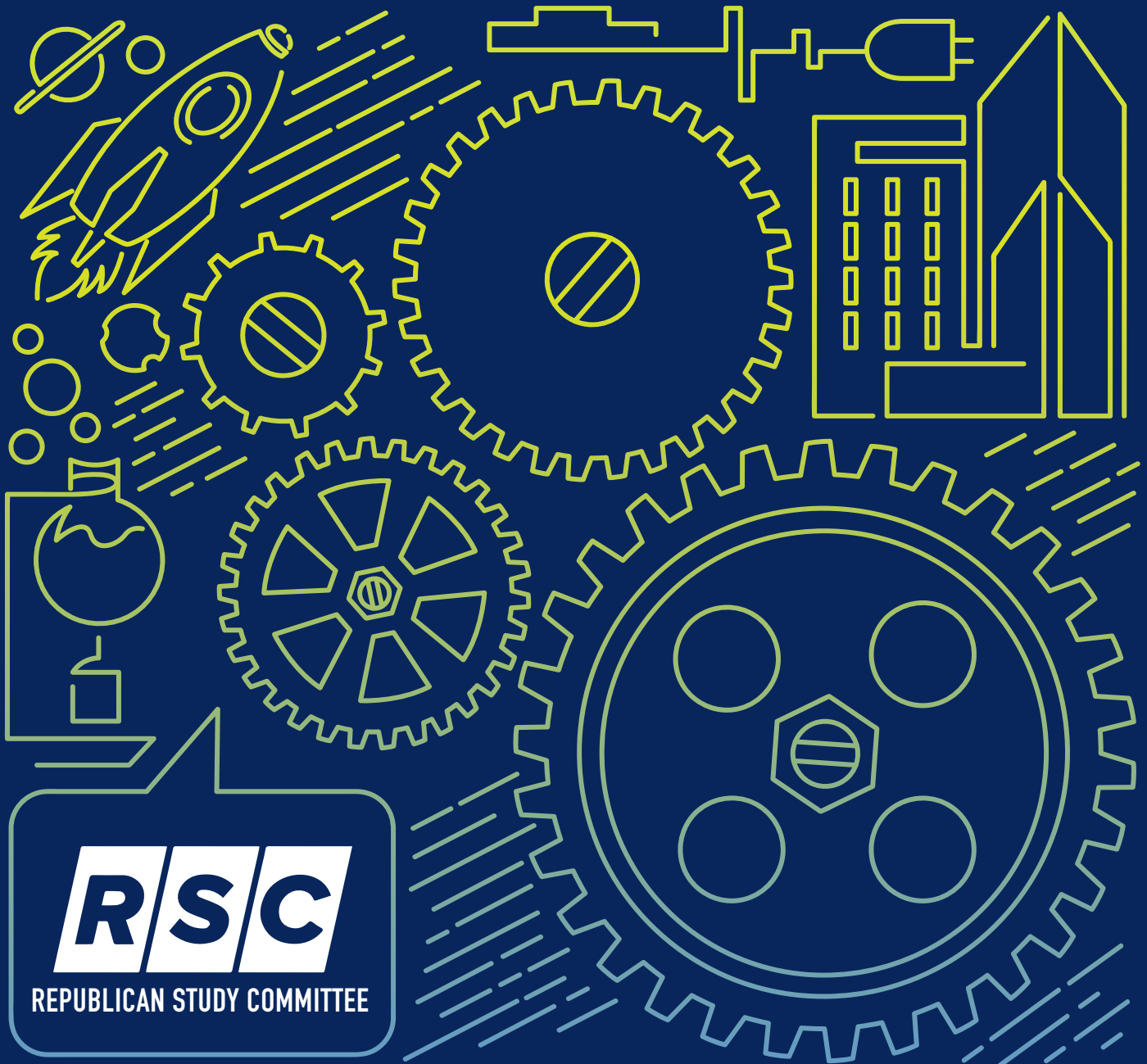


THE GOVERNMENT, EFFICIENCY, ACCOUNTABILITY, AND REFORM  
TASK FORCE PRESENTS:

**POWER, PRACTICES, PERSONNEL:  
100+ COMMONSENSE SOLUTIONS  
TO A BETTER GOVERNMENT**



**RSC**

REPUBLICAN STUDY COMMITTEE

## **INTRODUCTION [06]**

## **REFORM GOVERNMENT POWER STRUCTURES [08]**

Restrain Executive Rulemaking Authority 08

Increase Regulatory Transparency 15

Regulatory Reform through Litigation and the Judiciary 19

## **REFORM GOVERNMENT PRACTICES [21]**

Governmentwide Practices 21

Efficient Practices for National Security 30

Enact Fundamental Reform to Federal Judicial Practices 33

Provide Accountability for Programs 48

## **REFORM GOVERNMENT PERSONNEL POLICIES [50]**

Reform Hiring and Removal 51

Pay and Benefits 57

## **CONCLUSION [64]**

## **POLICY RECOMMENDATION LIST [65]**

**THE GOVERNMENT, EFFICIENCY, ACCOUNTABILITY, AND REFORM  
TASK FORCE PRESENTS**

**POWER, PRACTICES, PERSONNEL:  
100+ COMMONSENSE SOLUTIONS TO A BETTER GOVERNMENT**

**A LETTER FROM  
THE TASK FORCE**

Fellow Americans,

In 2010, Congress passed a law directing the executive branch to answer a seemingly simple question: How many federal programs currently exist? They were given a deadline of two years to respond. A decade later, lawmakers and taxpayers are still waiting for the answer.

It is a self-evident truth that a government too large to calculate its own size is simply too large.

But it is not just the massive size of the federal government that should alarm every American, it is the nearly unchecked scope of its power. When a grossly inefficient bureaucracy wields too much authority over every aspect of our lives it becomes a threat to our prosperity and the very foundation of our republic.

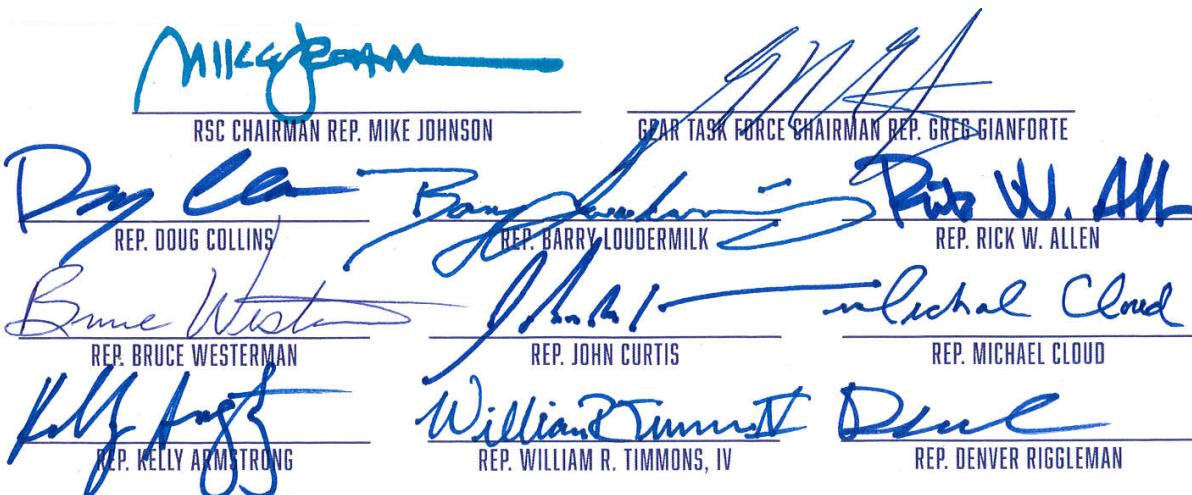
In the accompanying report, we identify and explain three primary problem areas plaguing the federal bureaucracy: POWER, PRACTICES, and PERSONNEL. Congress is largely responsible for all three.

Congress has ceded far too much of its authority to agencies and regulatory bodies, and it has chosen—more often than not—to either ignore the programmatic deficiencies that exist there, or simply throw more money at the broken systems. That approach has been destructive in many ways, and has even jeopardized the rule of law as it has left federal courts unable to efficiently administer justice. Through its inaction, Congress has also gradually allowed a handful of bad actors to compromise the reputation, efficiency, and morale of a federal workforce comprised largely of dedicated and patriotic civil servants.

The good news is that problems created by Congress can be solved by Congress. It is our duty to do so. To that end, we, the members of the RSC GOVERNMENT EFFICIENCY, ACCOUNTABILITY, & REFORM (GEAR) TASK FORCE, present the following three-step, common sense plan to achieve greater efficiency, accountability and reform in the federal government. Our plan includes more than 100 solutions and recommendations to:

1. Reclaim POWER from unelected bureaucrats;
2. Reform government PRACTICES to curb inefficiency and waste; and
3. Reemphasize and reward innovation among our nation's government PERSONNEL.

This solutions-oriented plan is not a partisan document but a blueprint for good government, and a call for action. Our government should work for the people again, and not the other way around. We owe it to the millions of hardworking Americans who fund this republic to repair it, and we are determined to fulfill that responsibility. This is how we can do it.



A collection of handwritten signatures in blue ink, each placed above a horizontal line. Below each line is the name and title of the signatory. The signatures are arranged in three rows. The first row contains Mike Johnson (RSC Chairman) and Greg Gianforte (GEAR Task Force Chairman). The second row contains Doug Collins, Barry Loudermilk, and Rick W. Allen. The third row contains Bruce Westerman, John Curtis, and Michael Cloud. The fourth row contains Kelly Armstrong, William R. Timmons, IV, and Denver Riggleman.

RSC CHAIRMAN REP. MIKE JOHNSON

GEAR TASK FORCE CHAIRMAN REP. GREG GIANFORTE

REP. DOUG COLLINS

REP. BARRY LOUDERMILK

REP. RICK W. ALLEN

REP. BRUCE WESTERMAN

REP. JOHN CURTIS

REP. MICHAEL CLOUD

REP. KELLY ARMSTRONG

REP. WILLIAM R. TIMMONS, IV

REP. DENVER RIGGLEMAN

# THE INTRODUCTION

Let us state the facts: The federal government is too large, it does too many things, and what it does, it usually does not do very well.

The original design of our extraordinary Constitution—of a limited government with three distinct branches—has long since been abandoned. Today, we effectively have a fourth branch of government, often referred to as “the bureaucracy,” which has been allowed to spread over the decades into a smothering administrative thicket that our founders would not recognize.

Congress created this problem. Often to avoid accountability and controversial political decisions, it gradually created an elaborate network of agencies and sub-agencies and regulatory bodies as it willfully gave away much of its constitutional authority.

The growth of federal bureaucracies has naturally spawned an infamous culture of waste and inefficiency. The problem is compounded by the lack of meaningful metrics to measure performance and has resulted in a government so large, its myriad number of programs cannot even be counted.

Everyone seems to understand and accept that dubious government programs range from the unconstitutional, to the imprudent, to the purely comical. But this is not a laughing matter, and there is an urgent need for Congress to do much more to stamp out the rampant fraud, waste, and abuse of the precious tax dollars of hardworking Americans.

While the legislative branch has drifted further and further from its original purpose, the judicial and executive branches have as well. For example, certain activist judges in our federal courts have increasingly assumed the authority to “legislate from the bench” in direct violation of the Constitution’s separation of powers.

The executive branch has also usurped more and more legislative authority over the years through runaway regulatory agencies and their entrenched Washington bureaucrats who often act as judge, jury, and executioner wielding mandates they themselves create.

Civil service is an important calling, but the dedicated, patriotic Americans who serve so faithfully in those positions are often overshadowed by unprofessional, partisan employees who lack accountability. Bad actors have ruined the credibility of so many agencies and undermined the foundations of our republic. Meanwhile, federal unions have taxpayer-funded privileges that would make their civilian counterparts blush.

All of this has dangerously eroded the public’s faith in our institutions. A recent poll conducted by the Pew Research Center found that “only 17% of Americans today say they can trust the government in Washington to do what is right ‘just

**“ONLY 17% OF  
AMERICANS TODAY  
SAY THEY CAN TRUST  
THE GOVERNMENT IN  
WASHINGTON TO DO  
WHAT IS RIGHT ‘JUST  
ABOUT ALWAYS’ (3%)  
OR ‘MOST OF THE  
TIME’ (14%).”  
PEW RESEARCH CENTER**



about always' (3%) or 'most of the time' (14%)."<sup>1</sup> While restoring constitutional balance and removing waste in our government should not be partisan issues, the Left has been unwilling to help address this crisis. Liberals are working instead: to further expand the power of the administrative state by shifting even more authority away from Congress and the people to unelected bureaucrats; to create even more government agencies and programs regardless of duplication or effectiveness; and to resist efforts to restore common sense and accountability to existing bureaucracies.

We can and must do better.

#### THE REPUBLICAN STUDY COMMITTEE PLAN

The Republican Study Committee (RSC) proposes this plan as a corrective roadmap for the federal government. This report of the RSC's Government Efficiency, Accountability, and Reform (GEAR) Task Force outlines our conservative vision and proposes critical reforms in three areas:

## POWER

REFORM GOVERNMENT POWER STRUCTURES:

# 1

In step one, we restore the balance of powers between the three co-equal branches of government. We rollback decades of Congressional abdication of its authority to the executive branch, returning power to the people over unelected bureaucrats. Furthermore, we rebalance the interaction between Congress, the executive branch and the judiciary.

## PRACTICES

REFORM GOVERNMENT PRACTICES:

# 2

Restoring the balance of powers is not enough to ensure an efficient, accountable, and reformed government. In step two, the report tackles government practices with an emphasis identifying and removing waste. This includes big, broad institutional reform and consolidation all the way to simple, common sense things like stopping payments to people who have deceased.

