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Federal Fumbles Vol. 5

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FEDERAL FUMBLES

VOLUME 5

**WAYS THE
GOVERNMENT
DROPPED
THE BALL**

US SENATOR JAMES LANKFORD

My fellow taxpayers,

Thank you for taking the time to read through Volume 5 of *Federal Fumbles*. This year I want to focus on something specific: Article 1, Section 9 of the Constitution, which grants Congress the power of the purse. It is Congress's duty—my duty—to set spending caps and ultimately appropriate those dollars to fund our federal government. This is a more than \$1 trillion annual task that I do not take lightly. It should be done wisely and on time.

As you may recall from Volume 4 of *Federal Fumbles*, I have been engaged with a bipartisan working group to offer real and practical solutions to fix our budget process—one that has worked only four times since 1974.

Part of reforming our budget process also involves *how* and *when* Congress actually funds the government. To that end my primary focus has been on my bipartisan solution to end government shutdowns once and for all. This solution is headed toward the end zone, and you can learn more on page 7.

This volume of *Federal Fumbles* does not stop with our broken budget process. In fact, that is just the beginning. In the pages ahead, you'll read some shocking information about the money different agencies spend on researching various aspects of Russian life (including their sea lions), a \$445.9 million annual Fumble at our southern border, and billions of dollars wasted in so-called *tax extenders*. What do you think of that Tesla next to you at the stoplight? Glad you like it since you helped purchase it.

You'll also learn how commonsense proposals to fund our inland ports and public lands are actually complicated ploys that take massive advantage of your tax dollars—to the tune of billions of dollars each year.

I will continue to press for other government reform solutions, including the Taxpayers Right-to-Know Act and the Grant Reporting Efficiency and Agreements Transparency (GREAT) Act. These two bills will offer unprecedented transparency into the way your tax dollars are actually spent.

We need to maintain a spotlight on federal spending no matter what's making headlines in Washington. Regardless of the political noise of the day, we cannot forget about the \$23 trillion national debt. I continue to fight against that debt each and every day, and I will continue to work through practical solutions for the sake of our country and future generations.

In God We Trust,

A handwritten signature in black ink, appearing to read 'J. Lankford', with a stylized flourish at the end.

James Lankford
United States Senator for Oklahoma

ABBREVIATIONS

American Burying Beetle (ABB)

Adjusted gross income (AGI)

Disaster Relief Fund (DRF)

Child Placing Agencies (CPAs)

Changes in Mandatory Programs (CHIMPs)

Cohort default rate (CDR)

Commercial off-the-shelf (COTS)

Electric vehicles (EVs)

Enforcement and Removal Operations (ERO)

Federal Acquisition Streamlining Act (FASA)

Fiscal year (FY)

Grant Reporting Efficiency and Agreements Transparency (GREAT) Act

Gross domestic product (GDP)

Harbor Maintenance Tax (HMT)

Harbor Maintenance Trust Fund (HMTF)

Intellectual property (IP)

Land and Water Conservation Fund (LWCF)

Maintaining Internal Systems and Strengthening Outside Networks (MISSION) Act

Military Housing Privatization Initiative (MHPI)

National Defense Authorization Act (NDAA)

The National Instant Criminal Background Check System (NICS)

National Flood Insurance Program (NFIP)

Opportunity Zone (OZ)

Overseas Contingency Operations (OCO)

Physical Access Control Systems (PACS)

Public Broadcasting Service (PBS)

Tax Cuts and Jobs Act (TCJA)

Unaccompanied Alien Children (UACs)

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Busting the Caps

The year was 2011. Deficits were exploding, and debt was accelerating. Congress wisely responded by putting in place a set of ten-year caps (maximum limits on federal spending) to restrain the growth of the deficit. At the time those restraints represented a landmark achievement for fiscal hawks and taxpayers. Unfortunately creative math in Washington is nearly impossible to stop and even harder to track. Since the caps were implemented, budget gimmicks have been used to effectively spend tens of billions beyond what the caps allow.

What does that mean? For fiscal year 2019 (FY19), Congress allocated \$1.24 trillion for discretionary spending, which is spending not required by law, as opposed to mandatory spending—e.g., Social Security, Medicare, and Medicaid. However, this \$1.24 trillion cap is largely irrelevant because of budget gimmicks created by Congress to spend more beyond our means (i.e., deficit spending) and directly add to our \$23 trillion+ national debt.

Case in point: since the establishment of the 2011 caps, Congress has finagled ways to spend billions in additional discretionary dollars.

Fast forward to today. Deficits are still exploding, and debt is still accelerating. In fact, since Congress passed the budget caps deal in 2011, our federal debt has exploded by nearly \$7 trillion. However, Congress has not spent less since the budget caps were put in place. The caps did slow the growth of spending, but they did not stop it. Just a few of the contributors to spending above and beyond the caps are:

- **The Harbor Maintenance Trust Fund**
- **The Land and Water Conservation Fund**
- **Overseas Contingency Operations**
- **The Disaster Relief Fund**

Hopping Off the Harbor

\$1.67 billion will automatically be added to our national debt in FY20 in the name of waterway infrastructure. Smells fishy to me.

While often overlooked, transportation by water plays a critical role in our international trade. Almost 80 percent, by volume, of goods traded internationally enter or exit the US through our ports.¹ With so much depending on this infrastructure, we must provide the necessary investment to keep these assets in a condition that supports our economy. To do that, in 1986 Congress created a Harbor Maintenance Tax (HMT), which is a tax of 0.125 percent on the value of both imported and domestic cargo as well as a tax at the same rate on tickets sold for cruises.² The funding is collected for the Harbor Maintenance Trust Fund (HMTF), which is used by the US Army Corps of Engineers (USACE) to fund projects that are critical to keep the ports open and running, such as dredging and maintaining jetties.³

It seems like a reasonable system to collect a user fee to fund projects that are needed for port infrastructure, but here is where views begin to diverge. To spend the funds out of the HMTF, Congress must appropriate the dollars through the annual appropriations process. USACE cannot simply spend the funds for their authorized purposes; Congress must decide the amount of funding that should be used from the Fund each year and the amount of the total budget it wants to devote to harbor maintenance.



If Congress decides that it is more important to fund other priorities than spend all the money raised by the HMTF any given year, this can result in surpluses in the HMTF over time, which has indeed happened since the estimated surplus for the HMTF is currently \$9.5 billion.⁴ This money is owed to our ports and must eventually be used for HMTF-authorized purposes.

For example, the Senate has proposed USACE receive \$7.75 billion from the \$1.37 trillion Congress allocated for total discretionary spending government wide.⁵ The Senate recommended that an additional \$1.67 billion of that allocation be dedicated to harbor maintenance projects and derived from the HMTF.⁶ But what if the HMTF was taken *off budget*? The USACE could spend any or all of the funds in the account to repair our waterways much more quickly. That sounds like a good idea, but dollars we take off budget are not subject to our federal budget caps.

While infrastructure advocates may want to free themselves from the constraints the caps place on the ability to spend user fees, some in Congress are looking for ways to sneakily spend more money without technically breaking the budget caps. Without adjustments in federal spending elsewhere to compensate, this complicated accounting trick would create billions in new debt for American taxpayers.

Investments in our infrastructure and the best ways to pay to fund them are challenges we must face. The American Society of Civil Engineers gives our infrastructure an overall grade of D+ (our ports are doing better with a whopping C+),⁷ and our user fees supporting roads and bridges will face a reckoning in the next year as the Highway Trust Fund faces insolvency.

This Land (Backlog) Is Your Land (Backlog), Round II

Who wants \$435 million in free money?

I have highlighted the Land and Water Conservation Fund (LWCF) and its shortcomings over the years. A quick recap: the LWCF is supported by a portion of the fees collected from offshore drilling. That money is then used to purchase more land to add to the federal government's landholdings for conservation and recreation.⁸

As I pointed out in Volume 4 of *Federal Fumbles*, we have a large maintenance backlog on our existing federal lands. Instead of reforming the LWCF to address some of these existing maintenance needs and slowing the rate at which we acquire new lands with existing maintenance backlogs, we simply continue the status quo of purchasing more land without regard to existing needs. Congress overwhelmingly voted to continue these irresponsible practices by not diverting some of the funds to maintenance when the LWCF was reauthorized earlier this year.⁹ Since the reauthorization was permanent, Congress is no longer forced to periodically consider whether the program could use updating or whether Congress has a change of heart on the balance between supporting our existing lands and buying new properties.

With permanent reauthorization irresponsibly enacted, advocates have now found ways to speed up this land acquisition—and as a result speed up the rate at which our deferred maintenance backlog grows. As it currently stands, although there is a dedicated funding stream for the Fund, the money spent out of the LWCF still needs to be appropriated by Congress and is subject to federal budget caps, similar to the HMTF, discussed previously.



A proposal put forward earlier this year would change the way the LWCF operates by providing mandatory instead of discretionary funding. That means it would not be subject to annual budget caps set every year by Congress.

Shifting the LWCF outside these caps and onto the mandatory side of the budget would mean that more funding from the LWCF could be spent each year without regard to our federal budget. The Fund currently has a roughly \$22 billion surplus,¹⁰ meaning spending out of this Fund could be drastically increased, and additional maintenance could be conducted. That sounds responsible, right?

There are two significant problems with this proposal. First, moving any account from discretionary to mandatory spending creates space under the budget caps for additional spending. We appropriated \$435 million from the LWCF to spend on buying new lands in FY19.¹¹ Without adjusting the caps, moving this account to mandatory spending would free up \$435 million to spend on other discretionary programs as directed by Congress. Ultimately this grows the deficit by \$435 million each year, which in turn compounds into \$4.35 billion in debt over 10 years.

The other critical problem with this proposal is: if the LWCF is unconstrained by the budget caps, spending within it may significantly increase beyond \$435 million each year. The aforementioned proposal laid out by several senators, most of whom serve on the committee responsible for considering the legislation, would provide \$900 million in mandatory funding each year,¹² which would more than double the current rate of new land acquisitions and could considerably add to our deferred maintenance backlog. So it actually makes the problem worse.

Contingent on What?

\$162.1 billion was created out of thin air by taking advantage of a loophole meant to ensure military readiness.

The Overseas Contingency Operations (OCO) account in our federal appropriations is used to fund combat ground vehicles, aircraft, and equipment; the resupplying of ammunition stockpiles; the building of required military facilities in combat zones; and the transportation of military personnel and materials into and out of theaters of war. The 2011 budget caps deal also contained a loophole that exempted OCO from the spending limits.

Starting in FY12, the Obama Administration began to take advantage of the loophole by requesting billions in OCO funds for Department of State (DOS) initiatives to build consulates in Iraq ahead of an ill-timed withdrawal, provide nebulous “institutional capacity” building projects in Afghanistan, and fund the US diplomatic presence in Afghanistan.

The previous Administration asked for ever-increasing OCO funds for an even broader array of DOS and US Agency for International Development (USAID) programs to provide humanitarian assistance and aid to various countries and to fight global health threats.¹³ Through FY19, DOS and USAID have spent a whopping \$162.1 billion in so-called OCO funds on activities that have little or nothing to do with the combat operations conducted by our military heroes.¹⁴

Fortunately the Trump Administration ended the practice of requesting OCO funds for DOS and USAID starting in FY18.¹⁵ But the Democrat-controlled House stuffed another \$8 billion in OCO funding for DOS and USAID in its spending bill to fund the agencies for FY20.¹⁶ Enough is enough. Congress should certainly provide OCO funding for military requirements, but using OCO funds for clearly non-military, non-contingency purposes, regardless of how laudable the programs or goals, is little more than a budget gimmick designed to keep the American people in the dark about how their money is being spent. If the program is necessary for our national defense, then we should plan for it and properly fund it instead of using an arbitrary and undesignated slush fund. After 18 years of work, we know the financial cost of fighting in Afghanistan. We should put that amount in our budget, not add it on top.

