FCC), May 22, 2024, *The Federal Register*, <https://www.ca5.uscourts.gov/opinions/pub/22/22-60008-CV2.pdf>.

<sup>350</sup> George S. Ford, Ph.D., "Net Neutrality, Reclassification and Investment: A Counterfactual Analysis," Perspectives, Phoenix Center for Advanced Legal & Economic Public Policy Studies, April 25, 2017, <https://phoenix-center.org/perspectives/Perspective17-02Final.pdf>.

<sup>351</sup> United States Court of Appeals for the Sixth Circuit, *Ohio Telecom Association et al., v. Federal Communications Commission*, Docket Nos. 24-7000/3449/3450/3497/3504/3507/3508/3510/3511/3519/3538, Argued October 31, 2024, Decided and Filed: January 2, 2025, <https://www.opn.ca6.uscourts.gov/opinions/pdf/25a0002p-06.pdf>; United States Supreme Court, *Loper Bright Enterprises v. Raimondo*, Docket No. 22-451, June 28, 2024, <https://www.scotusblog.com/case-files/cases/loper-bright-enterprises-v-raimondo/>.

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of applications and services, connect to the internet with legal devices, and encourage competition among providers.<sup>352</sup>

### Spectrum

None of the communications services discussed in this chapter would be available without licensed, unlicensed, or shared use spectrum. Mobile devices using licensed spectrum allow access to communications from any location, and data is frequently offloaded to unlicensed spectrum to ease the burden on mobile networks. Spectrum is a limited resource that must be allocated appropriately to continue to maintain the U.S.'s global leadership in telecommunications.

According to a September 28, 2022, Accenture report, the federal government is one of the largest holders of spectrum allocations, maintaining 3,300 megahertz (MHz) of spectrum in the lower mid-band spectrum range.<sup>353</sup> The NTIA manages spectrum allocations for federal agencies and provides a chart showing the use for each band. However, several spectrum reallocations, use cases, and auctions have occurred since 2016, making the chart obsolete and creating challenges toward determining which spectrum can be reallocated.

Even when such spectrum is identified, federal agencies are often reluctant to let it go. For example, the 5.9 GHz spectrum band that had been allocated to the DOT for the development of dedicated short-range communications (DSRC) systems operating in the Intelligent Transportation System radio service for vehicle-to-vehicle (V2V) communications.<sup>354</sup> The DOT had only deployed this spectrum in limited use, and the technology for V2V communications had outstripped the need for DSRC, yet the DOT tried to fight turning the mostly unused spectrum back over to the FCC for repurposing. Another example of agency interference was the FAA's effort to block deployment of the C-Band claiming that there could be bleed from fifth generation (5G) networks that would interfere with adjacent federally held spectrum near airports.<sup>355</sup>

Each type of spectrum allocation has its specific use case.

Licensed spectrum is purchased by mobile communications operators and others for a specific use in enabling communications. The federal government has allocated 270 MHz of spectrum in the mid-band range, which provides the best connectivity for 5G networks. This places the U.S.

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<sup>352</sup> FCC, "In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities (CC Docket No. 02-33); Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services (CC Docket No. 01-337); Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements (CC Docket Nos. 92-20, 98-10); Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities (GN Docket No. 00-185); Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities (CS Docket No. 02-52)," Policy Statement, Adopted August 5, 2005, <https://www.fcc.gov/document/fcc-adopts-policy-statement>.

<sup>353</sup> Accenture, "Three Mid-band Spectrum Bands Offer Greatest Potential to Meet 5G Demand in the US, Study Finds," September 28, 2022, <https://newsroom.accenture.com/news/three-mid-band-spectrum-bands-offer-greatest-potential-to-meet-5g-demand-in-the-us-study-finds.htm>.

<sup>354</sup> CAGW, "CAGW Files Comments with FCC on the use of the 5.9 GHz Spectrum Band," November 4, 2019, <https://www.cagw.org/legislative-affairs/letters-officials/cagw-files-comments-fcc-use-59-ghz-spectrum-band>.

<sup>355</sup> Deborah Collier, "Federal Agencies Must Stop Interfering with 5G Deployment," *The WasteWatcher*, CAGW, November 30, 2021, <https://www.cagw.org/thewastewatcher/federal-agencies-must-stop-interfering-5g-deployment>.

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thirteenth among allocations by industrialized nations.<sup>356</sup> The cost for exclusive use provided by licensed spectrum to licensees encourages investments in new technologies and increase the capabilities and efficiency of hardware and software to drive productivity. Licensed spectrum also offers licensees certainty that they will be able to provide a reliable wireless service.<sup>357</sup> Licensed mid-band spectrum is crucial to the deployment of 5G networks, and future innovations in the wireless industry, although it remains in short supply.<sup>358</sup> Since the first spectrum auction was conducted in 1994, they have generated more than \$259 billion in revenue.<sup>359</sup> However, until the FCC’s spectrum auction authority is restored by Congress, further auctions for licensed exclusive use spectrum remains uncertain.