## PERSONNEL

REFORM GOVERNMENT PERSONNEL POLICIES:

# 3

Lastly, step three focuses on reforming government personnel policy. No change in structure or practice will materialize without dedicated civil servants driving those needed changes. Our reforms aim to improve the morale and effectiveness of our federal workforce by improving accountability and shifting compensation practices to more closely align with those in the private sector.

<sup>1</sup>Pew Research Center, Trust and Distrust in America, (Jul. 22<sup>nd</sup>, 2019), <https://www.people-press.org/2019/07/22/trust-and-distrust-in-america/>

# REFORM GOVERNMENT POWER STRUCTURES STEP ONE

**“THE NINE MOST  
TERRIFYING WORDS  
IN THE ENGLISH  
LANGUAGE ARE:  
“I’M FROM THE  
GOVERNMENT, AND  
I’M HERE TO HELP.”  
PRESIDENT RONALD REAGAN**

Part of the genius of our constitutional structure is its separation of powers. This system, based on a critical balance between three separate, co-equal branches of government, ensures a properly functioning government when it operates as designed. That design was based upon the founders’ understanding of human nature and the fallen state of man. Since power so often corrupts, they believed that unchecked authority in the hands of just a few people could jeopardize our system and eventually encroach upon the God-given rights of every American. They were right.

Agencies across the executive branch, and their employees, are not directly accountable to the American people. These nameless faces wield broad regulatory power almost identical to that of Congress and our federal courts.

Congress has created this situation by enacting legislation that allows agencies to promulgate sprawling regulations. These regulations often spur statements of interpretation and guidance, otherwise known as “regulatory dark matter,” which are in essence additional laws.<sup>2</sup> Even when Congress does not direct agencies to promulgate regulations, it often remains idle as executive agencies manipulate the meaning of law through self-serving interpretations. Consequently, agencies can promulgate, enforce, and prosecute seemingly endless rules and regulations that bind every man, woman, and child in the United States. Unfortunately, current standards for judicial review have only empowered and emboldened Washington bureaucrats to test the bounds of their quasi-lawmaking authority.

This expansive administrative state has earned its reputation for inefficiency and ineptitude. As President Ronald Reagan once quipped, “The nine most terrifying words in the English language are: “I’m from the government, and I’m here to help.” Of course, the costs borne by the American people go well beyond the price tag of regulatory compliance, as they also include the costs associated with lost opportunities and stymied innovation.

To achieve a more accountable and efficient government, we must restore the balance of powers to what the framers originally envisioned. This must begin with reasserting Congress as a check on the unbridled regulatory power that the executive branch has amassed. To this end, RSC’s GEAR Task Force proposes the commonsense conservative solutions outlined below.

## **RESTRAIN EXECUTIVE RULEMAKING AUTHORITY**

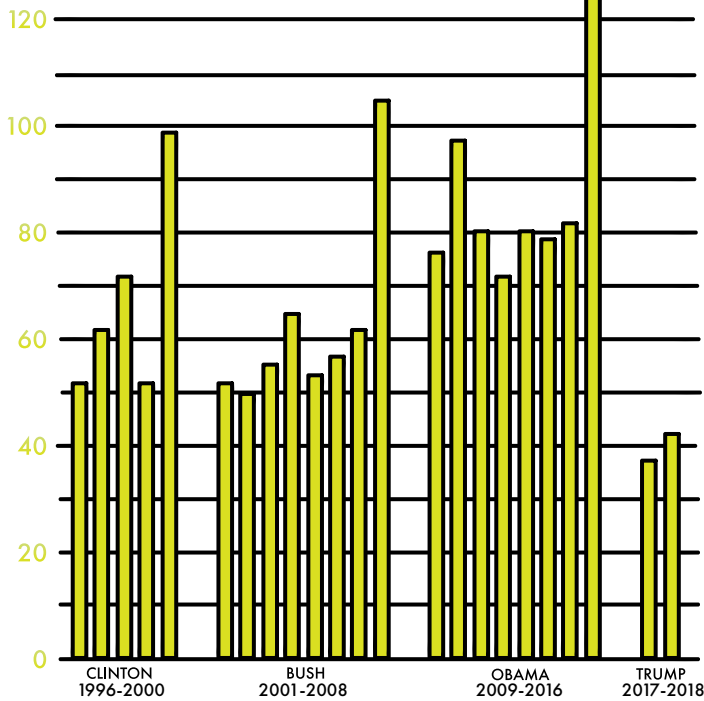
Article I of the Constitution plainly states, “All legislative Powers herein granted shall be vested in a Congress...” Despite this unequivocal language, executive branch agencies have largely supplanted Congress’ legislative power through prodigious rulemaking. According to the Competitive Enterprise Institute (CEI), the

<sup>2</sup> John Cochrane, Law and the Regulatory State, American Exceptionalism in a New Era § 61 (Nov. 2017), [https://faculty.chicagobooth.edu/john.cochrane/research/papers/AE\\_Ch6\\_John%20Cochrane.pdf](https://faculty.chicagobooth.edu/john.cochrane/research/papers/AE_Ch6_John%20Cochrane.pdf)



U.S. Code of Federal Regulations is currently composed of more than 180,000 pages, including more than one million regulatory restrictions.

### NUMBER OF FINAL MAJOR RULES PUBLISHED BY PRESIDENTIAL YEAR



**SOURCE: OFFICE OF INFORMATION AND REGULATORY AFFAIRS (OIRA)**

Between 2000-2016, the average annual cost of new regulations was \$8 billion. Thankfully, in 2017, the Trump administration began a historic effort to reduce regulations and has already decreased the cost of regulation by over \$50 billion. While Democrats in Congress have unfortunately shown little interest in assisting Republicans in this regard, there is much more yet to do.

#### Enact the REINS Act

The REINS Act, introduced in the 116th Congress by Rep. Jim Sensenbrenner (WI-05), would require Congress to pass a joint resolution, along with a presidential signature of approval, for any major rule within 70 days of promulgation before that rule may take effect.<sup>3</sup>

This legislation would dramatically change the process by which agencies create rules by ensuring that a major rule that could not attain the public support of

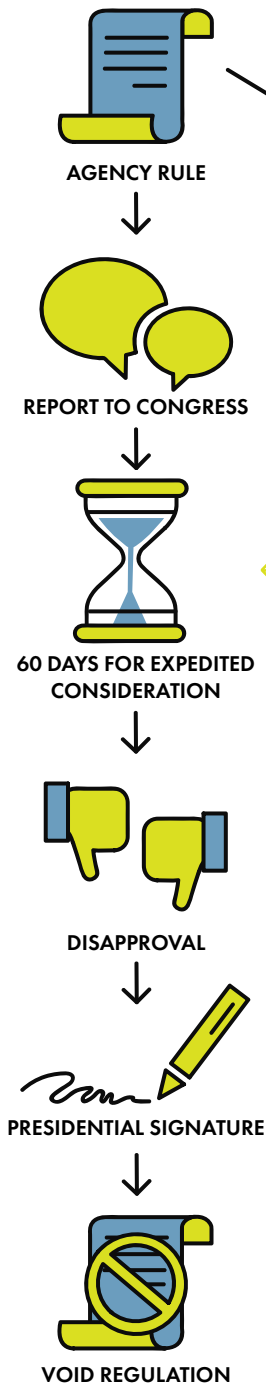
Congress, would not be implemented. Critically, this joint resolution would be considered under expedited procedures in the Senate so that it could pass the chamber with a simple majority. Under current law, rules take effect unless a joint resolution disapproving them is enacted. The REINS Act would help prevent potentially damaging regulations for all Americans and Congress from abdicating its lawmaking responsibility.

It is difficult to overstate the impact the REINS Act would have. President Obama’s administration issued 685 major rules during his presidency, and the federal government spent \$63 billion in 2016 alone implementing these regulations.<sup>4</sup> During the Obama administration, the House of Representatives passed the REINS Act four separate times in an attempt to hold the executive branch accountable.<sup>5</sup> Had this conservative solution become law, the United States could have saved billions of taxpayer dollars.

<sup>3</sup> Regulations from the Executive In Need of Scrutiny Act of 2019, H.R. 3972, 116th Cong.

## EXPAND USAGE OF THE CONGRESSIONAL REVIEW ACT (CRA)

### CURRENT CRA PROCESS



### PLAN UNDER THE RSC



## Expand the Usage of the Congressional Review Act (CRA)

The Congressional Review Act (CRA) of 1996, signed into law by President Clinton, is a legislative tool that can be used by Congress to roll back a recently promulgated regulation under an expedited parliamentary process.<sup>6</sup> The CRA allows Congress to negate regulations through bicameral enactment of a joint resolution of disapproval. Such joint resolutions are not subject to filibuster in the Senate and thus can pass each chamber with simple majority votes if passed within 60 legislative days of receiving notification of a rule.

The CRA can be a powerful tool that Congress can use to prevent implementation of harmful regulations. During the 115th Congress, the CRA was used successfully 16 times by congressional Republicans and President Donald Trump to roll back last-minute Obama-era rules.<sup>7</sup> The Trump administration has been unparalleled in its efforts to prevent, undo, and avoid the creation of additional regulations. We will not always have a president with such strong convictions in this regard will always be in office.

There is still untapped potential with the CRA that Congress has yet to pursue. Lawmakers should assert their Article I authority by utilizing the CRA to review and potentially nullify rules and regulations that did not follow proper CRA protocols when being implemented. Under the CRA, a rule cannot take effect until it has been reported to Congress by the promulgating agency. The Brookings Institution found “348 significant rules with apparent reporting deficiencies to the Government Accountability Office (GAO) or Congress, out of a total of 3,197 significant rules—slightly more than 10 percent.”<sup>8</sup> Congress ought to review these rules and use the CRA to protect the liberty of all Americans against the dictates of the administrative state.

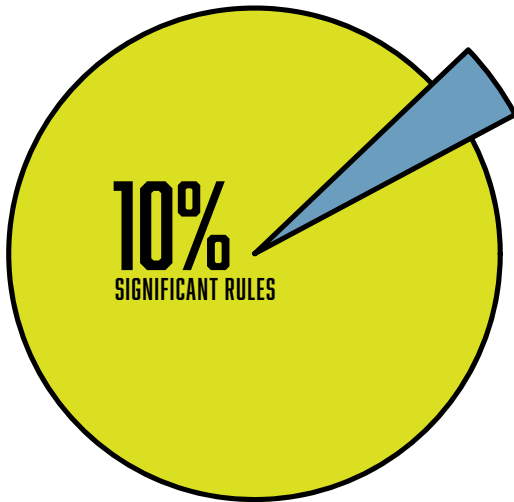
One example of a rule that is still subject to CRA review is an Obama-era federal land restriction that is currently the subject of litigation. In *Tugaw Ranches, LLC v. U.S. Department of Interior et al*, the Department of Interior is being sued for a 2015 rule that implemented expansive federal land restrictions to help conserve the greater sage grouse. This rule was implemented without proper notification of Congress and thus is unlawful under the CRA.<sup>9</sup> A

<sup>6</sup> Congressional Review Act of 1996, 5 U.S.C. § 801 (2019)

<sup>7</sup> Id.

<sup>8</sup> Philip Zeppos, How powerful is the Congressional Review Act?, BROOKINGS INSTITUTION (Apr. 4th, 2017), <https://www.brookings.edu/research/how-powerful-is-the-congressional-review-act/> (last visited Jan. 7, 2020).

<sup>9</sup> Jonathan Wood, Idaho Joins PLF’s Defense of the Congressional Review Act, Pacific Legal Foundation (Jul.



**SLIGHTLY MORE THAN  
10% OF SIGNIFICANT  
RULES HAVE APPARENT  
REPORTING DEFICIENCIES**

rule that significantly impacts the ability of state governments, municipalities, and landowners to use local resources deserves to be subject to all lawful transparency measures.

Additionally, the GEAR Task Force supports explicitly codifying in statute that the CRA applies to “regulatory dark matter.” Doing so would clarify that de-facto regulation should not be exempt from any congressional oversight of official federal rule making. It would also provide an expedited path for lawmakers to block these agency policy initiatives even if, under existing law, they are not subject to traditional notice-and-comment rulemaking. The Trump administration’s Office of Management and Budget (OMB) has taken this position,<sup>10</sup> but the current definition of “rules” subject to the CRA disapproval procedure is

too vague. Consequently, Congress has failed to utilize the CRA to block regulatory dark matter.

#### Enact The Article I Restoration Act

Since regulations can be implemented without deliberation and debate that is often provided by the legislature, there may not always be a thorough consideration of their long-term effects. Furthermore, with federal regulations being proposed across government each day and printed in the weighty Federal Register, it is hard for anyone to keep track of every new regulation, let alone those implemented long ago. A simple and potent solution is implementing sunset requirements on regulation.

In 2019, Idaho became the least regulated state through sunseting all state regulatory provisions that the legislature did not reauthorize.<sup>11</sup> This action, along with urging agencies to reduce two regulations for every new proposal, led to the state cutting 75 percent of its regulations in one year. This is a great example for the federal government, which rarely turns its focus to eliminating old regulations.<sup>12</sup>

The Article I Restoration Act, introduced by Rep. Bill Posey (FL-08), would require federal regulations to expire after three years if not specifically reauthorized.<sup>13</sup> To obtain reauthorization, the head of an agency would have to submit a request for reauthorization to Congress. This bill would drastically reduce the burden of regulations and their associated costs by forcing agencies to prioritize reauthorization for policies they deem most important. It would also force unelected

<sup>16</sup>th, 2018) <https://pacificlegal.org/idaho-joins-plfs-defense-of-the-congressional-review-act/>

<sup>10</sup> White House Office of Management & Budget, Memorandum: Guidance on Compliance with the Congressional Review Act (Apr. 11th, 2019), <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-14.pdf>

<sup>11</sup> Office of the Governor, Idaho, Idaho cuts and simplifies 75 percent of rules in one year, becomes least-regulated state in country (Dec. 4th, 2019), <https://gov.idaho.gov/pressrelease/idaho-cuts-and-simplifies-75-percent-of-rules-in-one-year-becomes-least-regulated-state-in-country/>

<sup>12</sup> James Broughel & Krista Chavez, Idaho is the Least Regulated State and a Model for the Rest of the Country, MERCATUS CENTER (Jan. 2nd, 2020), <https://www.mercatus.org/bridge/commentary/idaho-least-regulated-state-and-model-rest-country>

<sup>13</sup> Article I Restoration Act of 2019, H.R. 3617, 116th Cong.