Disaster Relief Fund

\$124 billion blew straight off the caps.

Budget caps were put in place for a reason: to address our staggering debt and deficit by forcing Congress to make tough spending decisions. However, the 2011 budget caps deal included a provision that gave the Federal Emergency Management Agency (FEMA) a blank check to fund its recovery operations by creating a special designation not subject to the annual discretionary cap.¹⁷ This has resulted in our disaster recovery spending accelerating to out-of-control levels. The special designation allows Congress to completely ignore the statutory cap to the tune of billions of dollars a year.



Since 2011 more than \$129 billion have been allocated to the Disaster Relief Fund (DRF). Here's the kicker: \$124 billion of that allocation have been appropriated completely outside the caps, and only \$5 billion of it remained inside the statutory budget limits.

While we should ensure FEMA has the funds it needs to fulfill its mission, Congress must budget the funding in a wise and accountable manner instead of throwing around billions of unauthorized dollars each year. In FY13 it was \$19 billion.¹⁸ In FY17 it was \$14 billion.¹⁹ In FY18 it was more than \$50 billion.²⁰ Need I say more? These numbers are not decreasing anytime soon. Congress must work to actually prepare to fund disasters instead of handing out blank checks that drastically exceed statutory spending limits.

Additionally, these are not the only funds used for recovery efforts. Just this past June, Congress passed a disaster supplemental bill that added \$19.1 billion for disaster relief to several agencies including the US Departments of Agriculture (USDA) and Housing and Urban Development (HUD).²¹ The need to urgently release funds and a conspicuous lack of proactive oversight raise concerns about the ways in which these funds are spent.

With natural disasters on the rise, Congress must get serious about how we budget for disaster recovery. Simply blowing past the limits of the caps each year is not the answer. Many American have an emergency fund just in case. Congress refuses to budget for emergencies and just prints money instead.

SOLUTIONS FOR BUDGET REFORM

For the past several years, I have worked with a bipartisan group of senators and representatives to develop solutions to fix these massive budget issues. While we cannot go back and fix past overspending, we can make smarter decisions going forward. I have laid out a set of commonsense, bipartisan solutions to do just that. However, as mentioned in Volume 4 of *Federal Fumbles*, work remains to get them passed.

Here's a breakdown of how the budget process currently works and my solutions for fixing it:

The president is supposed to release his annual budget proposal in February.²² However, it is widely ignored on Capitol Hill, regardless of the president's party affiliation. Although it does contain helpful budgetary information and historical trends, it has become a messaging document that requests drastic increases or cuts to federal agencies and programs, depending on who is president. Presidents' budgets have historically received very few votes in Congress.

Following the president's budget, the real work begins in Congress. The Budget Committee should create a budget resolution that includes a budget cap, setting the maximum amount of money the Appropriations Committee can allocate to federal programs. This is the \$1.24-trillion figure referenced earlier for FY19. However, budget resolutions do not become law. They are completely nonbinding suggestions.

This is where things get noisy, if they weren't already noisy enough. When a budget resolution reaches the Senate floor for a vote, a process called a *vote-a-rama* kicks off, during which senators can offer unlimited amendments during what becomes an around-the-clock, worthless, political-messaging debate with no relevance to the budget process.²³ You can watch one on C-SPAN sometime—usually in the middle of the night.

Remember: the budget resolution is not law, so these amendments are simply gotcha political moments to pit the parties against each other in a meaningless exercise of political theater. The actual critical spending decisions are not made until late in the process, complicating an already complex process.

The agreed-upon budget caps (top-line spending limits) are then sent to the Appropriations Committee, which allocates the funds throughout the federal government.²⁴ Spending caps increase every year, and budget gimmicks are then used to increase spending beyond the caps, as previously described. In addition, a tool known as *Changes in Mandatory Programs* (CHIMP) turns fake offsets into justification for increased spending levels. For example, Congress chooses to withhold money from the Children's Health Insurance Program and the Crime Victims Fund so that other programs can receive *plus-ups*.²⁵ This process drives up spending beyond the caps and withholds money from children's health and/or crime victims—and it happens every year.

When the Appropriations Committee finishes all 12 funding bills, Congress votes on the final packages, and the president signs the spending bills into law.²⁶

Funnily enough, lawmakers are not required to acknowledge our \$23 trillion national debt during any stage of this process. Instead of reducing spending, it has actually increased year after year. That is truly the fumble of fumbles. Even more, Congress votes to simply increase the debt ceiling without being required to take action to reduce our deficits.

So how can we fix this broken process? Here are my ideas:

- **Stop kicking off the annual budget process with the president's budget request.** The president should still send his priorities and suggestions to Congress, which has the power of the purse, but let's not have this moment at kickoff. It's the equivalent of the QB missing the first throw of the game.
- **Restructure the Budget Committee to include members from critical committees including Finance, Ways and Means, and Appropriations.** These players are essential in the final spending process, so let's include them in the process from kickoff to the end zone.
- **Repurpose a powerful budgetary tool called *reconciliation* to join the game during the budget resolution process so that Congress is required to tackle our annual deficits.** Making reconciliation only about deficit reduction and requiring that it happen every two years create a moment when Congress must get serious and vote on a plan to address our debt and deficit problems every session. And let's not stop there.
- **Make the budget resolution a binding law.** Doing so will force Congress to have these spending debates earlier in the year instead of hashing them out in the final seconds and going into a continuing resolution, or government-funding overtime.
- **Require Congress to vote on a deficit-reduction package each time we are forced to increase our debt limit.** If the deficit increases, Congress has the responsibility to go on the record—publicly—to show taxpayers whether or not their Members of Congress support reckless and unsustainable spending.
- **End the vote-a-ramas.** We should simply put a time limit on considering amendments to end this meaningless process.
- **End CHIMPs and budget gimmicks once and for all.** I have introduced multiple amendments to do this. While progress has been made, the fact is both Democrats and Republicans use this budget-busting tool to their advantage.

At the end of the day, Congress must make the difficult choices of deciding where our priorities lie and our ability to fund them. There are no quick answers, but these solutions are great steps in the right direction. It is not too late to make the tough but responsible choice between acknowledging the tradeoffs we face and choosing first to fund our needs instead of our wants.

Shut Down the Shutdowns

To be blunt, I am sick and tired of government shutdowns and the havoc they wreak on federal employees, American families, and wasted taxpayer dollars. I never want to see a shutdown clock appear on the news again, and neither do federal employees or their families, some of whom miss more than one paycheck while still having to work.

Government shutdowns actually only waste taxpayer dollars and cause significant cost increases. The three most recent shutdowns—lasting a total of 52 days—cost taxpayers \$4 billion.²⁷ Here's a breakdown:

- At least \$3.7 billion spent on back pay for furloughed federal workers²⁸
- At least \$338 million wasted on extra administrative work, lost revenue, and late fees on interest payments²⁹

In addition, nearly 15 million days of productivity among furloughed employees were lost totaling nearly 57,000 years.³⁰ However, furloughed employees received back pay despite being unable to work for a collective 57,000 years.³¹

Alarming, all of these figures listed above do not even include data from the Departments of Defense (DOD), Justice (DOJ), and Commerce (DOC), as well as the Environmental Protection Agency (EPA) and USDA. These agencies were unable to contribute their data simply because they did not have it.³²

This also does not include the \$11 billion in lost economic activity resulting from the last shutdown alone.³³

But the real stinger is the impact that government shutdowns have on federal employees and their families, who should be left harmless throughout the tumultuous, noisy, and partisan process of government funding. They should not have to go through exceptionally painful times because of a lack of compromise from their elected leaders. That is my shoulder to bear, not theirs.

The good news is there is a solution. When my brother and I got into arguments growing up, our mom would send us to our room until we worked out our differences. This is a pretty commonsense solution. Let me show you that page in our playbook.



SOLUTION

My idea is basically the same approach my mom took with my brother and me: force Congress to stay in DC until we are able to fully fund the government.

The Prevent Government Shutdowns Act is simple: if all twelve appropriations bills are not passed by the end of the fiscal year, Members of Congress and their staffs stay in DC until funding levels are reached. Meanwhile, an automatic continuing resolution would kick in, meaning the government will continue operations under the previous fiscal year's funding level. In addition Congress would not be able to consider any other type of legislation but appropriations bills. Basically, we fund the government or stay in town voting until we do.

This commonsense solution will force Congress to do its job, while holding federal employees and the American people harmless throughout the process. We owe it to the American people to end government shutdowns once and for all.

Russian Grants

COST: \$2.9 million

While Russia meddles in our elections, our agencies are working to understand their sea lions and history.

Steller Sea Lions

Fun fact: the Steller sea lion is a marine mammal species found in Russia and the northern Pacific.

Not a fun fact: in recent years the National Oceanic and Atmospheric Administration (NOAA) awarded nearly \$1.7 million to a consulting group to study Steller sea lions in Russia.³⁴ That's right—\$1.7 million. This contract also has the potential to increase to \$5.3 million by September 2020.³⁵



Wait for it—the situation only gets worse. The firm that received this award, North Pacific Wildlife Consulting, works directly with the Russian government, acting as an entity to pass funds to Russian scientists for animal research.³⁶ This means that \$1.7 million of our money is directly assisting research by and for the Russian government. This is nonsensical.

While I can certainly support animal research, this specific case is not so stellar after all.

What Do Russian Bureaucrats Think of the US?

You don't need access to Top Secret clearance to answer this question, but the National Science Foundation (NSF) chose to spend \$50,000 of your money to find out.³⁷ This grant will fund a workshop entitled "Russian Elite Attitudes Toward Conflict and the West," which will bring scholars together to discuss this topic.

The general abstract of the workshop states its purpose is to study and understand why our relationship with Russia has experienced a seismic shift over the past two years.³⁸ It does not take a \$50,000 grant to grasp this concept. Our intelligence and national security communities are already laser-focused on this topic. I do not anticipate this workshop will reveal any breakthrough information that is not already known to the average American, much less our officials with security clearances.

Instead of spending money to learn what Russian bureaucrats think about us, we should instead spend money to ensure our election system is secured from Russian bureaucrats. This can be accomplished through passing my bill, the Secure Elections Act, which will strengthen election cybersecurity in America, streamline federal government information, share threats with states, and give states the ability to audit their elections.³⁹

Russian Empire Economy

Have you ever been interested in Russian corporations that existed before the October Revolution of 1917? Thanks to a grant of nearly \$114,000 from the NSF, you will soon be able to learn all about them.⁴⁰

I am sure this study will offer a unique perspective on financial developments in Russia before communism took control and the Soviet Union was formed. But I struggle to understand why \$114,000 of our money is going toward this study—especially when we are faced with a national debt of \$23 trillion.

Russian Influenza Epidemic

Tracking the flu is an essential public health task, but what about the flu in Russia—in 1889?

Thanks to a recent \$175,000 grant from the National Endowment for the Humanities (NEH), a group of students will examine “US and German medical discussions and popular reporting during the Russian influenza epidemic” from 1889 to 1893.⁴¹ While I am sure this is an interesting study, I am not sure it supports a federal nexus. I would rather see your tax dollars go toward a medical research project at the National Institutes of Health (NIH) to prevent future epidemics instead of funding a research project focused on discussions and reporting in the late 1800s.



Studying Stalin

We’ve all heard of Joseph Stalin and his hatred of capitalism. Because he stood against everything America stands for, why has \$600,000 of your money gone toward a two-hour documentary on his life?

A recent NEH grant is supporting a Public Broadcasting Service (PBS) documentary that will explore *The Complex Life and Legacy of Joseph Stalin*.⁴² While the Russians continue to cause disruption in the US, our resources should go toward preventing election interference, not a PBS documentary about that nation’s past communist leader.

Russia and Islam

A recent NEH grant awarded \$290,000 to study the Soviet and Russian perspectives on Islam.⁴³ But there’s something missing in that description: anything related to the US.