Spectrum sharing allows the use of licensed or unlicensed spectrum. A licensed shared access licensee purchases the right to use spectrum held by federal agencies on a shared basis, however, licensees must adhere to power limits, maximum levels of out-of-band transmissions, and other restrictions.<sup>360</sup> The 3.5 GHz (3550 MHz to 3700 MHz) Citizens Broadband Radio Service (CBRS) is an example of spectrum sharing.

In 2015, the FCC adopted rules allowing for use of the CBRS for which provide tiered access for users within the band. Tier 1 is set aside for incumbent users, including authorized federal users, which receive protection against harmful interference from Priority Access Licensees (Tier 2) and General Authorized Access users (Tier 3).<sup>361</sup> According to NTIA, CBRS is “aimed to facilitate growth in wireless broadband devices, provide cost-effective wireless broadband access for rural communities, create new jobs and businesses, increase productivity, spur innovation, and improve public safety.”<sup>362</sup> NTIA found that CBRS deployments increased by 270,621 during the period between April 1, 2021 to July 1, 2024, and rural Citizens Broadband Radio Service Devices (CBSDs) increased by 166,650. By July 1, 2024, 67.5 percent of all CBSDs were located within rural census blocks.<sup>363</sup>

Unlicensed spectrum has a variety of uses. Wi-Fi connected networks provide connections for mobile devices and computers in homes or workplaces, as well as connecting Bluetooth-enabled devices and other devices requiring the use of radio frequencies to operate, like baby monitors, security camera systems, garage doors, televisions, and other technology using remote controls. Unlicensed spectrum is also used in the workplace to facilitate streamlined work processes and communications.

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<sup>356</sup> James Andrew Lewis, “America’s Spectrum Gamble,” Center for Strategic and International Studies, May 15, 2024, <https://www.csis.org/analysis/americas-spectrum-gamble>.

<sup>357</sup> Joe Kane and Jessica Dine, “Good and Bad Reasons for Allocating Spectrum to Licensed, Unlicensed, Shared, and Satellite Uses,” Information Technology & Innovation Foundation, October 23, 2023, <https://itif.org/publications/2023/10/23/good-bad-reasons-for-allocating-spectrum-to-licensed-unlicensed-shared-satellite-uses/>.

<sup>358</sup> Deborah Collier and Tom Schatz, “The Race to 5G: Protecting Taxpayers through Spectrum Auctions,” CAGW, 2019, <https://www.cagw.org/reporting/race-to-5g>.

<sup>359</sup> FCC, “Auctions Summary,” <https://www.fcc.gov/auctions-summary>.

<sup>360</sup> Digital Regulation Platform, “Use of Shared Spectrum at the National Level,” The World Bank, June 10, 2020, <https://digitalregulation.org/use-of-shared-spectrum-at-the-national-level/>.

<sup>361</sup> FCC, “3.5 GHz Band Overview,” <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/35-ghz-band/35-ghz-band-overview>.

<sup>362</sup> NTIA, “An Analysis of Aggregate CBRS SAS Data from April 2021 to July 2024,” NTIA Report 25-575, November 18, 2024, <https://www.ntia.gov/report/2024/analysis-aggregate-cbrs-sas-data-april-2021-july-2024>.

<sup>363</sup> Ibid.

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On November 21, 2023, the Biden administration announced its national spectrum policy.<sup>364</sup> It neither resolved issues surrounding federally held spectrum nor set the stage for spectrum allocations for licensed, unlicensed, or shared spectrum applications. The announcement also did nothing to address the loss of spectrum authority by the FCC on March 9, 2023.<sup>365</sup>

On October 9, 2024, the administration released its National Spectrum Research and Development Plan, which does what its title implies by creating a new guide for government-funded spectrum research.<sup>366</sup> It also failed to provide guidance for federal spectrum that could be converted for future use as licensed, unlicensed or shared spectrum.<sup>367</sup>

During a January 23, 2025, House Commerce Subcommittee on Communications and Technology hearing, CTIA Executive Vice President Brad Gillen noted that two-thirds of spectrum in the mid-band range is held by the U.S. government, and NCTA President and CEO Michael Powell indicated that the current demand for spectrum is outpacing what is currently available. All witnesses agreed that the disagreements about spectrum use and federal agencies not relinquishing unused spectrum places the U.S. at a competitive disadvantage for global leadership.<sup>368</sup> Having a disunified spectrum plan places the U.S. at a disadvantage during global wireless and Wi-Fi standards setting meetings, particularly when these meetings include China, which is strategically working to become the dominant country in these negotiations.<sup>369</sup>