**ACCORDING TO  
CEI, FEDERAL  
REGULATIONS COST  
OUR NATION'S  
ECONOMY  
APPROXIMATELY \$2  
TRILLION ANNUALLY.**

bureaucrats to justify unpopular regulations to public officials who must answer to the voters.

### **CONTAIN THE COSTS OF FEDERAL REGULATIONS**

Federal regulation curtails economic freedom, costs taxpayers their hard-earned money, and stymies the growth and innovation of American businesses. The extent to which these effects perpetually hamstringing the growth of our nation's economy is vast. According to CEI, federal regulations cost our nation's economy approximately \$2 trillion annually.<sup>14</sup> That amount is worth about 10 percent of the United States' gross domestic product (GDP). Still, fully accounting for the cost of regulation is impossible when one considers the totality of regulatory impact, including lost time, jobs, and opportunities.

Fortunately, after eight years of overregulation under President Obama, the Trump administration has successfully focused on cutting cost and promoting prosperity by reducing regulation. For instance, in 2017, President Trump signed E.O. 13771,<sup>15</sup> which called for the elimination of two regulations for every one introduced. At the close of 2019, the President Trump announced his administration had "cut regulatory costs by \$50 billion and has rolled back 7.5 regulations for every new rule created." While the Trump administration's success is worth celebrating, the long-term economic savings cannot be guaranteed without congressional action. Congress should act to prospectively restrain and measure the costs of federal regulation that may be implemented in the future.

### Enact the Article I Regulatory Budget Act

The GEAR Task Force supports the Article I Regulatory Budget Act, sponsored by former RSC Chairman Rep. Mark Walker (NC-06).<sup>16</sup> This bill would ensure that the economic costs of regulations are budgeted for by the federal government in the same way that it budgets for spending. Budgeting for regulatory costs and establishing limits on their growth increases the extent to which agency bureaucrats—and lawmakers—can be held accountable for their regulatory actions.

Under this solution, the president would be required to deliver to Congress a budget for annual regulatory costs, in tandem with the president's annual budget. Congress would then pass its own regulatory budget in conjunction with its annual government funding budget. The Congressional Budget Office (CBO) would also be required to develop a baseline showing the current trajectory of regulatory costs which would serve as a measuring stick for determining when new legal requirements would increase net regulatory costs. Legislation that would increase regulatory costs above the limits established in the regulatory budget would be

<sup>14</sup> Wayne Crews, Ten Thousand Commandments 2018, COMPETITIVE ENTERPRISE INSTITUTE (Apr. 19th 2018), <https://cei.org/10kc2018> (last visited Jan. 7, 2020).

<sup>15</sup> Exec. Order 13771, 82 FR 9339 (Feb. 3rd, 2017)

<sup>16</sup> Article I Regulatory Budget Act of 2016, H.R. 5319, 115th Cong.

prohibited. In such instances, Congress would have to defund agencies' regulatory actions that breach the limits as part of any bill to fund the federal government. These restrictions would apply to regulatory dark matter in addition to traditional agency rules. Moreover, the bill would prevent the creation of regulatory dark matter until the relevant agency has undertaken notice-and-comment procedures.

According to the R Street Institute, Canada's federal government has had success using regulatory budgeting techniques. Throughout 2010 and 2011, former Prime Minister Stephen Harper began to implement regulatory budgeting to better inform and strengthen the government's deregulation agenda. The government had already utilized a standard add-one-eliminate-one strategy to prevent further regulatory growth. Building on this, the government began to require agencies to measure and track the cost of regulation to inform more targeted deregulatory action and create a loose decentralized regulatory budget structure. Agencies would be rewarded for deregulating with the purpose of alleviating the burdens on business, rather than arbitrary deregulation. After just two years, these regulatory budget-informed measures saved Canadian citizens and businesses \$21 million in compliance costs and 263,000 hours of work time.<sup>17</sup>



**AFTER JUST TWO  
YEARS, THESE  
REGULATORY  
BUDGET-INFORMED  
MEASURES SAVED  
CANADIAN CITIZENS  
AND BUSINESSES  
\$21 MILLION IN  
COMPLIANCE COSTS  
AND 263,000 HOURS  
OF WORK TIME.**

The process required by the Article I Regulatory Budget Act would restrain the regulatory costs that executive agencies could impose each year and force them to better account for the economic impacts of their actions in a way that they are not currently required. Over time, as agencies seek to impose new regulations, they will be forced to repeal existing outdated and unnecessary rules, reducing the overall burden on the country.

#### Enact the Regulatory Accountability Act

The GEAR Task Force also supports injecting the formal cost-cutting elements of the Regulatory Accountability Act sponsored by former member of Congress, Rep. Bob Goodlatte, into the existing rulemaking process.<sup>18</sup> Currently, economic impacts on American citizens and businesses are governed by a patchwork of statutes and executive orders. The extent to which existing protections adequately restrain the economic costs of regulations is hindered by the lack of comprehensive statutory language designed specifically to address this concern.

Fortunately, the Regulatory Accountability Act is designed to restrain regulators, during the Administrative Procedure Act's (APA) rulemaking process, from indiscriminately burdening Americans and their businesses with economically oppressive measures. Most importantly, the bill creates enhanced procedural requirements for rules that are major or high-impact. Major rules are primarily

<sup>17</sup> Sean Speer, REGULATORY BUDGETING: LESSONS FROM CANADA, R STREET INSTITUTE (March 2016), <https://www.rstreet.org/wp-content/uploads/2016/03/RSTREET54.pdf>

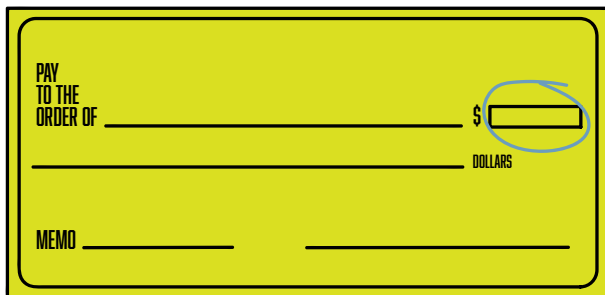
<sup>18</sup> Regulatory Accountability Act of 2017, H.R. 5, 115th Cong.

those with an estimated cost exceeding \$100 million.<sup>19</sup> Under the Regulatory Accountability Act, a new designation called a “high-impact” rule would be a rule estimated to exceed \$1 billion or more.<sup>20</sup> Agencies would have to provide public notice of a rule’s impact on jobs and wages, afford stakeholders an opportunity to participate in the rulemaking process, hold a formal hearing for adopting high-impact rules, and—advance rules only on the basis of the best evidence and at the least cost. The bill would even require agencies, for major rules, to publish a report on the benefits and costs to regulated entities and revise it every five years.

### Enact the Unfunded Mandates Information and Transparency Act

In 1995, Congress passed into law the Unfunded Mandates Reform Act (UMRA) of 1995. This legislation was passed with the intent of curbing the federal government’s habit of imposing pricey intergovernmental mandates on state and local governments and sticking them with the cost of implementation.

Unfortunately, the UMRA framework has several loopholes that allow regulators



to promulgate rules without being fully transparent as to the implications of the rule’s federal mandates. Under current law, agencies—other than independent regulatory agencies—are required to analyze the costs of potential regulations that contain federal mandates on state, local, and tribal governments and the private sector. This requirement, however, only applies to rules that cause such entities to expend, in the aggregate, \$100 million

## UMRA PASSED WITH THE INTENT OF CURBING UNFUNDED MANDATES ON STATE AND LOCAL GOVERNMENTS

(adjusted for inflation) in any one year. Once this threshold is reached, it triggers the requirement that agencies consider less expensive alternative regulations and solicit stakeholder input prior to promulgation.

To address this problem, the GEAR Task Force recommends that Congress should enact the Unfunded Mandates Information and Transparency Act, sponsored by House Education and Labor Committee Ranking Member, Rep. Virginia Foxx (NC-05).<sup>21</sup> This legislation has passed the House four separate times with bipartisan support.

This legislation provides a framework for a more accountable process that would increase transparency of the true costs of federal mandates on state and local governments, as well as the private sector. The Unfunded Mandates Information and Transparency Act would amend UMRA to close these loopholes. First, the bill would subject independent agencies, such as the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Communications

<sup>19</sup> Id.

<sup>20</sup> Wayne Crews, What’s the Difference between “Major,” “Significant,” and All Those Other Federal Rule Categories?, COMPETITIVE ENTERPRISE INSTITUTE (Sept. 2017) <https://cei.org/sites/default/files/Wayne%20Crews%20-%20What%20is%20the%20Difference%20Between%20Major%20and%20Significant%20Rules%20%281%29.pdf>.

<sup>21</sup> Unfunded Mandates Information and Transparency Act of 2019, H.R. 300, 116th Cong.

**“AT THE VERY LEAST  
POLICYMAKERS  
AND UNELECTED  
REGULATORS  
SHOULD KNOW THE  
PRICE OF WHAT  
THEY DICTATE.”  
REP. VIRGINA FOXX R-NC**

Commission (FCC), to the requirements of the UMRA. Second, it would ensure that all rules with potentially major mandates are subject to the UMRA, not just those for which a general notice of proposed rulemaking is published. This is critical considering a 2012 GAO report determined agencies had not published a notice of proposed rulemaking for 35 percent of major rules.<sup>22</sup> Last, the bill would fix the “major rule” threshold to make sure that it incorporates annual economic effects from a proposed rule’s mandate, not just “expenditures” that would result from the mandate.

Rep. Foxx summed up the benefits of the legislation stating, “At the very least policymakers and unelected regulators should know the price of what they dictate. The Unfunded Mandates Information and Transparency Act will help restore honesty and transparency to federal mandates and ensure Washington bureaucrats are held accountable for seeking public input and considering the negative consequences, in dollars and in jobs, prospective mandates will impose on the economy.”<sup>23</sup>

### **INCREASE REGULATORY TRANSPARENCY**

President Ronald Reagan was known to frequently employ the mantra “trust but verify.” This principle is at the heart of government accountability. The federal government should be accountable to the people. Our government was not designed to be led by philosophers in ivory towers, but rather was created to have civil servants work for the good of all Americans.

**“...TRANSPARENCY  
AND EVIDENCE-  
BASED SCIENCE ARE  
NOT JUST A LIMITED  
GOVERNMENT ISSUE;  
THEY’RE A BETTER  
GOVERNANCE ISSUE  
THAT SHOULD  
ENJOY BIPARTISAN  
COMMITMENT.”  
RICK MANNING**

Transparency has proven to be necessary and effective when making government more accountable to the Constitution and the public. Rick Manning, President of Americans for Limited Government, eloquently stated “...transparency and evidence-based science are not just a limited government issue; they’re a better governance issue that should enjoy bipartisan commitment.”<sup>24</sup> Without transparency and accountability there will be fewer safeguards in place to prevent waste or abuse. America’s government can and should set the standard of transparency for all the world. Benjamin Franklin said it best while debating the inefficiencies of the Articles of Confederation at the Annapolis Convention, “In free Governments the rulers are the servants, and the people their superiors and sovereigns.”<sup>25</sup>

The RSC GEAR Task Force supports a rigorous set of proposals to overhaul transparency across the federal bureaucracy. It is imperative that these commonsense transparency measures be enacted so Congress can more forcefully conduct its oversight duties and taxpayers can be ensured that the federal government is acting as proper stewards of their money.

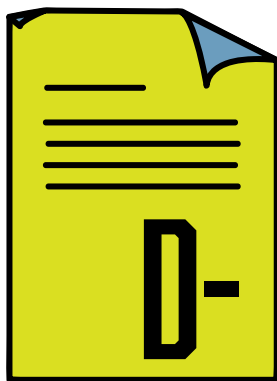
<sup>22</sup> GOV’T ACCOUNTABILITY OFFICE, GAO–13–21, Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments, 7 (2012), <https://www.gao.gov/assets/660/651052.pdf>;

<sup>23</sup> Office of Ranking Member Virginia Foxx, Summary: Unfunded Mandates Information and Transparency Act, <https://foxx.house.gov/legislation/umita.htm>

<sup>24</sup> Rick Manning, Better government begins with transparent information, THE HILL (Dec. 8th, 2019) <https://thehill.com/opinion/technology/473531-better-government-begins-with-transparent-information>

<sup>25</sup> Benjamin Franklin, Madison Debates, YALE LAW AVALON PROJECT (July 26, 1787) [https://avalon.law.yale.edu/18th\\_century/debates\\_726.asp](https://avalon.law.yale.edu/18th_century/debates_726.asp)





## FEDERAL AGENCIES SHOULD RECEIVE REGULAR REPORT CARDS AND CHECK UPS

### Create Regulatory Report Cards for Agencies

Congress should create benchmarks for improvement using a grading criterion for measuring existing agency regulations. For instance, CEI has recommended accounting for significant factors including tallies of rules by category, measurements of impact, and ranking overall agency action.<sup>26</sup> Regulatory report cards would not only promote transparency, they would also empower better analysis on the impact of rules. A regulatory report card would create a platform for public transparency while also standardizing the quantitative and qualitative metrics used to measure the effectiveness of a rule.

### Require Agency Data Disclosure in Support of New Proposed Rules

Agencies are not currently required to disclose a complete record of the data on which they base their rulemaking decisions.<sup>27</sup> This creates a significant hurdle to verifying the prudence of the action taken. Accordingly, Congress should insert statutory language into the Administrative Procedure Act that would require agencies to provide the underlying data supporting their rulemaking decision. This would better ensure that the agency rulemaking decisions are not based on arbitrary factors.