The study is part of a larger program at George Mason University and is funded by a private foundation. This is a reasonable project, but it should be funded in its entirety as a private project. I see no reason that \$290,000 of our money should support a private study of Soviet and Russian “understanding of cultural coexistence” with Islam.⁴⁴

SOLUTION FOR THESE GRANTS

These six grants are minuscule compared to the more than \$660 billion we spend every year on grants.⁴⁵ At the end of the day, Congress must work toward more stringent standards by which grants are merited and awarded.

In the meantime, however, forward progress was made by the Senate when it passed my bill, the Grant Reporting Efficiency and Agreements Transparency (GREAT) Act on October 22, 2019.⁴⁶ My bill will insert much-needed transparency into the grant process, making it more effective and efficient for Congress and the American people to see how their tax dollars are spent. It will also serve as a great tool for grant seekers by streamlining data transparency requirements.⁴⁷ Getting this data on such a massive federal expenditure is a win-win for everyone.

High-Risk Alert!

Some of the most persistent offenders of federal waste are federal grants. While many federal grants work to accomplish gains in public health, clean air, clean water, and resources for our first responders, an exceptional number of grants do not have a federal nexus.

Even worse, a number of federal grant seekers struggle to manage the grants they ultimately receive, which results in mismanagement; poor performance; and an abundance of fraud, waste, and abuse. The majority of these grantees are not acting in bad faith; they are simply unaware of proper grant management. Unfortunately it takes years for grantees to find out they made a mistake. In turn they are forced to pay back funds after the fact.

This can be resolved up front if grantees with a history of poor grant performance are flagged from the beginning as high risk.

SOLUTION

DOJ already has a high-risk grant list in place.⁴⁸ All other agencies should follow their lead. Being designated as high risk would not prevent anyone from receiving a grant. Instead it would simply provide more insight to make sure grantees and taxpayers get the most bang for their bucks.

We should work to ensure grantees can take full advantage of federal dollars while protecting our limited federal resources. A high-risk list is a proactive way to accomplish this goal.

A Play-by-Play on Immigration

COST: \$1.17 MILLION...per day!

For most of 2019, we heard Members of Congress and the media say that the crisis at the US/Mexico border is manufactured and that the Administration—specifically the President and law enforcement officials at the Department of Homeland Security (DHS)—are to blame.

Let's look at the facts. During FY19 an unprecedented number of migrants have traveled to our southern border. Nearly 1 million individuals, family units, and unaccompanied alien children (UACs) have entered this year alone; in FY18 that total was 521,090. While not the highest total migration in one fiscal year, FY19 does represent the largest number of children in family units who have entered our nation. A family unit is defined as one parent or a legal guardian traveling with a child under the age of 18. During previous migration surges, the vast majority of migrants were single adult males from Mexico who could rapidly be deported once it was determined they did not have legal status. To better understand why migrants travel in family units, you can read the entry in Volume 4 of *Federal Fumbles* called "Usually Kids Get the Discount, Not Adults." The simple answer is: smugglers charge less if an adult travels with a child because entry is easier with a child.



DHS manages the immigration system through multiple internal agencies, each of which is responsible for a different part of the process. The first stop is Customs and Border Protection (CBP), whose border patrol agents are the first level of enforcement at the border. CBP is responsible for monitoring the border and apprehending migrants who attempt to illegally cross between ports of entry. The Office of Field Operations within CBP processes migrants who cross at a port and either grants them access or deems them inadmissible due to a lack of legal standing to be in the US. Similarly, CBP apprehends individuals who cross between ports of entry. Once CBP processes these individuals, they should move to Enforcement and Removal Operations (ERO) within Immigration and Customs Enforcement (ICE), which is responsible for the detention of individuals during their immigration proceedings and then deportation if and when they are given an order of removal by an immigration judge.

On the Offense: CBP

Because CBP is the first point of contact for migrants, its job is law enforcement. If a migrant is interdicted by CBP and believed to be illegally present, CBP aims to detain him or her for no more than 72 hours before the migrant is transferred to ICE. CBP facilities were built when migrants were almost exclusively adult males, and migrants were transferred out of CBP custody as soon as possible.

But as mentioned above, things have changed. CBP is responsible for managing ports of entry, facilitating trade, processing legal entries, interdicting drugs and weapons, processing asylum seekers, apprehending illegal migrants, and more. Yet their security-focused mission has shifted to manage this crisis they aren't equipped to handle. CBP is doing the best it can to manage an unprecedented flow of migrants, but Congress has tied CBP's hands and hidden behind politics instead of stepping in to fix the issue.

During the height of the crisis over the summer, in a facility that was acquired under the Obama Administration to house 1,000 UACs, CBP was forced to use it to house an even greater capacity of family units.⁴⁹ Even though CBP intended the facility to house 1,000 children, for some unknown reason it never installed permanent bathrooms when the facility was constructed in 2014.⁵⁰

On the Defense: What Happens When ICE Funding Is Capped?

CBP shouldn't be responsible for detaining or subsequently releasing anyone; that's ICE's job. But some Members of Congress have made up the narrative that ICE is dangerous and should be shut down. Some have even blocked funding for ICE detention. As a result, CBP can't transfer migrants to ICE, which leaves CBP to house, detain, feed, care for, and eventually release migrant families. In May when border crossings were at their peak and Congress had not provided additional funding to DHS, CBP had 19,500 individuals in detention.⁵¹ CBP considers 4,000 individuals in detention to be an acceptable level.⁵² On average, in FY19 CBP apprehended 2,658 individuals each day people with nowhere to put them without ICE detention space.⁵³

Funding ICE used to be bipartisan. In 2014, the Obama Administration asked for \$995 million for operational costs of ICE to include detention, alternatives to detention, prosecution, removal of family groups, and transportation costs of UACs to Department of Health and Human Services (HHS) custody, per the *Flores* settlement. Since then, ICE funding (which is essentially based on the number of "beds") has been a major point of partisan bickering during every funding conversation.

The Tent Costs How Much?

Because CBP does not have enough detention space to house migrant families, it has stood up what it refers to as *soft-sided facilities*, which are essentially large, elaborate tents. So far it has stood six tents, some for migrant families and some for single adults.⁵⁴ The total estimated cost for all six is \$445.9 million per year.⁵⁵ In just the Rio Grande Valley sector alone, we're spending more than \$199 million per year on the soft-sided temporary CBP facilities instead of spending \$199 million on permanent ICE facilities.⁵⁶

So far in FY20, CBP is spending \$1.17 million on soft-sided facilities, each and every day.⁵⁷



That is not only wasteful to taxpayers, but it's also unfair to those men and women serving at CBP to force them to do something they were not trained to do. Failure to adequately fund ICE has forced CBP to house migrants in temporary makeshift facilities rather than the correct permanent ICE facilities.

In June when the crisis peaked, Congress appropriated additional funds that included \$1.1 billion for CBP and \$0 for ICE detention beds.⁵⁸ We remained focused on how we could help CBP hold more people, which ignored the obvious question: why aren't we providing additional funding to ICE? Detaining migrants is what they do.

And just when we think it couldn't get more wasteful, it did. Because Congress refused to fix our broken immigration laws, the Trump Administration rightly took proactive steps to curb the flow of migrants at the border. One policy it implemented is called the Migrant Protection Protocols, which establishes a path for individuals and families who await immigration hearings to remain in Mexico instead of being released into the US.

While this new policy has helped prevent migrants from disappearing into the US, it has also contributed to a 75-percent reduction in migrants awaiting proceedings in CBP custody. This decline has left the expensive, temporary, soft-sided facilities substantially under-utilized.⁵⁹

SOLUTION FOR IMMIGRATION AND BORDER SECURITY

Stop politicizing ICE, and fund it! Had Congress adequately funded ICE from the beginning, those dollars could have been used by ICE to follow through on orders of removal or detention for individuals illegally present in the US. We have emptied our pockets for empty tents.

Tax Extenders—Special Interest Giveaways, Funded by You

As the national debt continues to pile up—currently at \$23 trillion and climbing—American taxpayers may be surprised to know that part of our increasing national debt is the result of financing freebies to special interests through the tax code. These giveaways drive up deficits and ultimately add to the debt. Known inside the Beltway as *tax extenders*, these narrow provisions of the code provide tax breaks to specific industries. Over the years Congress has handed tax breaks to industries like candy at Halloween without regard to the impact it will have on our national debt.

These tax breaks are another form of spending, that in this case leave the government to pick winners and losers. Here are some of the worst offenders:

- **Beer and wine**—Certain breweries, distilleries, and wineries receive annual cuts in their taxes per barrel of alcohol produced.⁶⁰ Clearly the alcohol industry has strong growth without taxpayer support.
- **Puerto Rican Rum**—Current law provides that the vast majority of federal excise taxes on rum produced or imported into the US be transferred back to Puerto Rico and the US Virgin Islands.⁶¹ The territories then use that money to subsidize more production of rum products. This revenue is a windfall for Puerto Rican rum producers, leaving taxpayers to pick up the bar tab.
- **Racehorses**—Owners of racehorses are currently allowed to depreciate the value of their horses. The Joint Committee on Taxation estimates this tax break cost taxpayers around \$35 million in 2018 alone.⁶²
- **Movies and TV**—For almost 10 years now, film, TV, and even live theater productions have been able to take advantage of a tax break that allows them to deduct production costs.⁶³ It is curious why hardworking taxpayers would be asked to subsidize movies and TV shows, many of which rake in lucrative draws at the box office that benefit large Hollywood studios. I think most taxpayers could agree that these production companies will do just fine on their own.
- **Motorsports**—For several years now, motorsports leagues and track owners, including those affiliated with NASCAR, have been able to deduct expenses related to improving tracks and stadiums at a more accelerated and beneficial rate than other types of businesses.⁶⁴ Although this specific tax break expired in 2017, lawmakers have proposed extending it for years to come.



Energy Tax Extenders

COST: \$21.7 billion

Usually the point of temporary federal tax policy is to incentivize individuals or companies to adopt a certain technology before it has proven beneficial and is able to stand on its own. Once that is achieved, usually the temporary tax is eliminated—*usually* being the operative word. This has not been the case for several temporary energy tax provisions that continue to waste taxpayer dollars.



A Biopsy of Biodiesel

The first of many offenders is the biodiesel tax credit. This tax credit was first authorized in 2004 and allows biodiesel producers or blenders to receive an income tax credit of \$1.00 per gallon of biodiesel.⁶⁵ So far the credit has cost nearly \$12 billion.⁶⁶

Since the credit was enacted, production of biodiesel has grown from just less than 28 million gallons in 2004 to more than 1.5 billion gallons in 2017.⁶⁷ Biodiesel growth was helped by the tax credit, financial support provided by USDA, and a consumption mandate through the Renewable Fuel Standard (see my entry from the last volume of *Federal Fumbles* to learn all about it). For 2019 the mandated blending level of biodiesel with regular diesel is 2.1 billion gallons and is guaranteed to be no less than 1 billion gallons each year unless Congress decides to change the law.⁶⁸ Additionally, USDA support through the Farm Bill is unlikely to go away anytime soon.

Whether from the tax credit, the direct financial support, or the fact that the government tells us all that we are required to use biodiesel as a transportation fuel, the industry has clearly grown in the last 15 years.

Some have said the biodiesel industry has reached the point where it should either sink or swim.



The good news is the biodiesel tax credit expired at the end of 2017. The bad news is that's not how Washington works. Instead the biodiesel industry continues to lobby Congress to extend the credit so the industry can receive the tax credit for gallons *they produced in 2018 and 2019 after the credit had lapsed*. Providing financial assistance to incentivize compliance with a policy that has already lapsed won't achieve the desired result. Instead it provides a windfall to those who bet the right way—or lobby—on what the government will do. Sending a big check of tax dollars to companies does not encourage consumers to buy more biodiesel; it just improves the bottom line of biodiesel companies.