While the NDAA, 2025 provided the FCC with authority to auction spectrum returned to the agency from the AWS-3 auction, it did not restore any other authority.<sup>370</sup> The 119th Congress should quickly move forward with providing the FCC with 10-year auction authority, which will allow the agency to identify the best available spectrum for licensed use. Congress should also refocus the NTIA's efforts on developing a national spectrum strategy for future technology breakthroughs that require spectrum for licensed, unlicensed, and shared uses.

As technology develops, both licensed and unlicensed spectrum are vital for communications in the U.S. With the advent of 5G networks and nascent sixth generation networks, mobile communications continue to improve. The increased use of AI will require not only the

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<sup>364</sup> The White House, "Memorandum on Modernizing United States Spectrum Policy and Establishing a National Spectrum Strategy," November 13, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/11/13/memorandum-on-modernizing-united-states-spectrum-policy-and-establishing-a-national-spectrum-strategy/>.

<sup>365</sup> Thomas Schatz, "National Spectrum Strategy Falls Short Without Auction Authority," *The WasteWatcher*, CAGW, November 21, 2023, <https://www.cagw.org/thewastewatcher/national-spectrum-strategy-falls-short-without-auction-authority>.

<sup>366</sup> The White House, "National Spectrum Research and Development Plan," October 9, 2024, <https://www.whitehouse.gov/ostp/news-updates/2024/10/09/biden-harris-administration-releases-national-spectrum-research-and-development-plan/>.

<sup>367</sup> Executive Office of the President of the United States, "National Spectrum Research and Development Plan," Wireless Spectrum Research and Development Interagency Working Group, Networking and Information Technology Research and Development Subcommittee, of the National Science and Technology Council, October 2024, <https://www.whitehouse.gov/wp-content/uploads/2024/10/National-Spectrum-RD-Plan-2024.pdf>.

<sup>368</sup> "Strengthening American Leadership in Wireless Technology," House Energy and Commerce Subcommittee on Communications and Technology Hearing, January 23, 2025, <https://energycommerce.house.gov/events/communications-and-technology-subcommittee-strengthening-american-leadership-in-wireless-technology>.

<sup>369</sup> "Unlocking the Power of 5G-A: China's Strategic Push for 5G-A Dominance," *Telecom Review*, May 27, 2024, <https://www.telecomreview.com/articles/reports-and-coverage/8135-unlocking-the-power-of-5g-a-china-s-strategic-push-for-5g-a-dominance/>.

<sup>370</sup> Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, H.R. 5009, 2024, <https://www.congress.gov/bill/118th-congress/house-bill/5009>.

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increased availability of power but also seamless use of spectrum to enable its use by businesses, consumers and governments and help keep the United States at the forefront of this crucial technology.

A balanced approach to spectrum policy will allow all these technologies to flourish and become more innovative. To better prepare for spectrum allocations for licensed, unlicensed, and shared uses, NTIA must update the spectrum allocation chart (which has not been done since 2016), examine how agencies are using their spectrum allocations and determine what spectrum can be freed up to be either brought to the market for exclusive licensing, reallocated for unlicensed use, or where feasible, shared between an agency and other users as long as agency mission critical operations are not impacted.

### Universal Service Fund Reform

USF funding must be resolved after the U.S. Court of Appeals for the Fifth Circuit determined that the fees collected on telephone bills are an “illegal tax.” The fee is adjusted quarterly based on the contribution factor (CF) charged to telecommunications providers and passed on to consumers. In 2000, when the FCC first began to track the USF contribution factor, the CF was set at 5.66 percent. On September 11, 2024, the FCC announced that the fourth quarter CF had reached 35.8 percent, and the proposed rate for the first quarter of 2025 is 36.3 percent.<sup>371</sup> The only federal tax rate higher than the USF is the highest marginal income tax rate of 37 percent.<sup>372</sup> The most significant reason for the growing rate is the decreasing number of landlines and paging services that can be taxed to pay for the USF.

The USF provides funding for broadband deployment in high-cost areas of the country through the Connect America Fund and the Mobility Fund; access to schools and libraries through the E-Rate program; telehealth initiatives through rural health program, and low-income support through the Lifeline program. During the 118th Congress, a Universal Service Working Group was formed to determine the best path forward to sustain the USF. CCAGW provided the working group with proposals to improve the program.