### Require All Regulatory Submissions be Made Through OMB's Office of Information on Regulatory Affairs

OMB's Office of Information on Regulatory Affairs (OIRA) determines if agencies are in compliance with rulemaking requirements. It also reviews risk assessments, cost-benefit analyses, and other supporting information concerning regulations. Currently, agencies are only required to submit significant regulations to OIRA for their review in accordance with Executive Order 12866.<sup>28</sup> Congress should broaden this process by requiring agencies to submit all potential regulations to OIRA.

Under this commonsense proposal, a submission would be held to the same standard as is currently applied to review of major rules. This includes requiring agencies to submit a regulatory impact assessment that outlines the total potential impact and cost of a proposed regulation.

### Enact the ALERT Act

This legislation, sponsored by Rep. John Ratcliffe (TX-04), would require agencies to provide detailed monthly disclosures on regulations to OMB for every rule the

<sup>26</sup> Iain Murray, Myron Ebell & Marlo Lewis, Free to Prosper: Regulatory Reform and Agency Oversight, COMPETITIVE ENTERPRISE INSTITUTE (Jan. 8th, 2019), [https://cei.org/sites/default/files/Free\\_to\\_Prosp-er\\_2019\\_Regulatory\\_Reform\\_0.pdf](https://cei.org/sites/default/files/Free_to_Prosp-er_2019_Regulatory_Reform_0.pdf)

<sup>27</sup> David Muhlhausen, et. al., Blueprint for Reorganization: Pathways to Reform and Cross-Cutting Issues, HERITAGE FOUNDATION (Jun. 30, 2017), <https://www.heritage.org/budget-and-spending/report/blueprint-reorganization-pathways-reform-and-cross-cutting-issues>

<sup>28</sup> Exec. Order 12886, 58 FR 51735; October 4, 1993 <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf#page=4>



agency expects to propose or finalize in the coming year.<sup>29</sup> It also forces them to make the reports publicly available. Finally, rules would not go into effect unless this information is electronically posted for at least six months, with a few exceptions.

#### Enact the Providing Accountability Through Transparency Act

This legislation, sponsored by Rep. Blaine Luetkemeyer (MO-03), would require each agency to include a 100-word, plain-language summary of a proposed rule when providing notice of a rulemaking.<sup>30</sup> This system would put the onus on regulators to explain their rules to the public and make it easier for the public to understand the proposed regulation.

#### Require Independent Agencies to Comply with Existing Rulemaking Requirements

Independent agencies are generally exempt from having to comply with a number of statutes applicable to the rulemaking process, namely the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Data Quality Act.<sup>31</sup> These independent agencies promulgate some of the most far-reaching and economically impactful regulations in our nation. Such independent agencies include the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Communications Commission (FCC). Thus, it makes no sense that they do not have to comply with these critical regulatory restraints that significantly enhance transparency in rulemaking decisions. The GEAR Task Force supports eliminating these exemptions.

#### Enact the Guidance Out of Darkness (GOOD) Act

The GOOD Act, sponsored by former RSC Chairman Rep. Mark Walker (NC-06), would help to remedy disclosure issues with respect to regulatory dark matter.<sup>32</sup> This commonsense legislation would require all guidance documents to be published for transparency considerations. Postings would be required to be made in a database on the OMB website including the date an agency published the guidance, a link to the text of the guidance, and if the action is rescinded. This legislation would shine a light on all actions agencies take that carry a similar weight to regulation. It would also make transparent actions that agencies have previously taken to avoid accountability.

#### Reform the National Emergencies Act (NEA)

Throughout American history, presidents have invoked emergency powers to address pending crises. This tradition dates to 1794, when President George

<sup>29</sup> ALERT Act of 2017, H.R. 75, 115th Cong.

<sup>30</sup> Providing Accountability Through Transparency Act of 2019, H.R. 1087, 116th Cong

<sup>31</sup> Murray, et al., supra note 27.

<sup>32</sup> Guidance Out Of Darkness Act of 2018, H.R. 4809, 115th Cong.

Washington issued a proclamation regarding the use of militia power to put down the Whiskey Rebellions.<sup>33</sup> This authority was largely drawn from “implied powers” believed to be granted by virtue of Article II of the Constitution.<sup>34</sup>

The most famous application of emergency executive powers in U.S. history was the suspension of habeas corpus during the American Civil War by President Lincoln. By the end of the Korean War, the persistent and expanded use of emergency authorities became a national concern. For instance, a 1950 emergency promulgation which President Truman did not revoke after the Korean War was controversially part of the legal basis for American military intervention in Vietnam.<sup>35</sup> By 1972, Congress began to debate potential safeguards to prevent the abuse of executive emergency declarations. Eventually, it offered a bipartisan solution to provide a congressional check, the National Emergencies Act of 1976, which passed the House of Representatives with only five dissenting votes.<sup>36 37</sup>

The National Emergencies Act (NEA) provides a statutory structure for the use of emergency powers by a president, including safeguards of public accountability and congressional disapproval. To use emergency powers, a president must first cite the statute from which the authority derives. The NEA does not itself grant specific powers but rather allows a president to utilize standby authorities that exist within the federal code. There are over 130 statutory emergency authorities that can be activated by virtue of the president declaring a national emergency.<sup>38</sup> Declared emergencies automatically expire within a year, unless renewed by the president. An emergency can also be terminated by a joint resolution becoming law or a president rescinding the emergency declaration.

Although the NEA has provided a framework to limit presidential emergency powers, history has shown the limit to be largely ineffective as an accountability tool. Since 1979, the NEA has been utilized 56 times, with 33 of these declarations remaining in effect, and none being successfully overridden by congressional disapproval. Considering the greatest check on emergency authority has been the discretion of presidents when exercising it, it would be difficult to argue the NEA is an effective tool in checking executive emergency actions. Some fear the NEA could be abused by a future rogue president to undertake reckless and wasteful actions, such as a socialistic green-climate initiative.

The GEAR Task Force recommends that the NEA be modified to restore the ability of Congress to act as a co-equal branch to the executive, even and especially during

---

<sup>33</sup> L. Elaine Halchin, National Emergency Powers, CONGRESSIONAL RESEARCH SERVICE (Dec. 5th, 2019), <https://fas.org/sgp/crs/misc/R44999.pdf#page=4>

<sup>34</sup> *Id.* at 2.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> 50 U.S.C. §§ 1601-1651

<sup>37</sup> Halchin, *supra* note 34.

<sup>38</sup> A Guide to Emergency Powers and Their Use, BRENNAN CENTER (Sept. 4th, 2019), [https://www.brennancenter.org/sites/default/files/2019-10/2019\\_10\\_15\\_EmergencyPowersFULL.pdf](https://www.brennancenter.org/sites/default/files/2019-10/2019_10_15_EmergencyPowersFULL.pdf)

times of crisis. Among the conservative reforms that may be considered are adding dual safeguards on the executive branch. The first would place an initial expiration date (perhaps 30, 60 or 90 days) on a president's emergency declaration. Before the stated expiration date, Congress would have to affirmatively authorize an extension of the emergency powers within a timeframe of its choosing. Rep. Chip Roy (TX-21) has introduced the ARTICLE ONE Act which would codify this requirement utilizing a 30-day period.<sup>39</sup> The second safeguard would impose a cap of some specific amount on new emergency spending. Reaching the cap prior to the declaration's expiration date would also terminate the emergency, absent an extension by Congress.

## **REGULATORY REFORM THROUGH LITIGATION AND THE JUDICIARY**

While Congress' role in confronting unruly regulation is irreplaceable, the judiciary must play a role as well. For too long, judges have treated administrative bodies as infallible by giving too much deference to their interpretation and execution of laws passed by Congress. This practice, known as the "Chevron deference," has been devastating in enabling agencies to essentially be their own judge and jury in reviewing their rulemaking. FreedomWorks described the problem of Chevron as an "...alarming erosion of the constitutional separation of powers, allowing federal agencies to determine vaguely written statutes -- perhaps, at times, purposefully written to be vague -- without judicial review."<sup>40</sup> Just as the executive branch has supplanted Congress through its rulemaking, it has also encroached on the federal courts' responsibility of judicial review. Congress should help the courts restore their plenary authority of judicial review by enacting sound policy that reiterates the court's role in determining the lawfulness of regulation.

### **Enact the Separation of Powers Restoration Act**

Separation of Powers Restoration Act (SOPRA), introduced by Rep. Ratcliffe, would reign in the executive branch by scaling back Chevron deference.<sup>41</sup> Specifically, it would require a non-deferential review of all legal questions relevant to the regulatory controversy at hand, including constitutional and statutory interpretation. If implemented, SOPRA would place judicial review back in the hands of the judiciary and make clear the lines between judicial interpretation of law and executive enforcement of the law.

### **Require Judicial Review of Regulatory Impact Data**

According to the Mercatus Center, "judicial review of agencies' regulatory impact analys[es] could motivate agencies to base regulatory decisions on the best available evidence about the problems they seek to solve, the proposed regulation

<sup>39</sup> ARTICLE ONE Act of 2019, H.R. 1755, 116th Cong.

<sup>40</sup> Jason Pye & Josh Withrow, Restoring the Balance of Powers, FREEDOMWORKS, [http://fw-d7-freedomworks-org.s3.amazonaws.com/IB\\_1\\_2020\\_Restoring\\_the\\_Balance\\_of\\_Powers.pdf](http://fw-d7-freedomworks-org.s3.amazonaws.com/IB_1_2020_Restoring_the_Balance_of_Powers.pdf)

<sup>41</sup> Separation of Powers Restoration Act of 2019, H.R. 1927, 116th Cong.

and alternative solutions, and the likely consequences.”<sup>42</sup> As noted above, ensuring that an adequate record of data exists for judges to review is critical. To this end, the GEAR Task Force supports statutory reforms to the rulemaking process that require regulators to disclose data on which they base their regulatory decisions.

In conjunction with that reform, the GEAR Task Force supports enactment of the REVIEW Act, sponsored by former Rep. Marino (PA-12), to further enhance regulatory oversight conducted through our federal court system.<sup>43</sup> This measure would require a federal agency to postpone the effective start date of any high-impact rule until completion of any judicial proceedings challenging the rule. OIRA would be responsible for reviewing if a rule qualifies as high-impact. The bill defines a high-impact rule as one that has an annual negative economic impact of more than \$1 billion.

### Prevent Sue-and-Settle

“Sue-and-settle” is a practice used to create de-facto regulation in order to circumvent existing rulemaking procedures. According to Rob Gordon and Hans Von Spakovsky of The Heritage Foundation, “The administration would invite special-interest groups to sue the EPA over a regulation that it wanted to change but couldn’t, at least not expeditiously...Instead of fighting the lawsuit, the EPA would then almost immediately surrender, agreeing to settle. Inevitably, the settlement entailed consenting to whatever outrageous demands were being made by the agency’s handpicked ‘adversary.’”<sup>44</sup>

The GEAR Task Force recommends the enactment of the Sunshine for Regulatory Decrees and Settlements Act, sponsored by Rep. Doug Collins (GA-09), would subvert sue-and-settle tactics.<sup>45</sup> This bill would require agencies to disclose past sue-and-settle cases along with their effect on regulation. It would further create a 60-day waiting period between the day a suit is filed and a final settlement. This legislation would erode the ability of agencies to collude with partisan third parties.

---

<sup>42</sup> Reeve Bull & Jerry Ellig, *Judicial Review of Regulatory Impact Analysis*, MERCATUS CENTER (Mar. 9th, 2017) <https://www.mercatus.org/publications/regulation/judicial-review-regulatory-impact-analysis>

<sup>43</sup> REVIEW Act of 2016, H.R. 3617, 116th Cong.

<sup>44</sup> Rob Gordon & Hans Von Spakovsky, *Scott Pruitt Ends an Obama Administration Abuse of Power*, NATIONAL REVIEW (Oct. 21st, 2017), <https://www.nationalreview.com/2017/10/scott-pruitt-ends-epa-sue-settle-scheme-obama-administration-abuse-power/>

<sup>45</sup> Sunshine for Regulatory Decrees and Settlements Act of 2017, H.R. 712, 115th Cong.

# REFORM GOVERNMENT PRACTICES STEP TWO

Americans from all walks of life and political persuasion want an efficient government that delivers results. Every elected official promises their voters that they will work to serve them by leading a government that delivers solutions for the American people. No policy makers intentionally supports policies that create waste, yet, voters know that the federal government has developed a great tolerance of inefficiency. Many lawmakers and career bureaucrats continue to propose more spending and more bureaucracy to overwhelm, rather than solve, underlying programmatic deficiencies. Conservatives recognize that, sadly, there are vast areas of governance that need to be reformed in order to achieve government functions that are practicable, efficient, and accountable. The RSC GEAR Task Force supports a series of proposals to reform government practices to achieve these objectives for the American people.

Policies that lead to good governance and increased efficiency should not be partisan. Government practices, structures, and programs should be more businesslike, not more bureaucratic. They ought to be streamlined to maximize the value of every tax dollar invested in the federal government. Since Americans work hard and generously sacrifice much of their paychecks to the federal government, they should be treated more like shareholders. Citizens should know that the government will be responsible stewards of their hard-earned resources.

In order to maximize the efficiency of government practices, executive agencies should not be duplicative. Instead, offices and personnel should be structured in a way that synthesizes resources and maximizes the ability to tackle challenges head on. Executive agencies need to restructure to better fit changing times and modern challenges. Rather than the typical Washington approach of throwing more money at an office and hoping it will change, the government should be innovative.

Furthermore, federal spending is out of control and the government has completely lost track of how many programs it is funding. When someone pays a bill, they can look at the receipt or statement to see what goods and services accrued the cost they owe. By contrast, the federal government has succumbed to a standard not accepted anywhere else in American life—billing the taxpayer with no way of itemizing the cost. This is an outcome of the larger problem of unaccountable spending. Congress needs to get back to seriously reviewing programs it is funding, not only from a policy perspective but also through the lens of efficiency and accountability.