Like Electric Cars? You Probably Helped Pay for Them

It's not just liquid-fuel vehicles cruising the tax credit highway. More recently, electric vehicles (EVs) have joined the caravan. The EV tax credit was first enacted in 2008 and provides a \$7,500 tax credit for individuals or businesses who purchase an EV.⁶⁹ The size of the credit depends on a vehicle's battery capacity, which means more money to those with larger batteries.⁷⁰ For individuals the credit is non-refundable⁷¹ and can only be used to offset an individual's tax liability if the liability is less than the credit. Businesses are able to carry the credit back one year or forward up to 20 years.⁷²

Though the credit is claimed by individuals and businesses purchasing the vehicles, manufacturers are limited as to the number of vehicles they can make that would qualify for the tax credit. Per the authorization, each manufacturer can sell 200,000 vehicles that qualify for the credit.⁷³



After that cap is reached, the value of the credit phases down over a year, at which point the credit is eliminated for that manufacturer.⁷⁴ Both Tesla and GM have reached the limit and must now phase down.⁷⁵

Temporary tax policy is often poorly designed and tends to take on a life of its own; this credit actually had a lot of foresight in its design. It gave manufacturers a fair shot to work out their technology by connecting it to units sold rather than a specific timeframe. Then it provided a phasedown instead of a cliff. This credit also gave us enough time to see whether the incentive would actually change anyone's behavior. It turns out the answer to that question is mostly no. A study by the National Bureau of Economic Research (NBER) found that a whopping "70 percent of consumers would have purchased EVs without the subsidy."⁷⁶

While this should be enough to demonstrate that the EV tax credit should be allowed to phase down as currently scheduled, there is even more evidence to support that. The same study from NBER also found that the cars being replaced by the EV claiming the credit did not have worse gas mileage but rather replaced conventional vehicles whose gas mileage was more than 4 mpg above the national average.⁷⁷ A remarkable 12 percent were replacing hybrid-electric vehicles.⁷⁸

The credit is minimally impacting people's behavior, and its impact on tax expenditures is significant. According to the Joint Committee on Taxation, the credit cost \$2.2 billion from FY11 to FY17 and is expected to cost \$7.5 billion between FY18 and FY22.⁷⁹ To add insult to injury, the credit is predictably going to those on the high end of the income distribution: 78 percent of the credits in 2016 went to tax filers with an adjusted gross income (AGI) of \$100,000 or more, and 7 percent went to those with an AGI of more than \$1 million.⁸⁰ Ultimately it seems clear that those who can afford these expensive status symbols can afford and would purchase one without government support.

An additional problem is that EVs do not pay any of the required highway gas tax. So EV users get to drive on the road that everyone else pays for—in a car that everyone is paying for.

SOLUTION

We should allow the credit to phase out as scheduled rather than continuing to support a credit that has yielded few results. EVs are good enough to stand on their own four tires.

Cost of 301 Tariffs on the US Economy

COST: \$34 billion to American consumers—and counting⁸¹

China has been a problem for US businesses for decades. The Communist Party encourages theft of US intellectual property (IP) and maintains unfair joint venture requirements. It also facilitates investments and acquisitions, which results in large-scale shifts in IP from US companies to Chinese firms, and conducts a host of cyber activities that impede US business and government activity. These problems are nothing new, but the Trump Administration has rightly decided to tackle them head-on. The enthusiasm of this White House to forcefully address unfair Chinese trade practices is needed and refreshing.

However, the methods by which the Administration has sought to address the problems posed by China may have simultaneously hurt the US economy.

For much of the last two years, steel and aluminum tariffs have received the most attention from Congress and the media. To date the federal government has collected from US importers more than \$8 billion in steel and aluminum tariffs.⁸² What might shock many people is how much our government has collected in tariffs on Chinese imports from US importers.

Since July 2018, CBP, which collects all import duties such as tariffs, has received more than \$30 billion in tariffs paid on Chinese imports.⁸³ Every penny of this \$30 billion was paid by US importers of Chinese goods subject to the tariffs applied under Section 301 of the Trade Act of 1974. Imported goods coming into the US that are subject to the tariffs include oysters, honey, carrots, ice hockey gloves, hats, hammers and screwdrivers, vacuum pumps, air conditioners, sewing machines, television cameras, measuring tapes, and fire alarms—to name just a few of the thousands of products.

These products subject to US tariffs are clearly everyday items used by millions of Americans. Thus an increase in the cost of these items by 25 or 30 percent has an enormous and detrimental impact on the lives of all Americans—especially lower-income families. If the price of an air conditioner goes up by 10 or 20 percent, that's no big deal to someone in an upper-echelon tax bracket. But to someone at or below the poverty line, a 10- to 25-percent increase in price is a huge jump. Now apply that same scenario to the nearly \$600 billion worth of goods that US businesses and consumers buy from China.⁸⁴ The tariffs are not a sustainable solution for Americans living on Main Street.



SOLUTION

Unsustainable tariffs are why I introduced the Import Tax Relief Act earlier this year. If enacted, my bill would require the US to create a process by which US importers of Chinese goods subject to the Section 301 tariffs would be able to request tariff relief. Such relief would be granted immediately if the tariff on the imported good(s) would cause an increase in the cost of living for low-income families in America. This legislation is essential to ensure that US families keep more of their paychecks and don't empty their wallets at the grocery store as a price for political wins.

Furthermore, it's time to enlist the support of our allies around the world to confront China's trade malpractices. Many others, including the Europeans, have raised the very same issues with China that the Trump Administration has raised. Since China is the real problem here, let's not get distracted by the appeal of protectionist trade policies and instead work with our allies to change China's bad behavior.

\$11.6 Million for Zombies

COST: \$11.6 million

In an effort to identify and prevent payments after death, the Social Security Administration (SSA) established a program under which states and US territories can voluntarily contract with SSA to provide the agency with death data to compare with its records. States electronically submit death reports to SSA, and SSA automatically posts the state death information and terminates payments to deceased beneficiaries. Unfortunately for taxpayers, Puerto Rico does not have such a system in place, which has led to millions of overpayments to dead people.⁸⁵

The Puerto Rico Department of Health provided SSA's watchdog, the Office of Inspector General (OIG), with the vital records data of approximately 568,000 Social Security number holders who died in Puerto Rico from January 1992 through December 2016.⁸⁶ OIG matched the data against SSA payment records, and their findings were incredibly concerning. OIG found that SSA issued approximately \$11.6 million in posthumous payments to 149 beneficiaries who died in Puerto Rico during that time period.⁸⁷ OIG also identified 33,258 non-beneficiaries who were deceased according to vital records at the Puerto Rican Department of Health but whose death information was not in SSA's system, which could potentially lead to further improper payments.⁸⁸

SOLUTION

It could not be determined why the deaths were not in SSA's system or whether Puerto Rico reported the deaths to SSA. Extending the electronic reporting system to Puerto Rico should help ensure that deaths within the territory are correctly and timely reported to SSA.



Jamming in Jail

Quick question for you, should prisoners have cell phones in prison? Thousands of prisoners do. Illegal cell phones are smuggled into America's prisons by the thousands each year through a variety of means including drones, incoming vehicles, and facility staff. Due to the growing illegal market for the phones, individuals are paid an average of \$50 to \$1,000 to smuggle the contraband into state facilities.⁸⁹ Phones go for even higher rates if the risks and security protocols at the facility are higher.



Oklahoma has experienced numerous challenges and risks that contraband has inflicted on its prison system.⁹⁰ According to the Oklahoma Department of Corrections, 52,039 contraband cell phones have been confiscated in the state's correctional facilities since 2011.⁹¹ Once inside prison walls, the phones are used to conduct criminal activities ranging from cash transfers for drugs and extortion, to ordering violence against individuals outside of prison. Prison staff are even subject to threats or violence outside of prisons by disgruntled inmates.

Most recently Oklahoma experienced a statewide correctional facility lockdown from gangs ordering coordinated riots using contraband cell phones across the prison system.⁹² Following the riots, the Oklahoma Governor issued an executive order directing the state to research and implement technology solutions to address the ongoing threat.⁹³

This issue isn't unique to Oklahoma; state and federal prisons across the nation are struggling to combat the influx of contraband phones and resulting illegal activity. As a result, in February 2018 Federal Communications Commission (FCC) Chairman Ajit Pai convened a meeting of federal, state, and industry stakeholders to address the issue. Subsequently, the wireless industry's trade organization, CTIA, formed the Contraband Phone Task Force to identify potential solutions. The group is comprised of the Federal Bureau of Prisons (BOP) and the Association of State Correctional Administrators. Each participant is uniquely positioned to solve the many issues surrounding contraband cell phones in prisons if the task force actually wanted to solve the problem—more on that later.

Current federal law does not allow the complete jamming of cell phone signals—even if we had the technology available to do it. The 1934 Communications Act currently prohibits the interference of signals, which has been the basis for outlawing technology that jams cell phone signals.⁹⁴ Due to public safety concerns, the technology is largely only available for use at the federal level for certain national security purposes.

I recognize that there are concerns—primarily from the cell phone industry—over signal jamming. For years the industry has pointed to the need for further study of any unintended effects and even commissioned a report in 2018 through its task force studying jamming technology. However, the industry could only conduct a lab study of jamming in a restricted setting.⁹⁵ Given the membership of the task force, I would have hoped for greater coordination between the industry and federal stakeholders for a more robust study with more useful results. The study ultimately ended with a call for additional studies on jamming technology and punted the issue yet again.

SOLUTION

We should continue to prohibit jamming technology in public places and for most other applications, but state correctional facilities should be able to use jamming technology. We don't need a study that recommends more studies; we need solutions. FCC should establish engineering standards for cell phone jamming. BOP should install jamming devices in all facilities to identify best practices for installation and to encourage private innovation in jamming devices.

The 1934 Communications Act should be amended to allow state and local facilities to jam cell phone signals. It is time for cell phone companies to stop fighting signal-jamming devices and start helping prisons secure their facilities from devices that are essential outside prisons but illegal on the inside. States should ultimately be able to appropriately choose which technology is best suited for their budgets and the needs of each correctional facility.

OZ: Too Many Yellow Brick Roads

Over the years Congress has created several programs to incentivize investment in underserved and impoverished areas of the country through the tax code. The latest of these efforts yielded a new program established under the Tax Cuts and Jobs Act (TCJA) called an *Opportunity Zone* (OZ).⁹⁶ OZs are designed to encourage private investment in underprivileged areas dealing with stagnant economic growth and a lack of business activity. Specifically, an OZ reduces or delays capital gains taxes for those investing in economically distressed areas if they hold on to the investment.⁹⁷ The program is well thought out and well-intentioned, and I am hopeful it will positively impact communities needing an economic boost.

But the new OZs are stacked on top of older programs that have little to no data showing whether or not they work.⁹⁸ These programs include *Empowerment Zones*, *Renewal Communities*, *Enterprise Communities*, *Commercial Revitalization Deductions*, and a *New Markets Tax Credit*, just to name a few.

As part of my role on the Senate Finance Committee, I recently took part in a task force exercise that sought to analyze the effectiveness of some of the older economic improvement efforts. The task force left me with one major takeaway: we have no idea if any of these programs are effective at improving the lives of low-income Americans living in underserved areas—no idea whatsoever.⁹⁹ Even the Joint Committee on Taxation, the official scorekeeper and data tracker for all things tax/revenue, couldn't say whether the older programs were effective, largely because we lack any sort of relevant data.



With the creation of OZs, we've layered another effort on top of existing programs designed to help distressed communities. We must put in place a system that closely tracks economic investment at the project level and then study that data to ensure we know the program is truly benefiting low-income Americans and families. And if it turns out the program isn't working as designed, we can make reforms to fix it. Blindly putting in place programs without tracking performance and effectiveness is a terrible way to promote economic investment and growth. We must learn from past mistakes and make this program work well for our neighbors living in communities that need the help OZs have the potential to provide.