Replacing the contribution factor with annual or bi-annual appropriations would increase accountability for USF funding by giving Congress control over the taxing power rather than delegating it to an executive branch agency. It would also spread the responsibility for paying for universal service to all Americans and ensure that sufficient funding for the USF, unless it is consolidated with or replaced by another program, would continue.<sup>373</sup>

The funding mechanism should be reviewed for all four programs that the USF administers, taking into consideration programs like BEAD and others that allocate funds for unserved and underserved locations. According to the Technology Policy Institute (TPI), the USF program

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<sup>371</sup> FCC, “Contribution Factor & Quarterly Filings – Universal Service Fund (USF) Management Support,”

<https://www.fcc.gov/general/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>.

<sup>372</sup> Deborah Collier, “The Future of the Universal Service Fund,” *The WasteWatcher*, CAGW, September 26, 2024, <https://www.cagw.org/thewastewatcher/future-universal-service-fund>.

<sup>373</sup> “CCAGW Comments to Universal Service Fund Working Group,” Council for Citizens Against Government Waste, August 24, 2023, <https://www.cagw.org/legislative-affairs/letters-officials/ccagw-comments-universal-service-fund-working-group>.

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“spends too much money on the wrong things.”<sup>374</sup> Calling the High-Cost Fund “outdated and wasteful,” TPI noted that “Research shows that it has not made much of a difference in connecting households despite billions of dollars spent every year for the past 25 years.”<sup>375</sup> Meanwhile, TPI charges that the Universal Service Administrative Corporation “has increased its administrative expenses from \$105 million in 2010 to \$204 million in 2020 to \$365 million in 2023 while program expenditures stayed fairly constant.”<sup>376</sup>

The increased costs are a result of expanded services under the USF program, including the FCC’s July 18, 2024, order to provide schools and libraries with funding to provide Wi-Fi hotspots for student use off-campus.<sup>377</sup> In his January 27, 2025, statement upon introduction of a Congressional Review Act resolution to overturn this order, Senate Commerce, Science, and Transportation Committee Chairman Ted Cruz noted that the order, “represents an overreach of the FCC’s mandate and poses serious risk to children’s online safety and parental rights.” He further noted that the order was an “unlawful mission creep,” which “threatens to increase taxes on American families at a time when the USF contribution factor is already at a record high of 36%.”<sup>378</sup>

Congress should not only revisit the funding mechanism for the USF, and determine whether it is the best method by which to fund the programs, but also evaluate each program’s effectiveness in helping to deploy broadband in truly unserved areas of the country at reduced rates, at the least possible cost to taxpayers, and instruct the FCC to avoid expanding the USF beyond congressional intent. This process should include an assessment of the effectiveness of private sector programs that provide significant broadband access at reduced rates or no cost to beneficiaries of USF programs.

With up to \$800 billion available for the 133 broadband programs stretched across 15 agencies, there are far too many opportunities to squander billions of dollars in precious taxpayers’ resources and fail to connect remaining unserved and underserved businesses and households unless there is greater coordination of deployment efforts. The 119th Congress should immediately begin holding joint hearings among committees of jurisdiction in the Senate and House, as well as bicameral hearings, to determine how the responsibility and funding for broadband should be consolidated and wasteful spending avoided. The two most prominent and experienced agencies are the FCC and the NTIA, and they should be given the most significant responsibility and funding for broadband programs.

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<sup>374</sup> Gregory L. Rosston and Scott Wallsten, “Overhauling the Universal Service Fund: Aligning Policy with Economic Reality,” Technology Policy Center, August 28, 2024, <https://techpolicyinstitute.org/publications/broadband/overhauling-the-universal-service-fund-aligning-policy-with-economic-reality/>.

<sup>375</sup> Ibid.

<sup>376</sup> Ibid.

<sup>377</sup> FCC, “FCC Approves Rules to Support Wi-Fi Hotspots Through E-Rate Program,” Adopted July 18, 2024, <https://www.fcc.gov/document/fcc-approves-rules-support-wi-fi-hotspots-through-e-rate-program>.

<sup>378</sup> Senate Commerce, Science, & Transportation Committee, “Chairman Cruz Leads Senate Commerce GOP in Effort to Stop Biden FCC from Subsidizing Kids’ Unsupervised Internet Access,” January 27, 2025, <https://www.commerce.senate.gov/2025/1/chairman-cruz-leads-senate-commerce-gop-in-effort-to-stop-biden-fcc-from-subsidizing-kids-unsupervised-internet-access?ref=broadbandbreakfast.com>.

## Critical Waste Issues for the 119th Congress

The 119th Congress should be vigilant about overseeing and promoting sound and effective telecommunications policy. If not, taxpayer funds will be wasted, and the U.S. could squander its leading global position in telecommunications.

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