The RSC GEAR Task Force has a plan to reform government practices, restructure executive offices and agencies, and provide accountability for programs. By addressing practices, structure, and programs, this section of the report provides a reformed vision of government that is truly efficient for and accountable to the people.

## GOVERNMENT-WIDE PRACTICES

Government practices need reform at all levels. Before more technical and specific

practices are improved upon, government-wide practices should be addressed. Without getting the macro fundamentals of governing right, more technocratic functions of highly specialized agencies cannot be meaningfully reformed. The federal government needs to shape up some of its most broad and basic functions in a variety of ways to usher our federal government into the 21st Century.

### Improve Metrics

Reliable performance metrics inform sound policy, while imprecise metrics fuel poor decision-making.<sup>46</sup> In business, successful managers do not make strategic decisions without evidence, and government should be held to the same standard. It is critical that our government adequately and accurately measure the impacts of federal programs and initiatives while debating new policies and revising old ones. After all, federal policymaking has a measurable impact on individuals, families, and society at large. Thus, Congress should modernize the federal government's collection of metrics to ensure our federal policymakers are informed by the best available information including stronger outcome-based metrics.

In 2016, Congress passed the Evidence-Based Policymaking Commission Act which created the Commission on Evidence Based Policy.<sup>47</sup> One year later in September 2017, the Commission produced a report analyzing the importance of evidence-based policy making. It used the Drug Abuse Resistance Education program (DARE) as one example of the positive impact data can have in revising policies. DARE was created to help students avoid drugs, gangs, and other harmful activities. Over 30 surveys and analyses were done on the impact of the popular DARE program throughout the 1990's and early 2000's that demonstrated that the program was largely ineffective. In response to this, the DARE program partnered with Pennsylvania State University to rewrite their curriculum. Preliminary studies on the impact of the new DARE curriculum are very encouraging.<sup>48</sup>

Congress should work to optimize federal metrics with a simple two-step approach. First, Congress should request a GAO study on best practices by federal agencies on performance-based metric collection. Because agencies use different methods of collection and measure different activities, it is important for Congress to survey the best practices currently in use. Second, informed by GAO's report, it should require agencies to harmonize their terminology in data collection.<sup>49</sup> It is challenging for government to develop meaningful government-wide metrics because agencies use different terms to describe the same things. This discrepancy renders data vague, if not meaningless, for policymakers seeking to make data-driven decisions.

---

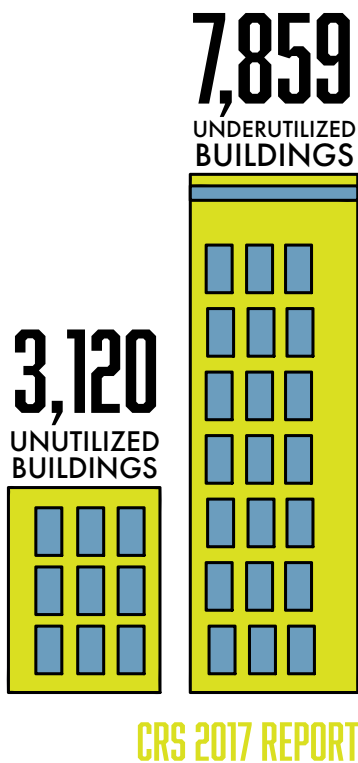
<sup>46</sup> Marc Berson & Howard Risher, *It's Time to Improve Government's Use of Metrics and Analytics*, GOVEX-EC.COM (Nov. 19th, 2017), <https://www.govexec.com/management/2017/11/its-time-improve-governments-use-metrics-and-analytics/142416/>

<sup>47</sup> 5 U.S.C. 3109 and 5316 (2019)

<sup>48</sup> Commission on Evidence-based Policymaking, *Report on the Promise of Evidence-Based Policymaking* (Sept. 2017) <https://www.cep.gov/report/cep-final-report.pdf>

<sup>49</sup> *Id.*

## Utilize Excess Federal Office Space



Current policies pertaining to management of federal property are grossly inefficient and contradict commonsense business practice. Under the status quo, empty office buildings cannot be sold by agencies that want to be efficient. Instead, they must let their vacant offices remain a purposeless cost on their balance sheets. According to a 2017 CRS report, "In FY2016, federal agencies owned 3,120 buildings that were vacant (unutilized), and another 7,859 that were partially empty (underutilized)."<sup>50</sup> If a space is no longer in use and an agency would like to get rid of it, the current process limits their ability to do so, by requiring the General Services Administration (GSA) to verify if another federal agency can use the office space before it can be put on the market for sale.

This inefficient requirement should be eliminated. If this reform were implemented Citizens Against Government Waste (CAGW) estimates, it would lead to a savings of \$15 billion over five years.<sup>51</sup> Putting up red tape around the practice of selling unused office space does not provide the federal government any sort of advantage. Instead, agencies should be able to sell their unused offices to provide for greater fiscal responsibility and better stewardship of taxpayer dollars.

Another efficient technique used to manage excess federal office space is known as enhanced leasing authority. For example, the National Aeronautics and Space Administration (NASA) uses enhanced leasing authority in order to curb waste by letting NASA rent out their underutilized properties to like-minded organizations for research purposes. This enhanced leasing authority is granted to NASA due to the unique quality of their assets, including highly specialized laboratories and other unique research capabilities. Furthermore, since space exploration and research are largely carried out through an enterprise approach, with NASA working side-by-side with state and private partners, enhanced leasing is an opportunity for NASA to accrue cost savings while staying within their normal purview of operations.

Enhanced leasing authority is meant to promote fiscal responsibility, as it allows for organizations to enter contracts with NASA with the potential to have some of the costs of their research reimbursed while paying NASA for the workspace. In FY 2018, enhanced leasing authority saved NASA \$6.7 million.<sup>52</sup>

Enhanced leasing authority was extended for two years in the December 2019 omnibus.<sup>53</sup> Congress should codify this exercise in good governance and promote further efficiency at NASA by extending enhanced leasing authority for seven years in a standalone bill. Government efficiency should be voted on by its merits, rather

<sup>50</sup> Garrett Hatch, The Federal Assets Sale and Transfer Act of 2016: Background and Key Provisions, CONGRESSIONAL RESEARCH SERVICE (Oct. 31 st, 2017), <https://fas.org/sgp/crs/misc/R44999.pdf#page=4>

<sup>51</sup> Citizens Against Government Waste, Prime Cuts 2018, <https://www.cagw.org/reporting/2018-prime-cuts>

<sup>52</sup> NASA Enhanced Use Leasing Extension Act of 2019, H.R. 5213, 116th Cong.

<sup>53</sup> Further Consolidated Appropriations Act of 2020, H. R. 1865, 116th Cong.

than tied to a larger more contentious spending bill. This more stable approach would allow for NASA officials to have more predictability when pursuing contracts that generate revenue for NASA. Finally, Congress should consider granting similar authority to other agencies.

### Enact the Transparency in Federal Buildings Projects Act

Being the largest employer in the nation, the federal government has a lot of office space. This reality stems from federal officials constantly planning, building, and discerning projects to build offices. It is difficult for policymakers and private sector stakeholders who want to better understand the full portfolio of federal office buildings, as there is no centralized location sharing this vital information.

The Transparency in Federal Buildings Projects Act, a commonsense piece of legislation sponsored by Rep. Gary Palmer (AL-06), would require the GSA to publish online all prospectuses submitted by GSA to Congress concerning proposed public building projects and associated information.<sup>54</sup> This legislation already passed the House of Representatives in October 2019.<sup>55</sup> It is time for the Senate to pass this important reform and send it to the White House to be signed into law.

### Leverage Common Contracts

The enormity of the federal government has created a system where government agencies often obtain duplicative services and products from third-party vendors. Yet, if the government more often approached contracts as a unified buyer, it could leverage the buying power that comes with great size.

The GEAR Task Force supports the OMB Performance Plan's proposal for agencies to leverage common contracts so that the shared contracts allow for taxpayer savings, increased efficiency, and greater value. The elimination of fragmented buying by agencies and duplicative contracts to the same vendor for largely the same work is estimated to lead to a savings of billions of taxpayer dollars.<sup>56</sup> Congress should require agencies to use common contracting techniques when such practice is feasible.

### Stop Paying Dead People

According to the Social Security Administration's (SSA) Inspector General (IG), millions of hard-earned tax dollars are paid out to deceased people every year. The SSA's IG received data identifying 17 million deceased individuals from the Veterans Administration (VA) in 2016. The IG ran this data against SSA records and was able to estimate that the SSA paid \$37.7 million to 746 dead veterans.<sup>57</sup>

<sup>54</sup> Transparency in Federal Buildings Projects Act, H.R. 2502, 116th Cong.

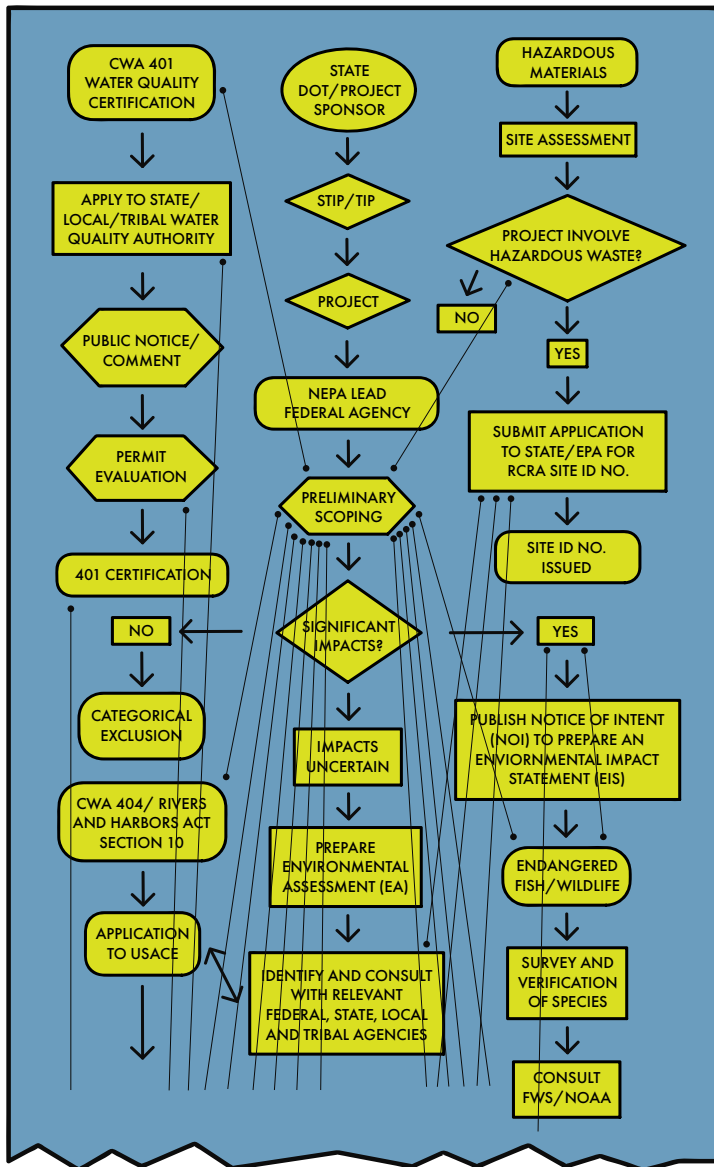
<sup>55</sup> Office of Congressman Gary Palmer, Palmer Stands for Increased Access to Federal Building Proposals, (Oct. 28th, 2018), <https://palmer.house.gov/media-center/press-releases/palmer-stands-increased-access-federal-building-proposals>

<sup>56</sup> General Services Administration, Category Management: Leveraging Common Contracts and Best Practices to Drive Savings and Efficiencies, (Dec. 2019)

<sup>57</sup> Matthew Adams, Kennedy Sponsors Bill to Stop Paying Dead People, AMERICANS FOR TAX REFORM



Because this sample size was limited to just veterans, it can be assumed that this issue is far vaster when all deceased Americans are included. In 2015, the SSA IG identified 6.5 million individuals listed as being 112 years of age or older without any recorded death information.<sup>58</sup> The SSA's failure to curb these improper payments to deceased individuals is an embarrassing problem for the federal government.



**THE PROCESS OF OBTAINING A FEDERAL PERMIT (ONLY HALF THE CHART SHOWN)**

the potential impact certain projects will have on the environment.<sup>62</sup> The term impact has been understood more broadly over time to include more indirect or cumulative effects. In 2016, for instance, the Obama Administration issued a rule requiring agencies to consider the “reasonably foreseeable” climate impacts

(Mar. 15th, 2018), <https://www.atr.org/kennedy-sponsors-bill-stop-paying-dead-people>

<sup>58</sup> Office of Inspector General, Numberholders Age 112 or Older Who Did Not Have a Death, SOCIAL SECURITY ADMINISTRATION (Mar. 2015) [https://oig.ssa.gov/sites/default/files/audit/summary/pdf/Summary%2034030\\_0.pdf](https://oig.ssa.gov/sites/default/files/audit/summary/pdf/Summary%2034030_0.pdf)

<sup>59</sup> Stopping Improper Payments to Deceased People Act of 2019, H.R. 2543, 116th Cong.

<sup>60</sup> Id.

<sup>61</sup> Kelsey Brugger, Trump unveils landmark rewrite of NEPA rules, E&E NEWS (Jan. 9th, 2020) <https://www.eenews.net/stories/1062036913>

<sup>62</sup> Republican Study Committee, FY2020 Budget, (May 2019) <https://mikejohnson.house.gov/sites/mike-johnson.house.gov/files/Final%20RSC%20FY%202020%20FOR%20PRINT.pdf>

If agencies were able to better communicate and had access to a complete death database, there should be no improper payments made to the deceased. GEAR Task Force Chairman Rep. Greg Gianforte (MT-At Large) is the lead Republican spearheading the bi-partisan effort to fix this problem. To that end, he has cosponsored the Stopping Improper Payments to Deceased People Act.<sup>59</sup> This commonsense bill would allow federal agencies to work together and have access to the complete death database in order to prevent payments to dead people. It would also require the SSA to partner with states in compiling and sharing death data.<sup>60</sup> Finally, the bill would provide a framework for state and local agencies to appropriately collect and disseminate death data. This legislation would end the piecemeal approach to collecting data on deaths ensuring that no more federal tax dollars are wasted on the dead.