SOLUTION

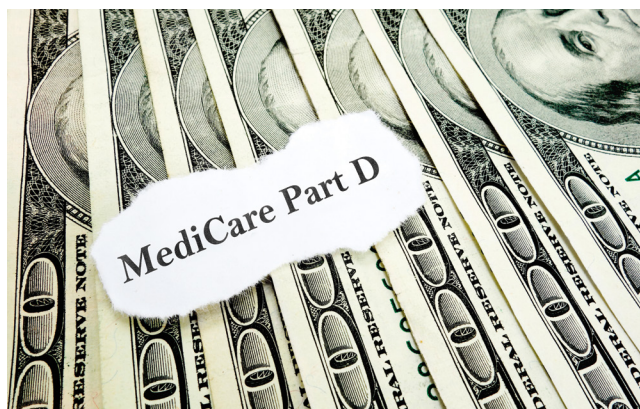
Why not combine forces on these programs while cutting back duplication in government red tape and bureaucracy? Why not have one program dedicated to improve economically distressed areas instead of several fragmented pieces that don't coordinate or interact with one another? Taxpayers demand commonsense approaches to these problems and efficiency in the way we spend their taxpayer dollars—including credits allowed through the tax code. In the days ahead, I will continue to work with my colleagues on the Senate Finance Committee to consolidate and streamline the tools we have to spur economic development through the tax code, which could ultimately improve the lives of those living in communities that need a hand up, not a handout.

Generic Tiering in Medicare Part D

COST: \$22 billion

As rising prescription drug prices continue to plague American families, millions who rely on Medicare Part D for prescription drug coverage are looking for commonsense solutions that will increase their access to more affordable medicines and lower their out-of-pocket costs.

Medicare patients' out-of-pocket costs for prescription drugs are determined by their insurance plan formulary, which is essentially a menu of options of covered drugs. Traditionally Medicare Part D plans have had five prescription drug formulary tiers, with tiers 1 and 2 reserved for lower-cost generic drugs, tiers 3 and 4 reserved for more expensive branded drugs, and tier 5 reserved for specialty drugs—i.e., the most expensive. The lower the tier, the less the patient pays out of pocket. Historically generic drugs have been placed on tiers 1 and 2 immediately after launch, which gives lower-cost options to patients and reduces out-of-pocket expenses. However, this benefit for Part D seniors is rapidly eroding, and in recent years more and more low-cost generics are placed on higher tiers—if they are even put on a tier at all.



In fact a recent study showed that nearly half of all new generics approved since 2016 were excluded from *all* formulary tiers, and only 14 percent of generic drugs have been put on the lowest tiers between 2016 and 2019.¹⁰⁰ Contrast that with 2011 when 71 percent of all generics were on the lowest tier.¹⁰¹ According to the same study, this practice has resulted in seniors paying nearly \$22 billion more in out-of-pocket costs in recent years.¹⁰² Let that sink in for a minute.

Why is this happening? Why do Part D seniors find it increasingly difficult to access more

affordable medicines? Too often brand-name pharmaceutical companies engage in what is called a *rebate trap*. They increase prices and then leverage rebates that are given to Pharmacy Benefit Managers—the middlemen who negotiate drug formulary prices on behalf of third parties—to exclude competition from lower-cost generics and *biosimilars*. As a result, Americans pay more at the pharmacy counter and do not receive the benefit of competition that lowers drug prices.

Further increasing costs for seniors, Part D plans have only one formulary tier for all specialty drugs, which account for only 2 percent of prescriptions filled in the US but constitute 40 percent of spending.¹⁰³ Specialty drugs are often used to treat chronic and complex conditions and generally require Part D beneficiaries to share more of the costs. Despite the availability of lower-cost generic versions of these products, Medicare Part D has not evolved to allow seniors to share in the savings.

SOLUTION

Three simple changes to Medicare Part D will modernize the program and deliver significant savings to patients at the pharmacy counter. First, we should ensure patients have access to lower-cost drugs when they come on the market. Second, these drugs should be placed on the lowest cost-sharing formulary tier. Third, we should create a specialty tier for lower-cost alternatives with reduced patient cost sharing.

It's time for Congress to pass meaningful, simple-to-understand legislation to address the skyrocketing costs of prescription drugs. I urge my colleagues to join me in advocating for these important changes that will ensure seniors have access to affordable medicines and, most important, substantially reduce out-of-pocket costs for patients.

Pepperoni or Cheese? Let Uncle Sam Regulate That for You

There are at least 430 departments, agencies, and sub-agencies in the federal government,¹⁰⁴ according to the Federal Register Index. The reality is that no one is exactly sure how many federal entities exist,¹⁰⁵ meaning we don't know the exact number of programs or the exact number of federal employees and contractors performing work on these programs.

With so many federal programs, it is no surprise that American taxpayers are simultaneously paying for duplicate services, experiencing confusing fragmentation in oversight by different agencies for similar items, and even experiencing gaps in services due to the perplexing mix of federal programs.¹⁰⁶

For example, there are multiple regulations for a company that makes frozen pizza, down to the toppings, depending on whether the pizza is cheese or pepperoni.¹⁰⁷ USDA would inspect the meat for the pizza up to three times, but the Food and Drug Administration (FDA) would have jurisdiction over the cheese pizza. Additionally, USDA, DOD, and the Departments of Veterans Affairs (VA) and the Interior (DOI) all have similar programs for maintaining federal military and veteran cemeteries.¹⁰⁸

The possibilities for cost savings are almost endless. For example, in President Trump's federal agency reorganization plan, one proposal was to streamline federal financial literacy programs. As highlighted by a prior Government Accountability Office (GAO) report,¹⁰⁹ more than 15 federal financial literacy programs across different agencies cost American taxpayers \$68 million in overlapping services. Eliminating this duplication provides an opportunity for consolidation that would deliver better services to taxpayers and save money. In another example from 2013, President Obama offered a proposal to consolidate federal trade and business-related functions to the Department of Commerce (DOC), which would have eliminated 1,000–2,000 federal jobs and saved \$3 billion over ten years.¹¹⁰



SOLUTION

One solution is to merge programs, agencies, and bureaus within the federal government with a focus on saving taxpayer dollars. Congress or the White House have made many attempts to align federal programs, agencies, and bureaus to reduce duplication. The current Administration's plan, *Delivering Government Solutions in the 21st Century*,¹¹¹ is the most recent example. The Legislative and Executive Branches need to have a serious dialogue about these proposals and identify paths forward on merging or realigning programs, agencies, and bureaus. This is not about taking away services; it's making sure we provide *efficient* services.

Teamwork Makes the Federal Dream Work

USDA's National Finance Center is one of the largest human resources and payroll-service providers in the federal government. So why is an agency principally concerned with farming, food products, and forestry providing administrative, non-mission services to more than 130 other federal entities?¹¹² Or why does the federal government have so many different systems for common business support functions? For example, the government has more than 40 versions of a travel software package, none of which can integrate or connect.¹¹³

The private sector has embraced the use of *shared services*, or the consolidation of common administrative business functions critical to operations but not critical to core mission activities, such as human resources, legal, acquisitions, or travel. In the federal government, services have often grown organically over time. If one agency became particularly good at an activity—say, providing payroll to employees—other agencies would seek to copy that system or recruit that agency to do it. That process is what led an agency that was first developed to serve farmers and ranchers to now process payroll for thousands of federal employees. But is that the best way to approach running the federal government?

Every administration since President Reagan has sought to modernize the federal government, deliver better services, and save taxpayer dollars by better utilizing shared services, but the federal government has often fumbled these efforts and remained locked into 20th-century business practices with aging hardware and software and outdated practices.¹¹⁴

In 2015 the Partnership for Public Service convened a roundtable of shared services and estimated that a comprehensive government-wide approach could save American taxpayers between \$21 and \$47.2 billion¹¹⁵ over ten years. The federal government spends \$25 billion annually on common mission support (hiring, travel, payroll, etc.), and according to a 2019 Office of Management and Budget (OMB) estimate, a move to a more comprehensive shared-services platform could result in a cost savings of 5 to 30 percent.¹¹⁶

SOLUTION

The Executive Branch must take the lead and remain vigilant to ensure government services are streamlined. I applaud the current Administration's Sharing Quality Service initiative¹¹⁷ and hope this forward progress can provide a framework for streamlining and modernizing shared services across the government. It will take vigilance to cross the goal line and achieve consolidation of administrative services that align the activities of agencies with their core missions.

No agency has a system to care for federal employees from interview to retirement. Instead agency human resources departments navigate a complex web of software, shared services, and legacy hardware. Our federal workers continue to find human resources very user-unfriendly.



Census of the Century—Hopefully

In 2020 the US Census Bureau will fulfill the constitutional mandate to conduct a complete and accurate count of every household in the US. Census Day is April 1, 2020, and the Bureau will utilize more than 1.5 billion printed items during the 2020 Census.¹¹⁸ This includes initial letters to households, questionnaires mailed to households, and follow-up mailings like postcards. Wait—we're mailing paper forms to be filled out and mailed back? What year is this?

2020 will mark the first time Americans have the opportunity to submit their Census responses online.¹¹⁹ The Census Bureau's goal is for 55 percent of the population to respond online using computers, phones, or other mobile devices.¹²⁰ And while this technological shift is moving the ball down the field, we still have some distance to go for a touchdown. Census Day isn't the only significant federal event in April. Every April 15 is Tax Day, the deadline for filing the previous year's federal income tax returns. The Internal Revenue Service (IRS) estimates that only 10 percent of households filed their 2018 taxes by mailing in paper forms, with 90 percent filing their taxes electronically.¹²¹ If 90 percent of US taxpayers can complete their taxes online, then these same people are capable of responding to the Decennial Census in the same manner.



SOLUTION

Increasing rates of self-response online would save American taxpayers millions of dollars. The biggest win for taxpayers would be to combine IRS filings along with the Census. Every ten years when we have a Census, a few extra questions could be added to IRS forms so people could fill out and submit both at the same time. This makes economic sense for taxpayers and would be much more efficient for everyone's time.

Election Security Grants

It is no secret that the Russians attempted to interfere in the 2016 presidential election. While no actual votes were altered, the threat was—and still is—real. The federal government has provided states with more than \$3.6 billion since 2003¹²² to improve their election processes, but some states did not improve their election security. In 2018 Congress approved an additional \$380 million for state election security. The new money was disbursed to states by September 20, 2018.¹²³

But the majority of those dollars have yet to be spent. Even though all 50 states, as well as Washington, DC, American Samoa, Guam, Puerto Rico, and the US Virgin Islands, have all received their share of the \$380 million, not even half of that amount has been spent.¹²⁴ In fact as of July 2019 only \$108 million of that massive amount have been expended to protect Americans' hard-fought victory for democracy at the voting booth.¹²⁵

But the Fumble doesn't stop there. The House of Representatives recently voted to provide an additional \$600 million to states in FY19 even though states have not spent even half of the money they were given more than a year ago.¹²⁶ It's nonsensical to keep providing states more money for election security if they are just going to stuff the money under their mattresses. While states must continue to run elections, they must also be good stewards of taxpayer dollars by spending that money to improve cybersecurity, hire staff, or invest in machines that produce auditable results. Stockpiling federal money won't do anything to secure our elections.



SOLUTION

In 2018 I introduced the Secure Elections Act with a bipartisan group of senators to reinforce the essential priority of local election security. The goal of the bill is simple: maintain states' rights to conduct free and fair elections but also have security measures in place to be able to audit results and prevent attempts to hack our election systems.

Uncle Sam Wants You—Screened, That Is

Providing safety and security for everyone across US military installations is a prudent and important investment for our service members and their families. In an effort to secure US military installations against intruders who seek to do harm, the DOD implemented Physical Access Control Systems (PACS) that digitally scan an entrant's credentials to confirm his or her identity with an authorized personnel database. The implementation and utilization of this tool was a wise investment to ensure everyone on base can work and live in safety.

Congress passed language in the FY18 National Defense Authorization Act (NDAA) that required the GAO to examine DOD's use of all its PACS and security systems.¹²⁷ Unfortunately the GAO report found that three of the military services—the Army, Navy, and Marine Corps—have not monitored the use of PACS at installations around the globe.¹²⁸ This is a Fumble for taxpayers for two reasons.

First, by not exercising oversight of the program, the federal government is not following through on the security investment made by taxpayers. Without oversight from the Pentagon, there is no way to ensure that PACS are being properly utilized—or are being utilized at all.

Second, the Pentagon does not have data to evaluate the system's effectiveness or make informed decisions about the use of PACS in the days ahead.¹²⁹ The Army, Navy, and Marine Corps have missed an opportunity to ensure that future conversations about base safety and personnel access are informed by data and experience.

SOLUTION

In its FY18 report, GAO made five recommendations, all of which will require congressional accountability to ensure that our service members and their families are safe on our military installations.



Unhealthy Homes for Heroes

COST: \$61 million

The Military Housing Privatization Initiative (MHPI) was started with good intentions. In FY19 the federal government spent more than \$61 million in privatized housing for our women and men in uniform.¹³⁰ The original idea was to get the Armed Forces out of the family housing business and put it into the hands of the housing professionals. Letting businesses with real estate and rental expertise handle housing would free the warfighter and DOD to focus on defending our nation. The MHPI was and is an excellent example of how to utilize the strengths of the private sector in our nation's defense—if it was designed well.

Poorly written agreements between the service branches and housing companies focused on the wrong performance measurements, such as maintenance request response times, rather than customer satisfaction with the repairs made. Additionally, these agreements limited the ways each service could hold housing companies accountable when they failed to live up to their promises. Worst of all, service members and

their families had little recourse if housing companies failed to provide a high-quality, healthy home or if the companies didn't make needed repairs. Service members and their families could only complain through their chain of command, and it was up to individual commanders to try and hold non-performing housing companies accountable.



Unfortunately these problems were not isolated to one state, one installation, or even one military service. The Military Family Advisory Network, a nonprofit group, received nearly 17,000 responses to a survey about privatized housing experiences.¹³¹ Shockingly, more

than half the respondents were dissatisfied with their living conditions. Closer to home, the wife of an Air Force member stationed at Tinker Air Force Base, Janna Driver, testified before the Senate Armed Services Committee earlier this year.¹³² She provided harrowing testimony about neglected maintenance and the housing company's failure to remediate mold found throughout the family's home, which made her husband and children sick. Military families from both Tinker Air Force Base and Fort Sill have made similar complaints. Janna's experience in substandard military housing is unacceptable.

All military members and their families deserve and should expect high-quality, healthy homes. The MHPI can deliver on that promise if DOD manages the program effectively.

SOLUTION

Thanks to brave military families like Janna Driver's, Congress became aware of the serious problems DOD encountered in managing the MHPI and held senior military leaders accountable. Each of the service secretaries and their military chiefs pledged to address military family housing issues directly and immediately. The services also began work on a Military Housing Resident Bill of Rights. Congress addressed all the problems that have surfaced with MHPI in the FY20 NDAA by making Military Housing Privatization Reform a stand-alone title of the measure.¹³³ Title XXX "Military Housing Privatization Reform" of the Senate passed FY20 NDAA provides a Tenant Bill of Rights for Privatized Military Housing, ensures agreements between the services and housing companies are enforceable, allows the withholding of incentive payments from housing companies that aren't upholding their end of the bargain, and takes numerous steps to ensure environmental and health hazards in military privatized housing are swiftly addressed. The pieces are now in place to ensure service members and their families stationed in Oklahoma have the high-quality housing they deserve.

COTS Solutions Are Not COST Effective

Federal agencies enjoy enormous purchasing power. In FY17 DOD spent \$320 billion on federal contracts, representing 8 percent of the total federal budget and more than all other government agencies combined.¹³⁴ That number increased during the next two fiscal years and is poised to increase again in FY20.

However, instead of purchasing the proper equipment to address our nuclear arsenal, IP, and other critical programs, federal agencies purchase commercial off-the-shelf (COTS) solutions. Many COTS are lower quality and are not equipped to do their intended jobs.

When Congress passed the Federal Acquisition Streamlining Act (FASA) in 1994, it directed DOD to look first to private companies when making purchases.¹³⁵ Yet as recently as 2016, Palantir, a private technology firm, had to sue the US Army in order to get it to even consider purchasing the company's data analytics software, which had the proven ability to save soldiers' lives.¹³⁶ Why build something new from scratch if a US company already has a solution "off the shelf"? But what if that off-the-shelf technology does not work?

The National Nuclear Security Agency (NNSA) decided earlier this decade to purchase cheap, off-the-shelf electrical capacitors for two nuclear weapon modernization programs. But NNSA failed to ensure the capacitors would meet quality control standards for the world's most powerful weapons. In September 2019 the NNSA deputy administrator told Congress that the parts, which initially cost just \$5 each, must now be replaced in 370 nuclear weapons at a total cost of at least \$725 million.¹³⁷

In another example the Air Force currently has to reverse-engineer and manufacture parts for a number of decades-old aircraft because the service initially failed to purchase the IP rights to the aircraft's internal systems. As a result, the plans for some of these decades-old systems simply no longer exist, making it impossible to source the parts from the private sector.¹³⁸ It should not be this difficult, risky, or costly to replace parts. Federal agencies can and must purchase COTS solutions that deliver vital capabilities to our nation's military heroes, secure our nation, and protect American taxpayers.

SOLUTION

The Trump Administration has thankfully put a renewed emphasis on the purchase of smart, cost-effective COTS solutions across the federal enterprise. Administration guidance will help prod reluctant federal agencies to consider less expensive, American- and Allied-made COTS solutions across a broad range of applications instead of costly, difficult-to-maintain government systems. Thanks to congressional oversight, NNSA is re-examining its entire COTS purchasing strategy with an eye for ensuring the no-fail components of our nation's nuclear deterrents are manufactured to exacting engineering standards or in some cases built in-house.

In addition Congress included language in the 2018 NDAA that directed DOD to develop a comprehensive policy for purchasing IP rights. In August 2019 DOD announced it was standing up a new office to focus exclusively on IP negotiations with the private sector.¹³⁹ Working together with the Administration, Congress is making sure federal agencies buy COTS solutions that deliver advanced capabilities to our warfighting heroes quickly, spend taxpayer dollars in the private sector responsibly, and consider future IP issues sensibly.



When 10% Is Not Really 10%

The Post-9/11 GI Bill is an exceptional benefit that our service members earn through their service to our nation. If you have served at least 90 days on active duty, you are eligible to have a portion of your college or training program paid by the federal government. If you serve a total of 36 months or more, you can earn 100 percent of your entire education.



Since the Post-9/11 GI Bill was enacted in 2009, the VA has administered an average of \$12 billion a year,¹⁴⁰ totaling approximately \$94 billion.¹⁴¹ Most education options can be approved to receive GI Bill funds, including public, private, nonprofit, for-profit, and trade schools and certification and training programs.

Unfortunately over the years, some schools have taken advantage of recruiting veterans just for the dollar signs that come along with enrolling them.

Don't get me wrong. The majority of post-secondary institutions offer quality programs that accommodate the needs and unique skill sets of our veterans and service members. Many programs focus on career skills such as mechanics, welding, culinary, cosmetology, truck driving, and more.

However, there has been concern that some for-profit schools are run more like businesses than higher-education institutions, so veterans' benefits are abused. To ease this concern, President George H.W. Bush signed a bipartisan bill into law in 1992 that limited the amount of federal funding that for-profit schools may receive from taxpayers, which became known as the *90/10 rule*. This law requires for-profit schools to obtain at least 10 percent of their revenues from non-federal sources, dollars outside of those paid by taxpayers. That seems straightforward, right?

However, current law does not include Post-9/11 GI Bill and tuition assistance dollars on the 90-percent side of the ledger. That means for-profit schools can still receive 100 percent of funding from the federal government if they utilize Post 9/11 GI Bill or tuition assistance dollars by recruiting and admitting veterans and service members, which has led to the growing concern from veterans groups that for-profit schools may recruit veterans and service members more aggressively than civilian students so schools can remain in compliance with the law and remain 100 percent federally subsidized.

Two now-shuttered for-profit colleges, ITT Technical Institute and Corinthian Colleges, received more than \$1 billion in Post-9/11 GI Bill benefits before suddenly closing their doors, leaving nearly 7,000 student veterans and every American taxpayer in the lurch.¹⁴² Congress recently passed a law to reinstate those benefits to veterans who lost their earned benefits at those schools at an additional cost to taxpayers.

While I am thankful for the work that for-profit schools have accomplished for veterans, I think we can all agree that schools should not receive 100 percent of their revenues from taxpayers to keep their doors open.

SOLUTION

I introduced the bipartisan Protect Veterans' Education and Training Spending (Protect VETS) Act of 2019 as a solution to move GI Bill and tuition assistance funds to the 90-percent side of the ledger, just like all other federal funds schools receive. This just means that for-profit schools will now need to secure at least 10 percent of their revenues from sources other than taxpayers. While this issue has unfortunately been plagued by partisan politics in the past, we were able to find a commonsense solution to protect veterans, taxpayers, and quality for-profit schools alike. This is a balanced measure to ensure that schools have the best interests of student veterans and service members in mind when they recruit them to their institutions.

D for Default Rates!

*\$163 billion of nearly \$1.4 trillion in outstanding federal student loan debt was in default as of June 2018.*¹⁴³

The *cohort default rate* (CDR) is a key tool used by the federal government to hold schools accountable for borrower outcomes and to protect borrowers and taxpayers from the costs associated with student loan defaults. Per the CDR, an institution of higher education may lose eligibility to receive federal student aid if a significant percentage of its borrowers default on their loans within the first three years of repayment.¹⁴⁴ Unfortunately the CDR only tracks the first three years of repayment, and there are significant limitations to this accountability tool.



In April 2018 GAO found that some schools were gaming the system by “hiring consultants that encouraged borrowers with past-due payments to put their loans in forbearance, an option that allows borrowers to temporarily postpone payments and bring past-due loans current.”¹⁴⁵ Many of these students default in the fourth year, which improves the school’s default rate or CDR but actually hurts the students.

GAO found that more than 800 schools had hired these consultants. While some consultants gave accurate information to students regarding their repayment

options, others were spreading false information or pressuring students into forbearance.¹⁴⁶ Eight of the nine consultants GAO looked at were only paid for their services to students during the first three years of the repayment period. GAO found that more than 260 additional schools would be at risk of losing access to federal student aid if the CDR rate were to exclude borrowers who were in forbearance for 18 months or more and who did not default during the three years.¹⁴⁷

Forbearance exists to help students avoid default in the short term for many reasons such as economic hardship, unemployment, military service, rehabilitation, or further education. The GAO report shows, however, that some schools are using this tool incorrectly to game the system for personal gain—at the expense of students. While in forbearance, students accrue interest, which increases total loan balances and can put them at higher risk of default in subsequent years. Consultants hired by schools for the three years often leave students to deal with higher costs and other consequences of their selfish advice.

SOLUTION

Congress should strengthen schools’ accountability for student defaults by revising the CDR to account for students who spend long periods in forbearance during the three years. It should add a repayment rate mechanism to the CDR and require consultants to be accountable for giving accurate and complete information on student options for loan repayment. Protecting schools but hurting students is a major problem.