Enact Permitting Reform

Obtaining a permit through the federal government is a process fraught with inefficiency. President Trump described the problems with federal permitting as “big government at its worst.” Perhaps the largest hinderance encountered during the federal permitting process is the National Environmental Policy Act (NEPA).<sup>61</sup> NEPA requires federal agencies to assess

**“ANYONE WHO  
HAS DEALT WITH  
THE FEDERAL  
GOVERNMENT KNOWS  
THE FRUSTRATION  
THAT THE SLOW  
BUREAUCRATIC  
PROCESS CAN BRING.  
GOVERNMENT DELAYS  
TO INFRASTRUCTURE  
PROJECTS HAVE A  
TANGIBLE COST TO  
JOB GROWTH.”**  
**GEAR TASK FORCE MEMBER  
REP. KELLY ARMSTRONG  
(ND-AT LARGE)**

arising from greenhouse gases produced by a number of economic and energy-related activities.<sup>63</sup> This burdensome and confusing regulatory structure has led to the NEPA review taking nearly 6 years on average.<sup>64</sup>

Congress has sought to address inefficiency in the permitting process in recent years. For instance, Title 41 of the FAST Act, enacted in 2015, contained temporary reforms to streamline permitting for certain covered infrastructure projects.<sup>65</sup> Covered projects include anything subject to NEPA, valuing at least \$200 million, that is ineligible for existing streamline or exemption. While these reforms were significant, borrowing mostly from the Federal Permitting Improvement Act, they were limited in scope.<sup>66</sup>

In 2017, the Trump administration issued Executive Order 13807 to address some of the problems created by NEPA. The E.O. instituted the “One Federal Decision” policy that places a 2-year goal on NEPA reviews. It also requires the lead State agency to set a timetable for the NEPA review process and a structure for issue resolution.<sup>67</sup>

GEAR Task Force member Rep. Kelly Armstrong (ND-At Large) has introduced bipartisan legislation, the Federal Permitting Reform and Jobs Act, which would build on recent reforms and greatly improve the federal permitting process.<sup>68</sup> The bill would expand and make permanent the reforms implemented in the Title 41, of the FAST Act, commonly known as FAST-41. This would make permanent a significant reduction of the burden created by NEPA. It would also create a two-year deadline for agencies to finalize permitting determinations. Furthermore, the bill would codify President Trump’s Executive Order 13807 allowing for the Steering Council to help overcome any obstacles in an individual permitting process, if the agency or applicant seek assistance.

As Rep. Armstrong has stated, “Anyone who has dealt with the federal government knows the frustration that the slow bureaucratic process can bring. Government delays to infrastructure projects have a tangible cost to job growth.” Congress must continue to improve the permitting process if the federal government is going to operate more efficiently.

To begin the new decade, the President announced his plans to further reform the regulatory regime codified in the National Environmental Policy Act (NEPA).<sup>69</sup> This landmark proposal would end the requirement that permit applicants account

<sup>63</sup>Natural Resources Committee, Hearing Summary: Full Committee Oversight hearing titled “Modernizing NEPA for the 21st Century”, U.S. HOUSE OF REPRESENTATIVES (Nov. 29th, 2017) [https://republicans-naturalresources.house.gov/uploadedfiles/hearing\\_memo\\_-\\_fc\\_ov\\_hrg\\_on\\_nepa\\_11.29.17.pdf](https://republicans-naturalresources.house.gov/uploadedfiles/hearing_memo_-_fc_ov_hrg_on_nepa_11.29.17.pdf)

<sup>64</sup> Phillip Rossetti, Addressing Delays Associated with NEPA Compliance, AMERICAN ACTION FORUM <https://www.americanactionforum.org/research/addressing-delays-associated-nepa-compliance/>

<sup>65</sup> 42 U.S.C. § 4370m

<sup>66</sup> Federal Permitting Improvement Act of 2015, S. 280, 114th Cong.

<sup>67</sup> Exec. Order No. 13807, 82 FR 40463 (2017)

<sup>68</sup> Federal Permitting Reform and Jobs Act of 2019, H.R. 3671, 116th Cong.

<sup>69</sup>Brugger, supra note 47.

for “cumulative effects” and “indirect impacts.” These standards have often proved to be impossibly burdensome, asking contractors to consider implications beyond reasonable predictability and with indirect relation to a potential project. Furthermore, the Trump administration has announced plans to exempt projects with minimal federal funding from NEPA review and to require one agency to take the lead in processing applications to reduce duplication.

### Modernize the Endangered Species Act

The Endangered Species Act (ESA) directs the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to list or delist animal species as endangered based upon the use of “Best Available Science.” Unfortunately, this term has largely been left open to interpretation. This has created a gap in a broad range of interpretations. Since the ESA does not define what constitutes best available science, courts have interpreted the obligation often falling back on deferential review and contributing to endless litigation.

Government practices that hinge upon a crucial phrase should not be left so vague as to undermine the enforcement of a policy. Thus, the phrase “Best Available Science” needs to be clearly defined and modernized in its application. The Endangered Species Transparency and Reasonableness Act, sponsored by Rep. Tom McClintock (CA-04), offers a solution that clarifies the meaning of “Best Available Science.”<sup>70</sup> This legislation would require that data used by federal agencies for ESA listing decisions be publicly available online. This proposal would create accountability as it would allow individuals to know the basis for the government’s listing decision.<sup>71</sup>

Another problem posed by the ESA listing process is the inappropriate designation of critical habitat space by the FWS. Critical habitat space is land that is preserved to help protect an endangered species. In the past, designations of critical habitat space have involved setting aside vast amounts of land to protect species that cannot inhabit the land. For example, in 2018, the Supreme Court ruled unanimously that the FWS could not take over 1,500 acres of private and commercial land in an attempt to recover an endangered species of frog. This decision was made on the simple basis that the land had never been inhabited by the endangered species, and the land did not possess the environmental features the frog needed for survival. In plain terms, the Court ruled that critical habitat must be actual habitat for the species.<sup>72</sup>

To address this issue the GEAR Task Force recommends that Congress enact the Critical Habitat Improvement Act, sponsored by RSC Chairman and House

---

<sup>70</sup> Endangered Species Transparency and Reasonableness Act of 2018, H.R. 3608, 115th Cong.

<sup>71</sup> *Id.*

<sup>72</sup> Faimon Roberts, In Louisiana dusky gopher frog case, U.S. Supreme Court overturns lower courts, NEW ORLEANS ADVOCATE (Nov. 28th, 2018) [https://www.nola.com/news/courts/article\\_69e7aae2-b56d-55cd-be36-33e47af62125.html](https://www.nola.com/news/courts/article_69e7aae2-b56d-55cd-be36-33e47af62125.html)

Committee on Natural Resources member, Rep. Mike Johnson (LA-04).<sup>73</sup> This legislation would codify the August 2019 Department of Interior (DOI) rule that reformed the standards related to the designation of critical habitats.<sup>74</sup> Specifically, the legislation would require that critical habitat designations be made only with land where the DOI Secretary has identified what elements are necessary for the survival of an endangered species. Furthermore, the DOI Secretary can only use land that is deemed essential to species survival. Finally, the DOI must exhaustively attempt to use land currently inhabited by an endangered species, before turning to unused land to be designated as critical habitat.<sup>75</sup>

## **OVERHAUL FEDERAL TECHNOLOGY PRACTICES**

Successful businesses understand that operations cannot happen efficiently without an effective technology policy. According to GAO, the federal government invests over \$90 billion annually in information technology (IT). Yet, government technology is completely lagging, and aspects of federal IT management are outdated or duplicative. The federal workforce is undertrained in applicable technologies and most agencies have not fully implemented required reforms in software management. Furthermore, the government's incredible capacity for collecting data through various agency reports has little use without an effective management of government IT. Congress has taken a proactive role in IT oversight in the last decade but must continue to lead needed reforms to promote better efficiency and accountability.

### **Improve the Federal Information Technology Acquisition Reform Act (FITARA) Scorecard**

In 2014, Congress passed the Federal Information Technology Acquisition Reform Act (FITARA) into law.<sup>76</sup> FITARA was the first major reform to congressional oversight of federal government IT in the new millennium.<sup>77</sup> FITARA created a scorecard system where agencies are given a grade on their IT policies and how well they have implemented the reforms required under FITARA. Grades are determined based on compliance with seven categories. Categories include data consolidation, transparency and risk management, Chief Information Officer (CIO) authority enhancement, software purchasing, and other related factors. Agencies must testify before Congress about their grades and steps they are taking to improve poor performance. This accountability-based model has produced effective results. For example, in 2018, only seven agencies started the year with the highest possible score.<sup>78</sup> However, by the end of the year with the help of effective oversight, 18 of the 24 agencies under FITARA had obtained the highest possible score.

<sup>73</sup> Critical Habitat Improvement Act of 2019, H.R. 5591, 116th Cong.

<sup>74</sup> U.S. Department of Interior, Trump Administration Improves the Implementing Regulations of the Endangered Species Act, (Aug. 12th, 2019) <https://www.doi.gov/pressreleases/endangered-species-act>

<sup>75</sup> House Western Caucus, Modernizing the Endangered Species Act, <https://westerncaucus.house.gov/issues/issue/?IssueID=14890>

<sup>76</sup> 40 U.S.C. 11302 and 11319 (2019)

<sup>77</sup> FITARA Overview, CIO.GOV, <https://management.cio.gov/>

<sup>78</sup> Government Accountability Office, Report to Congress: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas (Mar. 2019) <https://www.gao.gov/assets/700/697245.pdf#page=47>

The GEAR Task Force believes that Congress should continue to build off the success of the FITARA model by seeking improvements from agencies where they currently fall short.<sup>79</sup> As of 2018, no agency had fully implemented the FITARA requirements for streamlining CIO authorities. Furthermore, in 2018, agencies were found to have underreported IT contracts by a value of approximately \$4 billion. Despite the generally positive results of the FITARA program, this lack of accountability is unacceptable. Congress should more thoroughly provide oversight in the areas of FITARA scoring where agencies are falling short, so that FITARA requirements will become fully implemented across agencies.

### Consolidate Data Centers

Federal agencies have recently identified over 12,000 data centers, a number that continues to climb.<sup>80</sup> There is no reason for the federal government to have countless data centers, especially considering that maintaining so many is costly and inefficient. Since 2011, the government has offered FedRAMP as a security monitoring service to secure agency data on the cloud. Transitioning data to the cloud has been stalled by agencies not granting reciprocal authorization when using FedRAMP. Currently the federal government spends over \$70 billion on IT system operations and maintenance.<sup>81</sup> Much of this cost is due to duplication, which is exacerbated by duplicative data centers and inefficient implementation of cloud technology. In 2017, the GAO High Risk Report recommended that the government create savings through data center consolidation. Currently, the OMB IT Dashboard tracks the costs of federal IT and provides guidelines for federal agencies on how to execute cost-saving consolidation. Recommendations were made by GAO to agencies to achieve \$5.7 billion in savings through data center consolidation.<sup>82</sup>

A simple step for Congress to inject accountability into the process of consolidation is to require that all federal data center consolidation cost savings are reported to OMB. This would provide increased transparency for policymakers as it would centralize important data in one public platform. Furthermore, some data is already collected and disseminated by OMB, so the precedent for the government practice is already established. The GEAR Task Force recommends that Congress overhaul federal data storage by incentivizing agencies to consolidate and move towards the cloud. Agency funding should be maintained for those who reach consolidation benchmarks set by Congress, while agencies that fail to meet such benchmarks should have funding incrementally reduced until corrective action is taken.

---

<sup>79</sup> Id. at 74.

<sup>80</sup> Government Accountability Office, DATA CENTER OPTIMIZATION: Additional Agency Actions Needed to Meet OMB Goals (Apr. 2019), <https://www.gao.gov/assets/700/698448.pdf#page=14>

<sup>81</sup> Committee on Oversight and Government Reform, Hearing Summary: To the Cloud: The Cloudy Role of FEDRAMP in IT Modernization, U.S. House of Representatives (Apr. 11th 2019) <https://oversight.house.gov/legislation/hearings/to-the-cloud-the-cloudy-role-of-fedramp-in-it-modernization>

<sup>82</sup> Government Accountability Office, *supra* note 77.

## Increase Use of Software Asset Management

With government investing an enormous amount of money in technology and the constant innovations being made in software, it is understandable that agencies will often update their software assets. By the same token, the process of managing these costly assets is crucial, with there being an absolute need to keep an accurate inventory of existing software.

In GAO's 2018 report on government duplication, it was revealed that 20 agencies had not completed software inventories required by law.<sup>83</sup> Agencies will often purchase duplicate programs simply because they are not tracking what they already own.<sup>84</sup> Congress should require that all agencies eliminate redundant software products and services and reduce excessive information technology software licenses. Furthermore, Congress must conduct rigorous oversight to ensure that agencies are in compliance with federal law pertaining to software asset management.

## Transition Government Records to Electronic Systems

A recent White House plan called for the conversion of all records from paper to electronic form.<sup>85</sup> This may seem obvious as we enter the third decade of the 21st century, but this is a major undertaking. The National Archives and Records Administration (NARA) is attempting to convert its treasure trove of information to electronic systems by 2022. While agencies across government have many important tasks in front of them, converting records to modern system is essential to efficient data management. By moving all records to electronic systems, government will be better equipped to access its data and respond to individual requests more quickly. Congress should assist in this historic effort by codifying the Trump administration's deadline for NARA and using it as a benchmark for all federal agencies.