FEMA Fraud

FEMA has made tremendous progress in the last few years, even while in the midst of record-setting natural disasters. In addition to providing victims with needed assistance in the immediate aftermath of a disaster, FEMA has begun to set its focus on mitigation practices and other preparedness activities.

However, we owe it to communities utilizing FEMA funds to make sure they get the support they need. With increased oversight and assistance, FEMA will be better able to serve those who need it. For example, the DHS OIG recently found that the state of Washington's Public Assistance Grant program was effective.¹⁴⁸ That is great news. We need to work to make sure every state has that same level of success. However, the DHS OIG says more work needs to be done to improve fraud prevention in its disaster assistance programs.

Let's take a look at a few FEMA Fumbles and see how we can work toward improvement.

Promptness over Integrity

Fiscally irresponsible behavior at FEMA is primarily due to the rapid payment disbursement times required in the aftermath of a disaster. Because FEMA focuses on getting money out the door to needy survivors, chances for mismanagement of funds skyrocket.¹⁴⁹

Unfortunately there is a long track record of mismanagement. FEMA employees need training in ways to detect fraud, waste, and abuse and decrease improper payments. Ironically, FEMA does require its employees to receive annual training to reduce fraud and improper payment. But even though it is mandatory, 93 percent of FEMA employees have not completed the training.¹⁵⁰



SOLUTION

The solution is easy: FEMA needs to follow through on the mandate for fraud prevention and awareness training. Making FEMA employees attend the training will help ensure that disaster recovery dollars are disbursed quickly *and* correctly.

Transportation Troubles

FEMA financial assistance was never intended to be a substitute for home, flood, or auto insurance, but the agency often fails to ensure the funds it disburses are used properly. For example, after a disaster survivors are eligible to receive transportation assistance,¹⁵¹ which means that FEMA can issue payments to repair or replace a vehicle. However, FEMA has not properly allocated the funds and has failed to review survivors' existing insurance policies or to determine whether or not a disaster victim owns a second car. FEMA has also not taken into account the pre-disaster market value for cars, which has led to payments being disbursed for more than vehicles were actually worth. Furthermore, FEMA has failed to verify that transportation funds were spent for transportation purposes. What should be a simple task has resulted in a major failure.

The DHS OIG recently found that because of these missteps, FEMA mismanaged up to \$60 million throughout 2017.¹⁵² *\$60 million for one year*—that should have our attention.

SOLUTION

FEMA needs to ramp up its oversight practices to make sure transportation funds are spent on transportation needs. FEMA should also require certain eligibility documentation, and—gasp—review it to make sure proper payments are made.

\$306 million?

In 2012 Hurricane Sandy swept through the Atlantic region and wreaked havoc on the northeast US. Unfortunately, the DHS OIG notified FEMA in September 2019—seven years later—that it did not follow guidelines to manage the funding properly. Specifically, FEMA failed to review the \$306 million obligated to repair damage to New York City’s Holland Tunnel.¹⁵³



When billions of dollars are divvied up following a disaster, it should not surprise us that funds can be mismanaged. However, what is concerning about this case—other than the \$306 million error—is the fact it took seven years to conclude that guidelines were not followed and that FEMA management failed to ensure the accuracy of cost estimates.

This finding led to an OIG recommendation that FEMA de-obligate \$123 million due to lack of assurance.¹⁵⁴ Regrettably, this is not a unique situation. Too often FEMA is notified years after a disaster that it either misspent funds or did not track the dispersal correctly.

SOLUTION

FEMA should work *proactively* on oversight instead of waiting years *after* recovery projects have taken place. While recent steps have been taken in the right direction, there is still a long way to go, especially with the recent increase in natural disasters to which FEMA must respond.

Debris Removal

FEMA does outstanding work to help communities recover from natural disasters. However, in recent years states and local communities have begun to rely heavily on FEMA assistance, which has a history of fraud, waste, and abuse at the state and local levels.



In the hours following a disaster, contractors are hired to begin the debris removal process. However, once the president approves FEMA assistance, these contractors often raise their prices significantly because neither the state nor local community is footing the bill. Instead Uncle Sam is on the hook for the bill using his large checkbook of your federal tax dollars. Because recovery efforts are often needed ASAP, price gouging occurs, which is a classic case of taxpayer abuse.

In 2016 FEMA abandoned its oversight practice for debris removal and passed the responsibility

along to the sub-recipients, which include cities and local communities. What followed was a complete lack of oversight by FEMA of one of its most expensive FEMA activities. A recent OIG report claimed that current FEMA guidance does not ensure adequate oversight of debris removal, the cost of which has reached \$1.5 billion for Hurricane Irma alone.¹⁵⁵ That’s \$1.5 billion of our money that received little to no oversight, coupled with a program that has been notorious for fraud, waste, and abuse.

SOLUTION

We can work to provide timely debris removal after a disaster while protecting our federal tax dollars. Senator Rick Scott of Florida introduced the Disaster Contract Transparency Act of 2019,¹⁵⁶ which would require states to have advance contracts for debris removal in place in order to receive funding from FEMA. Advance contracting is a smart way to save tax dollars and ensure communities can quickly recover following a disaster—without price gouging.

Flooded by Red Ink

COST: \$16 billion

The National Flood Insurance Program (NFIP) covers approximately 22,000 communities in every state and provides more than \$1.3 trillion in annual coverage for flood insurance. Congress created NFIP in 1968 as a way to share the flood risk because of limited private-sector options.

Before 2005 NFIP was largely able to offer coverage to flood-prone properties while paying off any obligations through the larger pool of other policy payments. However, Hurricanes Katrina, Rita, and Wilma in 2005 brought unprecedented flood damage and claims to NFIP. Those disaster events forced FEMA to borrow \$17.5 billion from the US Treasury to cover insurance claims. Fast forward to 2012, and our national debt was increased further by \$6.25 billion in claims from Superstorm Sandy. NFIP is still accounting for previous disasters, and the program will continue to operate in the red for the foreseeable future.

Congress has set some parameters on NFIP's debt by capping the program's borrowing limit at \$30.4 billion. However, in 2017 NFIP hit its debt limit when it borrowed \$5.83 billion for claims from Hurricanes Harvey, Irma, and Maria. To prevent the program from collapsing, Congress subsequently cancelled \$16 billion of NFIP's debt. Despite the cancellation, NFIP was then allowed to borrow an additional \$6.1 billion and currently has \$20.5 billion in outstanding debt.

Make sense? It shouldn't. It's as preposterous as a credit card company writing off debt you can't pay but then agreeing to increase your credit limit.



SOLUTION

The GAO, which has added NFIP to its high-risk list since 2006, has recommended for years that Congress institute reforms to flood insurance rates. The high risk report is updated every two years, and GAO has consistently included recommendations to FEMA for NFIP reform. The most recent update to the list has 13 outstanding recommendations for program improvement. However, since 2017 Congress has failed to reauthorize the program with any reforms and has simply extended the reauthorization timeline for later consideration. With an ever-increasing \$23 trillion in national debt, taxpayers can no longer afford inaction.

Given the regularity of catastrophic flood events, it's highly likely within the next few years that Congress will face the potential bailout of NFIP again. It's time for Congress to seriously consider reforms to NFIP that will drive down debt and bring solvency to the program.

FORWARD PROGRESS

- **The GREAT Act**—As mentioned in Volume 4 *Federal Fumbles*, I have worked with Senators Gary Peters (MI), Maggie Hassan (NH), and Mike Enzi (WY) and Representative Virginia Foxx (NC) to reintroduce the GREAT Act.¹⁵⁷ The legislation builds on an HHS pilot program and would require the OMB and the largest grant-awarding agency, HHS, to create a comprehensive and standardized data structure to cover all data elements reported by recipients of federal awards, including grants.¹⁵⁸ The GREAT Act requires federal data transparency to make the grant process more efficient and effective. By streamlining data transparency requirements for grant recipients, data collection and dissemination to Congress will happen more quickly and more easily. Additionally, grant recipient reporting will ultimately be streamlined to greatly reduce compliance burdens. I'm happy to report the bill unanimously passed out of the Senate on October 22, 2019, but it still needs to pass the House. I look forward to working with OMB and HHS on the implementation of the GREAT Act. Both grant recipients and taxpayers need this commonsense reform.
- **Trade with China**—The Trump Administration focused intensely on changing our nation's trade relationship with China. In an effort to pressure the Chinese to make fundamental changes to the structure of its economy, the Administration invoked Section 301 of the Trade Act of 1974 in order to impose tariffs on Chinese imports. It is right for the President to raise these concerns with China, but it is also important to note that not all of these efforts have been beneficial for American businesses and consumers. In fact the strategy of imposing tariffs on Chinese imports has actually hurt the profits of many American companies and small businesses, causing some to lay off workers or close entirely. There are certain items and raw materials that are only available in China, and business owners, who rely on low and stable prices from the Chinese market, need stability and certainty in order to stay profitable and plan for the future. As a solution to this problem, I proposed that the US Trade Representative (USTR) create an exclusion process for its tariff regime. My proposal was simple: create a tool by which businesses can apply for tariff exclusions on specific products, goods, or raw materials that are only available in China. If claims are granted, those items will not be subject to Section 301 tariffs when imported to the US. This idea was included as a provision in the FY19 omnibus spending package as report language. In June 2019 the USTR officially created this exclusion process and invited businesses to submit their requests. I hope this solution gives relief to employers and consumers who have seen cost increases due to the trade war with China. Ultimately the real solution is fair and better trade with China including low or no tariffs.
- **American Burying Beetle Downgrade**—In the very first volume of *Federal Fumbles*, I wrote about everyone's least favorite winged insect, the American burying beetle (ABB). Even though the ABB's population has significantly increased over the years, the bug remained listed on the endangered species list. This resulted in developers purchasing \$30,000 in *beetle credits* to develop on lands where the beetle may reside. I said it then, and I'll say it again: bugs should not take priority over people. We should not drive a bug into extinction, but we should acknowledge species growth. A September 2019 proposal was made to downgrade the beetle from an *endangered* species to a *threatened* species because it no longer meets the definition of an endangered species.¹⁵⁹ This announcement is welcome news, and it is even better that it happened in Tulsa. I wish the ABB the best as it continues to reproduce.
- **FACE-ing Facts at FEMA**—As previously mentioned, FEMA struggles to manage advanced contracts in the aftermath of disasters. Thankfully, the Federal Advance Contracts Enhancement (FACE) Act passed the Senate on November 11, 2019.¹⁶⁰ The bill is a result of a GAO report that recommended nine ways for FEMA to improve its practices following the destructive 2017 hurricane season.¹⁶¹ This bill will implement those recommendations so disaster recovery is more coordinated with fewer gaps in the actual on-the-ground work. I was happy to cosponsor this bill and look forward to its signature into law.