## **EFFICIENT PRACTICES FOR NATIONAL SECURITY**

America stands at a critical juncture concerning its national security. The government must always prepare for threats spanning from the violence of terrorists and cartels to high tech nuclear and cyber threats from near-peer adversaries. America's national security apparatus needs to run as a well-oiled machine. Efficient practices and fiscal accountability are just as critical to national security efforts as any other factor involved. Congress must do what it can to maintain a robust oversight role in all aspects of governance concerning the defense of our nation.

---

<sup>83</sup> The Chief Information Officer (CIO) of each executive agency is required to create a full inventory including 80 percent of software license spending and enterprise licenses in the agency. They are also required to regularly track licenses and license management, analyze software usage for the purposes of cost-effective decision making, deliver training on software license management, and establish the goals of software management for the agency. CIOs are required to report to the agency's Director on financial savings, which then must be made public. Government Accountability Office, 2018 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits (Apr. 2018) <https://www.gao.gov/assets/700/691514.pdf#page=89>

<sup>84</sup> Citizens Against Government Waste, *supra* note 57.

<sup>85</sup> White House Office of Management & Budget, Memorandum: Transition to Electronic Records (Jun. 28th, 2019), <https://fas.org/sgp/trump/omb-electronic.pdf>

## Reduce Government Security Clearance Processing Delays

The federal government has long struggled with processing security clearances in a timely manner. In October 2019, a new agency, the Defense Counter Intelligence and Security Agency (DCSA) was created through a merger between the Defense Department's Defense Security Service (DSS) and OPM's National Background Investigations Bureau (NBIB) into one office.<sup>86</sup> The backlog of pending clearances, inherited from OPM has been significantly reduced from 725,000 pending investigations in 2018 to under 218,000 at the onset of 2020. This number is in line with the administration's "steady-state" inventory target. Secret level clearances were processed 55% faster and top-secret applications were processed 60% faster.<sup>87</sup> This is a major improvement when previously a top-secret security clearance took over a year to process, and a secret level clearance took close to a year.<sup>88</sup>

The GEAR Task Force recommends that Congress codify GAO's recommendation to allow for clearance investigations to be executed more efficiently.<sup>89</sup> In doing so, Congress should request an evidence-based review of investigation and adjudication timeliness objectives, with a report to Congress on their findings. This report should review the quality of background investigative measures. Congress should also require DCSA to develop and implement a comprehensive IT and workforce plan that identifies what is needed to meet current and future demand for background investigations services and to improve the processing time for investigations.

## Address Cybersecurity Shortcomings

America's critical infrastructure, along with the ability for all federal offices to be able to conduct business is dependent on the government's cybersecurity system and capabilities. Hackers, criminals, and terrorists seek to exploit America's cybersecurity systems in the same way threatening actors seek to overcome physical security systems. For example, in early 2020 a group of Iranian affiliated hackers penetrated the U.S. Federal Depository Library Program's website and wrote pro-Iranian messages, depicted the President of the United States being assaulted, and wrote an ominous message about Iranian cyber capabilities.<sup>90</sup> While the breach did not produce overly harmful results, it nonetheless demonstrated current vulnerabilities within the federal network. Cybersecurity needs are constantly evolving as the capacity of hackers change, so the government must continue to update its cyber practices to protect America's systems.

<sup>86</sup> Lindy Kyzer, DoD Appoints NBIB Director as Acting Director, Defense Counterintelligence and Security Agency, CLEARANCEJOBS.COM (Jun 24th, 2019), <https://news.clearancejobs.com/2019/06/24/dod-appoints-nbib-director-as-acting-director-defense-counterintelligence-and-security-agency/>

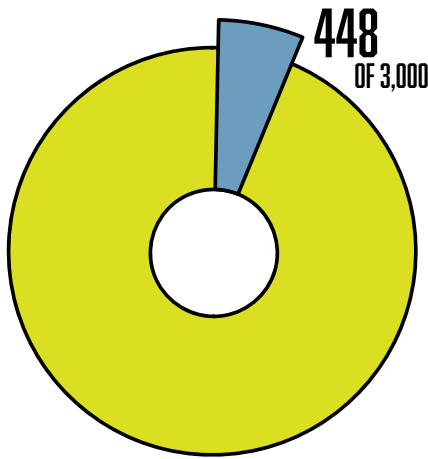
<sup>87</sup> Adam Mazmanian, Clearance Backlog Continues to Drop, FEDERAL COMPUTER WEEK (Jan. 22nd, 2020) <https://fcw.com/articles/2020/01/22/clearance-backlog-drops-senate-hearing.aspx>

<sup>88</sup> Lindy Kyzer, OPM Cuts Security Clearance Backlog in Half, But Processing Delays Spell Trouble for Pentagon, GOVEXEC (Jul. 22nd, 2019) <https://www.govexec.com/management/2019/07/opm-cuts-security-clearance-backlog-half-processing-delays-spell-trouble-pentagon/158586/>

<sup>89</sup> Government Accountability Office, *supra* note 77.

<sup>90</sup> Lex Haris, Hackers briefly deface website for U.S. government library with pro-Iranian message, CBS NEWS (Jan. 4th, 2020) <https://www.cbsnews.com/news/iran-hackers-briefly-deface-website-for-u-s-government-library-with-pro-iranian-message/>





**ONLY 448 OF THE 3,000 GAO RECOMMENDATIONS FOR U.S. GOVERNMENT'S CYBERSECURITY POLICIES HAVE BEEN IMPLEMENTED**

Since 2010, GAO has made over 3,000 recommendations concerning the U.S. government's cybersecurity policies.<sup>91</sup> As of GAO's last full survey of these concerns in 2017, only 448 recommendations had been implemented. The Trump administration has made cyber security a priority and has implemented important policies addressing current federal practices.<sup>92</sup> The administration has released multiple strategy documents and attempted to address current threats such as the need to fully staff cyber security positions within the federal government.

Congress should use its oversight authority to support the Trump administration's cybersecurity initiatives. Specifically, Congress should require that an inter-department strategy be developed to implement the suggestions of GAO that remain outstanding.<sup>93</sup> Furthermore, Congress must require reports to the relevant congressional committees on governmental efforts to secure federal information systems, protect cyber infrastructure while also safeguarding individuals' privacy and personal data.

#### Safeguard State Secrets Through Security Clearance Reform

A major threat to the security of state secrets is the recruitment of federal workers with newly acquired security clearances to work at private entities with questionable ties to nefarious governments. Security clearances are a state privilege and many companies are seeking consultants with clearances under the guise of innocuous purposes with the potential to exploit their access to classified information. With the current debate raging over Huawei as an example, the threat of foreign government affiliated companies exploiting access to America's secrets through individuals with limited experience cannot be overstated.<sup>94</sup> In fact, President Obama's Senior Director for Cyber Security Policy is now a lobbyist for a Chinese government shell company.<sup>95</sup>

The Safe Career Transitions for Intelligence and National Security Professionals Act, sponsored by Rep. Jim Banks (R-IN), is a leading proposal to address this issue.<sup>96</sup> This legislation would ban companies that are barred from doing business with the federal government, like Huawei and ZTE, from being able to hire former civil servants with security clearances. It would also give the Director of National Intelligence (DNI) the ability to add companies to the list.

<sup>91</sup> Government Accountability Office, *supra* note 77, at 58.

<sup>92</sup> White House Press Release, President Donald J. Trump is Strengthening America's Cybersecurity Workforce to Secure Our Nation and Promote Prosperity (May 2nd, 2019), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-strengthening-americas-cybersecurity-workforce-secure-nation-promote-prosperity/>

<sup>93</sup> Government Accountability Office, *supra* note 77, at 28.

<sup>94</sup> Thomas Ayres, How to Pre-Empt the Huawei Threat, WALL STREET JOURNAL (Nov. 17th, 2019) <https://www.wsj.com/articles/how-to-pre-empt-the-huawei-threat-11574018700>

<sup>95</sup> Dan Strumpf, Trump Takes Aim at Huawei After Ex-Obama Official Becomes Lobbyist, WALL STREET JOURNAL (Apr. 15th, 2019) <https://www.wsj.com/articles/how-to-pre-empt-the-huawei-threat-11574018700>

<sup>96</sup> Safe Career Transitions for Intelligence and National Security Professionals Act of 2019, H. R. 3997, 116th Cong.



## ENACTING FUNDAMENTAL REFORM TO FEDERAL JUDICIAL PRACTICES

When courts are unable to efficiently administer justice, the integrity of America's rule of law is put at risk. Furthermore, when our nation's system for redressing grievances between individuals, organizations and government is weighed down with inefficiency, unnecessary conflicts can linger in society. Congressional and executive operations become jeopardized when laws and policies are held up in lengthy and unaccountable legal proceedings. For these reasons, the virtues of efficiency and accountability should drive reforms to the federal judicial system just as they should within the other two branches of the federal government.

### Modernize the 9th Circuit Court

The 9th Circuit Court of Appeals has grown too large to effectively carry out the duties of an appellate circuit. Compared to other circuits, it requires the most judges by far and covers the most geography and population. The 9th Circuit covers around 40 percent of America's land mass and 65 million people, amounting to 20 percent of our population.<sup>97</sup> It also has over 11,000 pending cases, which make up nearly one third of the backlog miring America's circuit courts.<sup>98</sup> As described by former House Judiciary Committee Chairman Rep. Bob Goodlatte, "[the 9th Circuit is] twice the size of any other circuit. The geographic breadth and workload of the Ninth Circuit makes it challenging for parties and their counsel to have timely court dates in their region."

The administrative challenges posed by its size have been a matter of debate for many decades.<sup>99</sup> Two non-partisan reports analyzing the challenges faced by the 9th Circuit have been commissioned. In 1973, the Hruska Commission was published by then Senator Roman Hruska (R-NE) which called for the 9th Circuit to be broken into two separate circuits.<sup>100</sup> More recently, in 1998 Supreme Court Justice Byron White produced the White Commission, which suggested reforming the structure of the 9th Circuit.<sup>101</sup> The need to more efficiently administer the 9th Circuit is simply undeniable.

To resolve this issue, the GEAR Task Force supports enactment of the Judicial Administration and Improvement Act of 2019, sponsored by Rep. Andy Biggs (AZ-05). Similar to the suggestion of the Hruska Commission, this legislation would

---

<sup>97</sup> Mark Brnovich & Ilya Shapiro, Split Up the Ninth Circuit—but Not Because It's Liberal, WALL STREET JOURNAL (Jan. 11th, 2018) <https://www.wsj.com/articles/split-up-the-ninth-circuit-but-not-because-its-liberal-1515715542>

<sup>98</sup> Senate Judiciary Committee, Testimony of DIARMUID F. O'SCANNLAIN (Jul. 31st, 2018), <https://www.judiciary.senate.gov/imo/media/doc/07-31-18%20O'Scannlain%20Testimony.pdf#page=8>

<sup>99</sup> Aquiles Suarez, No More Justice Delayed: Time To Divide the Ninth Circuit Court of Appeals HERITAGE FOUNDATION (Jun. 14th, 1989) <https://www.heritage.org/node/21644/print-display>

<sup>100</sup> Commission on Revision of the Federal Court Appellate System, Report: Structure and Internal Procedures: Recommendations for Change, (Jun. 1975), <https://www.fordlibrarymuseum.gov/library/document/0019/4520540.pdf>

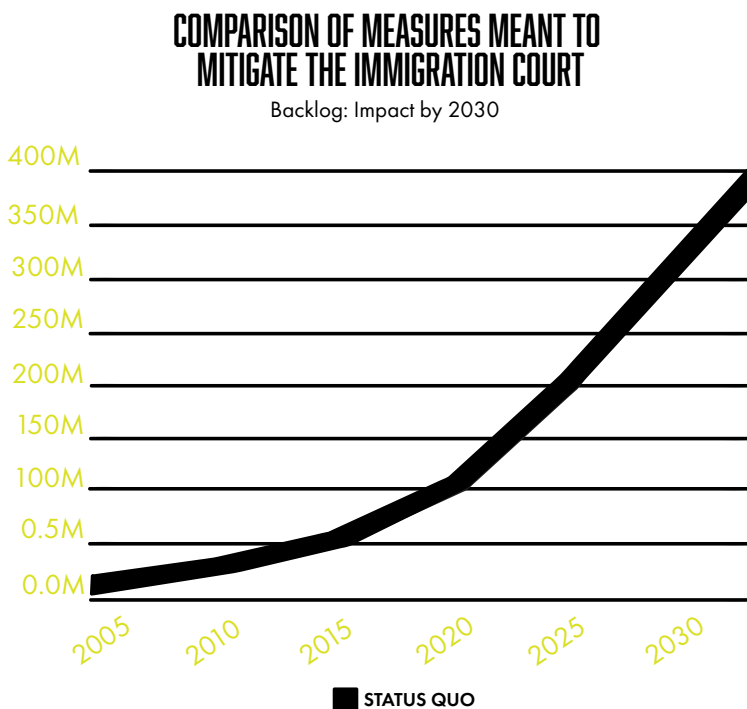
<sup>101</sup> Commission on Structural Alternatives for the Federal Courts of Appeals, Final Report, (Dec. 18th, 1998), <https://www.law.berkeley.edu/wp-content/uploads/2019/03/Commission-on-Structural-Alternatives-for-the-Federal-Courts-of-Appeals-1998.pdf>

divide the 9th Circuit into two separate federal circuits. The new 9th Circuit would maintain California, Guam, Hawaii, Oregon, Washington, and Northern Mariana Islands. The legislation would also create a 12th Circuit composed of Alaska, Arizona, Idaho, Montana, and Nevada. This proposal offers a balanced solution by splitting states and territories equitably between two circuits to better promote the efficient administration of federal court duties. As Ilya Shapiro of the Cato Institute put it, “Smaller circuits encourage substantive knowledge of local law and collegiality among the judges.”<sup>102</sup>

### Optimize Immigration Court Efficiency

Similar to the issues concerning the 9th Circuit Court of Appeals, the challenges faced by immigration courts have recently been greatly politicized. Nonetheless, there are severe non-partisan challenges that currently undermine the simple

function of American immigration courts. Due to extreme inefficiency, the current backlog of cases in immigration courts now exceeds 1 million claims.<sup>103</sup> This backlog has grown rapidly over the past decade. As the backlog has grown, wait times have increased, sometimes even taking years to process a case, according to the Bi-Partisan Policy Center.<sup>104</sup> This burden is currently imposed upon approximately 400 immigration judges, according to the Department of Justice.<sup>105</sup> The backlog not only increases wait times, it strains housing facilities, and undercuts the ability of judges to swiftly grant asylum to genuine claimants or quickly remove individuals who abuse the system. Overall immigration court inefficiencies undermine America’s national security and humanitarian concerns in adjudicating immigration law.