- **Fixing Failed Oversight at DHS**—It is no surprise that our border patrol agents are stretched beyond capacity. To provide additional assistance at the border, DHS funds local and state law enforcement personnel assistance under a program called Operation Stonegarden. According to a 2017 DHS OIG report, however, the program has failed to meet its oversight responsibilities, which has led to waste and abuse.¹⁶² Operation Stonegarden has spent more than \$531.5 million since FY08, not including the \$85 million enacted for FY19 or the \$90 million requested for FY20. Thankfully I was able to secure language in the committee-passed FY20 Homeland Security Appropriations bill that requires DHS to report back to Congress on the ways it has implemented increased oversight on Operation Stonegarden. While support for our officers on the ground is critical, DHS still has the responsibility to oversee spending and prevent the misuse of taxpayer dollars.
- **Contraband Cell Phones**—As a former subcommittee chairman for the Senate Appropriations Committee, I directed the FCC and its Contraband Phone Task Force to report on its work to combat contraband cell phones in correctional facilities by using micro-jamming technology. The brief report notably highlighted the need for testing and recommended continued testing in state facilities.¹⁶³ Additionally, I worked with the Appropriations Committee on language directing BOP, in conjunction with NTIA, to report on a cost estimate to fund the testing of jamming for a full correctional facility.¹⁶⁴ These are minor but necessary steps to effectively test and legalize jamming in state prisons. I urge FCC to act on its report and bring finality to the long conversation. FCC Chairman Pai should continue to work with BOP and NTIA to develop the framework for testing. Collectively those agencies have the expertise and stakeholder connections to test an entire correctional facility. Additionally, the federal government should continue the special federal designation to test in-state facilities for a complete picture of the technology's application. Congress can then make an educated decision on where it is most appropriate to allow the use of jamming at correctional facilities. States ultimately deserve the necessary resources to keep inmates, staff, and the public safe.
- **Child Placing Agencies**—An Obama Administration regulation that took effect on January 11, 2017, expanded Title IV-E of the Social Security Act beyond federal law in a way that resulted in discrimination against faith-based Child Placing Agencies (CPAs). The regulation put CPAs in a hard place. They could either put a veil over their religious beliefs or risk a loss of funding and possibly their licenses. However, after seeing the negative impact this regulation had on faith-based groups, such as Miracle Hill Ministries in South Carolina,¹⁶⁵ HHS under President Trump issued a proposed rule to clarify the rights of CPAs with sincerely held religious beliefs to live out their faiths.¹⁶⁶ The Trump Administration's new proposal will clarify the regulation to align with current federal non-discrimination law and Supreme Court precedent. The government should not stand in the way of groups trying to find children loving homes by forcing those groups to abandon the same faiths that drive them to care for vulnerable children.¹⁶⁷ Although the proposed rule is still making its way through the process, once finalized it will open doors for all types of agencies to walk with families through the adoption process. We need more adoption and foster care agencies, not fewer.
- **Fostering and Adoption**—Since 2011 the number of children in foster care has increased by about 10,000 each year. But in FY18 due to 63,123 adoptions (which by the way is a record high) the number of children in foster care decreased by 3,788.¹⁶⁸ Though this is incredible progress, there are still more than 430,000 children in foster care, including 523 children in Oklahoma currently eligible for adoption.¹⁶⁹ Unfortunately many children age out of the system without having a secure and safe place to call home with loved ones to support them. This can lead to an increased risk of homelessness; poverty; and physical, emotional, and sexual abuse. Our nation has a lot of work ahead to find a permanent home for every child, but thanks to the dedication of child welfare advocates and foster and adoptive families who have opened their homes to vulnerable children, we continue to make progress.

- **Reducing Opioid-Related Deaths**—Opioid overdose deaths have dramatically increased over the past decade until recently. Due to the investment of billions of dollars and the passage of federal legislation (SUPPORT Act, 115th Congress), states have been able to help thousands of people working on recovery. After new regulations and additional mental health services were made available, fewer opioids have been prescribed and more life-saving substance abuse treatments have been utilized. Nationally, opioid prescriptions decreased by around 20 percent between 2013 and 2017.¹⁷⁰ Additionally, hydrocodone prescriptions in Oklahoma decreased 6.9 percent from 2016 to 2017.¹⁷¹ My goal is to continue to ensure those in need of pain medication are able to receive it while preventing further addiction and/or dependence on dangerous drugs.
- **Enforcing Gun Laws**—Far too often criminals and individuals who are prohibited from buying firearms lie on the background check form. In 2017 alone the National Instant Criminal Background Check System (NICS) denied 112,000 transactions. Of those denials, only 12,700 were referred to a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) field office to investigate, of which US Attorney offices prosecuted only 12.¹⁷² I have always advocated for information sharing between federal, state, and local law enforcement. I believe that sharing information will help us reduce crime and go after those who lie on federal forms or illegally obtain a firearm. This year I worked with my colleagues to include language in the FY20 Commerce, Justice, Science, Appropriations bill that encourages ATF to notify local law enforcement when a felon in its jurisdiction tries to buy a gun and to utilize the help of local law enforcement to retrieve firearms from those who fail a NICS check. When 12,700 people illegally try to buy firearms and only 12 of them are prosecuted, we have a problem.

TOUCHDOWNS



- **Economic Excellence**—I can't talk about Touchdowns without mentioning our economy. Poverty rates are falling, the middle class is booming, wages are rising, and growth rates are beating expectations. In 2018 poverty levels fell to a pre-recession low of 11.8 percent.¹⁷³ Household incomes have increased 8.6 percent, or an average of \$5,228 per family for the middle class in the first two years of President Trump's Administration.¹⁷⁴ Compare that to a mere 1.7-percent increase during the previous eight years. Our gross domestic product (GDP) is consistently beating expectations. Most recently in the third quarter of 2019, GDP increased at an annual rate of 1.9 percent, beating the 1.6-percent expectation.¹⁷⁵ These growth rates are a direct result of increased consumer spending, investments, and exports. But maybe the economic data we should be most proud of is our record unemployment rate of 3.6 percent.¹⁷⁶ This number continues to decrease, as it was 3.8 percent a year ago.¹⁷⁷ In September 2019 the African-American, Hispanic, and disabled unemployment rates were all at record-low levels as well.¹⁷⁸ This is tremendous news that will continue to drive America into the future.
- **Reducing Regulations**—The Trump Administration has continued to roll back unnecessary and outdated regulations over the past year. In FY18 the Administration removed an estimated \$23 billion in regulatory costs by ending 12 regulations for each new regulation issued.
- **Better Bidding**—Volume 2 of *Federal Fumbles* raised the issue of a common Federal Aviation Administration (FAA) of using no-bid or sole-source contracts. The use of these contracts is problematic because it raises the possibility that the federal government is paying more than it should due to a lack of competition. Since this was highlighted in *Fumbles*, FAA has been directed to implement a strategy to reduce the number of no-bid contracts awarded and to put performance measures in place to meet this goal.¹⁷⁹ This is a great win for taxpayers.
- **Bible Tariffs**—As part of the ongoing trade conflict with China, this year the USTR announced a round of tariffs on goods produced in China. On May 14 the USTR released a Request for Comments on proposed imposition of 25-percent tariffs on all remaining Chinese-origin products imported into the US including those central to the publishing industry.¹⁸⁰ Unfortunately a round of the proposed tariffs also included Bibles. Due to longstanding supply-chain issues, almost all Bibles are printed in China—ironic, I know. Due to specialization developed in the printing industry over the last 40 years, Bibles can only be printed in China because of the uniquely thin paper required for such a lengthy book. Without an exemption a tariff on Bibles would drastically increase the cost of production to US publishers and increase the price of Bibles for millions of Americans. This would dramatically affect church and missions outreach by making it more costly for churches and missions to hand out free Bibles. Thankfully, on August 13, 2019, the USTR announced that a number of items had been removed from the upcoming 10-percent tariff list, including religious texts and Bibles.¹⁸¹ While the US and China must find a path forward on our trade disagreements, this is a much-needed win.
- **Turkey and the F-35**—Turkey is not the same country it was just a few years ago. Although it is a NATO ally, Turkey has taken provocative steps to increase its military cooperation with Russia—the very nation NATO was created to deter. Perhaps no action better exemplifies this shift than Turkey's decision to purchase a piece of Russian technology known as the S-400, which is a surface-to-air missile defense system that Russia uses to target NATO aircraft near its border with Europe.

As a NATO ally, Turkey has a stake in the production of the F-35 aircraft, manufacturing various parts within the supply chain and flying planes at its military bases. However, Turkey's purchase of the S-400 puts US national security at risk. American aircraft (and the proprietary technology that goes with it) should not be used in conjunction with a Russian system designed to shoot down those planes. When I first began raising concerns about this issue two years ago, the Administration and most of Congress did not agree with me. However, I moved forward with introducing the Protecting NATO Skies Act. Within a week of its introduction, DOD announced it would halve the shipment of F-35 parts to Turkey, and the language from my bill was included in the FY20 NDAA that passed the Senate.

- **Judicial Confirmations**—One of the vital roles of the Senate is to vet and confirm judicial nominees. During the 116th Congress alone, the Senate has confirmed 80 judges.¹⁸² During the previous 115th Congress, the Senate confirmed 84 judges for a total of 162 judicial nominations under the Trump Administration.¹⁸³ At the same point in President Obama's Administration, the Senate had only confirmed 102 judges.¹⁸⁴ Vetting and confirming federal judges who preserve and defend the Constitution is one of the most vital legacies we can leave for the next generation.
- **United Nations (UN) Peacekeeping**—As a permanent member of the UN Security Council, the US plays a vital role in promoting peace and human dignity throughout the world. One aspect of American leadership at the UN is US financial contributions to the body's peacekeeping budget, which is used to finance peacekeeping missions in countries and regions plagued by conflict.
 - While UN peacekeeping missions are a valuable investment, the key to their success is the cost-sharing model that enables the US to work collaboratively with other countries to achieve conflict resolution. That is why there is a statutory requirement preventing US contributions from exceeding 25 percent of the overall UN peacekeeping budget.¹⁸⁵ Unfortunately Congress has too often failed to abide by that standard since it was codified in 1994, appropriating more funds than are permitted under the law.¹⁸⁶
 - As a member of the Senate Appropriations Committee, I have advocated for holding our nation's contributions to the 25-percent cap outlined in the law. Because of my involvement on behalf of Oklahomans and the leadership of the Trump Administration and Senator Lindsey Graham (SC), we have held to the 25-percent cap on US contributions to the UN peacekeeping budget for three straight years. The Senate has once again taken the lead on this issue by sticking to the 25-percent cap in its FY20 State and Foreign Operations Appropriations bill.¹⁸⁷ This is a win for US taxpayers and a commonsense voice resonating in Congress.
- **VA MISSION Act**—In 2014 the VA experienced the largest scandal it had seen in the history of its existence. Ground zero of the scandal was the VA Health Services Center in Phoenix, AZ, where whistleblowers alleged that 40 veterans died while waiting for care due to a "secret waiting list," which led to a VA OIG report.¹⁸⁸ After this initial report, systemic issues were found across the entire VA enterprise at medical facilities nationwide that unfortunately also plagued our VA facilities in Oklahoma.
 - The delays highlighted by the 2014 OIG report led Congress to pass legislation to make it easier for veterans to receive care outside the VA, which would then be paid for by the VA similar to other insurance plans. This law was known as the Choice Act.¹⁸⁹ While this \$10 billion expansion in care was a positive first step allowing veterans to receive care in their communities, shortfalls in the program remained. For example, veterans were still experiencing delays in referrals from the VA to the private-sector, much of which was due to significant delays in physician reimbursement that discouraged many private-sector doctors from participating in the program at all.

- To fix the flaws of the Choice Act and further improve veterans' access to the healthcare services they needed, Congress passed the VA Maintaining Internal Systems and Strengthening Outside Networks (MISSION) Act in June 2018, which was finally rolled out in June 2019. The VA MISSION Act provides veterans with greater choice in their healthcare and gives them greater control in how and where they receive that care, especially in urgent cases or for routine labs or radiology. Perhaps as important, there is now greater collaboration between community healthcare providers and the VA health care system, which is another step in the right direction to encourage more collaboration between the private and public sectors. For taxpayers it is a commonsense measure to encourage less duplication of services and more collaboration, especially if right next door there is a top-notch facility that specializes in care that can benefit our veterans. For instance, across the street from the Oklahoma City VA Medical Center is the Stephenson Cancer Center, which works with the University of Oklahoma to provide some of the highest quality cancer care in the nation. If a veteran needs oncology care, why shouldn't he or she be able to cross the street and receive that top-tier care? Under the VA MISSION Act, vets will now be able to do that.
- Health care has always been a complicated issue, and we've experienced these complications at the VA for decades. With passage of the VA MISSION Act, options are put back in the hands of the men and women who have served, which helps fulfill our country's promise to our military dating back to President Lincoln—"To care for him who shall have borne the battle."¹⁹⁰

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