The RSC GEAR Task Force recommends Congress prioritize hiring more immigration judges. Specifically, Congress should pass Rep. Debbie Lesko’s (AZ-08) legislation that would authorize the Attorney General to appoint 100 more immigration judges.<sup>106</sup> This would expand the number of judges by about a quarter of its current

<sup>102</sup> Mark Brnovich & Ilya Shapiro, Split up the Ninth Circuit – but Not Because It’s Liberal, CATO INSTITUTE, <https://www.cato.org/publications/commentary/split-ninth-circuit-not-because-its-liberal>

<sup>103</sup> Michelle Hackman, U.S. Immigration Courts’ Backlog Exceeds One Million Cases, WALL STREET JOURNAL (Sep. 18th, 2019) <https://www.wsj.com/articles/u-s-immigration-courts-backlog-exceeds-one-million-cases-11568845885>

<sup>104</sup> Aquiles Suarez, No More Justice Delayed: Time To Divide the Ninth Circuit Court of Appeals HERITAGE FOUNDATION (Jun. 14th, 1989) <https://www.heritage.org/node/21644/print-display>

<sup>105</sup> U.S. Department of Justice, About the Office of the Chief Immigration Judge, <https://www.justice.gov/eoir/office-of-the-chief-immigration-judge>

<sup>106</sup> A Bill to authorize the Attorney General to appoint 100 additional immigration judges, and for other purposes of 2019, H.R. 3859, 116th Cong.

**‘THIS PRACTICE,  
ACCORDING TO  
SUPREME COURT  
JUSTICE CLARENCE  
THOMAS, IS  
“LEGALLY AND  
HISTORICALLY  
DUBIOUS.”  
SUPREME COURT JUSTICE  
CLARENCE THOMAS**

size. A major increase in judges will lessen the caseload burden per judge allowing for more time to process individual cases more efficiently. It is disgraceful that an administrative court system designed to be efficient has become more bogged down than an appeals court. There is nothing partisan about efficiently administering the law and providing effective due process by processing cases reasonably quickly out of respect to the interest of both parties in any case.

Provide Accountability for the Judgement Fund

The Judgment Fund was created to provide for payments to successful plaintiffs in civil suits brought against the United States. The fund is managed by the Bureau of Fiscal Service under the Department of the Treasury.<sup>107</sup> Payments from the Judgement Fund are non-discretionary, due to its function in paying out judgments and settlements as they occur. Unfortunately, there historically has been little effective oversight of the Judgement Fund because specifics about its payments have long been obscured.<sup>108</sup>

Congress has recently begun to remedy this problem. Recently, two leading proposals the Judgment Fund Transparency Act, sponsored by Rep. Chris Stewart (UT-02).<sup>109</sup> Tand Rep. Doug Collins’ (GA-09) the Open Book on Equal Access to Justice, sponsored by Rep. Doug Collins, were signed into law in early 2019 as part of a larger legislative package<sup>110</sup> These reforms allow for transparent reporting on payments made by the federal government to award attorney’s fees of prevailing parties in suits against the federal government. Congress should continue to enhance accountability for the Judgment Fund. Current reporting standards regarding payments received can be strengthened to require specific reporting on the facts of a case. Reporting can also be broadened for national security consideration to disclose if a prevailing party has ties to foreign governments. Finally, since Judgment Fund accountability measures are a new government practice, Congress should work with the Department of the Treasury to review current reporting and standardize best practices. The Department of the Treasury should also report to Congress on any anomalies outside of current reporting requirements, including flagging the largest payments from the Judgement Fund and the most frequent recipients of funds. Measures like these, allow for Congress to be better informed when considering structural reforms to the Judgement Fund in order to provide for greater efficiency and transparency.

Provide Checks on Federal Injunctive Authority

Activist judges have recently assumed the authority to frequently issue nationwide injunctions on laws and regulations.<sup>111</sup> This practice, according to Supreme Court

<sup>107</sup> U.S. Department of Treasury, Judgment Fund FAQs, <https://fiscal.treasury.gov/judgment-fund/faqs.html>  
<sup>108</sup> House Committee on the Judiciary, Hearing Transcript: Oversight of the Judgment Fund (Mar 2nd, 2017) <https://www.govinfo.gov/content/pkg/CHRG-115hhrg25481/html/CHRG-115hhrg25481.htm>  
<sup>109</sup> Judgment Fund Transparency Act of 2017, H.R. 1096, 115th Cong.  
<sup>110</sup> Open Book on Equal Access to Justice Act of 2015, H.R. 3279, 114th Cong.  
<sup>111</sup> Marcia Coyle, Clarence Thomas, Alone, Asserts National Injunctions Are ‘Historically Dubious’, NA-

Justice Clarence Thomas, is “legally and historically dubious.” Thomas noted that these injunctions did not take place until approximately 150 years after America’s founding. He further explained, “These injunctions are beginning to take a toll on the federal court system— preventing legal questions from percolating through the federal courts, encouraging forum shopping, and making every case a national emergency for the courts and for the executive branch.”<sup>112</sup>

Simply put, nationwide injunctions breed inefficiency. When hastily enacted, a federal judge can halt a national policy without a full proceeding that weighs its Constitutionality. Furthermore, under current law there is little recourse to hold accountable a federal judge who is hasty when issuing nationwide injunctions.

To appropriately rein in runaway federal courts, it is Congress that must act. Article 1, Section 8, Clause 9 states, “The Congress shall have Power To ...constitute Tribunals inferior to the supreme Court...” and Article Three, Section 1 of the Constitution states, “The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” The Constitution makes clear that all inferior federal courts are created and given legitimacy through an act of Congress. Congress has acted over the years to create and reform the circuits which make up the federal judiciary. These decisions have been made within the context of figuring out what practices would allow for the administration of justice most efficiently for Americans within each court jurisdiction.

Congress should address the problem of activist judges so that government can more efficiently enact policy goals that elected officials are entrusted to advance.<sup>113</sup> The GEAR Task Force recommends that Congress enact the Nationwide Injunction Abuse Prevention Act of 2019, sponsored by Rep. Mark Meadows (NC-11).<sup>114</sup> This legislation would limit the injunctive authority of a federal judge to their federal circuit or the parties represented in a case. Individual judges would no longer act as de facto policymakers, as they would be unable to declare sweeping nationwide injunctions that prevent the enforcement of law far beyond their own jurisdictions. This would also take pressure off the Supreme Court to hear every case where a federal judge freezes an executive action, since its complete implementation and enforcement would not be frozen by the partisanship of a single judge.

## **CONSOLIDATE AND RESTRUCTURE GOVERNMENT**

Historically the federal government has reorganized its offices to meet great challenges. After World War II, President Truman proposed to Congress the idea to create a unified Department of Defense to organize greatly expanded military assets to meet the needs of America’s future armed conflicts.<sup>115</sup> In the aftershock

---

TIONAL LAW JOURNAL (Jun. 26th, 2018) <https://www.law.com/nationallawjournal/2018/06/26/clar-ence-thomas-alone-asserts-national-injunctions-are-historically-dubious/?sreturn=20200013200336>

<sup>112</sup> TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. v. HAWAII ET AL., 585 U. S., 48

<sup>113</sup> William Barr, End Nationwide Injunctions, WALL STREET JOURNAL (Sept. 5th, 2019), <https://www.wsj.com/articles/end-nationwide-injunctions-11567723072>

<sup>114</sup> Nationwide Injunction Abuse Prevention Act of 2019, H.R. 4292, 116th Cong.

<sup>115</sup> 50 U.S.C. ch. 15 § 401 (2019)

of the attacks on September 11, 2001, President George W. Bush led the largest reorganization of government since President Truman by working with Congress to create the Department of Homeland Security, to secure the homeland in the face of modern global terrorist threats.<sup>116</sup>

As America enters a new decade, our nation faces a crisis in government inefficiency. The federal government has never been larger or more expensive, yet, we have never had more tools at our disposal to streamline, consolidate, and reduce the size of government. To meet this challenge conservatives have long preached of the need to lessen the size and scope of the federal government and have put forth many policies that would work toward such an end.

The Trump administration has shown a strong desire to restructure and consolidate core components of the executive branch. Their zeal has been made clear by OMB's Reform Plan and Reorganization plan entitled "Delivering Government Solutions in the 21st Century."<sup>117</sup> Thus, the GEAR Task Force has chosen to highlight proposals that represent a strong first step in streamlining and restraining government.

The practice of restructuring, consolidating, and moving offices and functions in the name of the efficiency and accountability is a mandate owed to the American people. Federal realignment should be business oriented. Government reorganization should reduce waste and be undertaken with the same vigor that came with reorganization to confront previous challenges. Accordingly, the RSC GEAR Task Force urges Congress to undertake many of the conservative commonsense proposals by the Trump Administration for federal reorganization designed to reduce the size and scope of government.<sup>118</sup>

### Merge the Department of Education into the Department of Labor

The Department of Education's Washington-centric approach often harms students who would be more effectively served if policy was set at the state and local level. The Department's lack of focus on developing students to be ready for the demands of a 21st century career is a fatal flaw. America needs a well-educated workforce to tackle tomorrow's problems, and sadly today's Department has been unable to deliver in this respect. A strong first step in addressing this failure is to limit the government's role to assisting the states in preparing students for successful careers after graduation. To do so, the Education Department should be merged into the Department of Labor in line with the proposal advanced by the Trump administration.<sup>119</sup>

This proposal recognizes the intrinsic connection between education and the formation of America's workforce. Both chambers of Congress already recognize

<sup>116</sup> Andrew Glass, On This Day: Homeland Security Department Begins Operations, Jan. 24th, 2003, POLITICO (Jan. 24th, 2019) <https://www.politico.com/story/2019/01/24/homeland-security-department-begins-2003-1116070>

<sup>117</sup> White House Office of Management and Budget, Reform and Reorganization Plan, (June 2018) <https://www.performance.gov/GovReform/Reform-and-Reorg-Plan-Final.pdf>

<sup>118</sup> Id.

<sup>119</sup> Id. at 25.

this link through the jurisdiction of their committees. The House has a Committee on Education and Labor while the Senate has a Committee on Health, Education, Labor and Pensions. By merging the Department of Education into the Department of Labor, the executive branch can similarly address policies related to workforce development while shrinking the size and scope of government.

The RSC's American Worker Task Force has been developing its own plan that, among other goals, seeks to empower students, educators, and local communities so that today's students can achieve meaningful and well-paying jobs tomorrow. Additionally, the RSC's American Worker Task Force will offer proposals designed to foster innovative education and training policies, remove bureaucratic red tape preventing competition in the workforce, and addressing issues that disproportionately punish families and workers in the current welfare system. The RSC will chart a course for empowering the American worker.

#### Move Non-commodity Nutrition to the Department of Health and Human Services.

The U.S. Department of Agriculture (USDA) is tasked with broad authority far beyond the scope of analyzing agricultural commodity markets, assisting with agriculture-based trade, and managing federal programs designed to assist America's farmers. One of the primary issues USDA is forced to address beyond agriculture is welfare policy.

The GEAR Task Force recommends that Congress codify the White House Proposal to move non-commodity nutrition programs to the Department of Health and Human Services.<sup>120</sup> This proposal would involve moving welfare policy into the Office of Administration for Children and Families at HHS. Programs subject to this reform include SNAP, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), the Child and Adult Care Food Program (CACFP), and the Farmers' Market Nutrition Programs. These programs should be viewed primarily through the lens of welfare policy. Furthermore, moving these tense debates out of USDA allows for agricultural policy to be focused on maintaining America's status as the breadbasket of the world.

Housing these welfare programs into one office would also be better for creating policies that impact beneficiaries. Having one office with jurisdiction over these programs will allow for a more systematic understanding of the interconnections in America's welfare system. It would further enable experts to make decisions that are prudent not just for one program's beneficiaries, but for all Americans in need. Finally, having one office would streamline government accountability as individuals would easily know what office to reach out to with any questions that they have about any program they may be using, rather than wondering which agency handles it.

---

<sup>120</sup> White House Office of Management and Budget, *supra* note 118, at 29.

### Merge the Department of Commerce National Marine Fisheries Service (NMFS) with the Department of Interior's Fish and Wildlife Service (FWS)

Under the status quo, America has two agencies in different Departments with very similar missions. Both the NMFS and FWS are charged with enforcing the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). These laws seek to protect vulnerable species through federal regulation and, among other things, charge each agency with recommending conservation action in relation to infrastructure projects. If a highway or dam is being erected through a newly impacted ecosystem both agencies can be requested to do duplicative work outlining the impact on vulnerable species. This process is not only inefficient but can also be confusing if the agencies offer differing proposals.

Congress should enact legislation to codify the White House proposal to merge the NMFS with the FWS.<sup>121</sup> This agency would have unified policies toward maintaining fisheries and conserving wildlife. It would also create a more streamlined chain of command when doing ESA and MMPA reconditions, thus allowing for better turnaround in processing permitting requests.

### Move the Policy Function of the Office of Personnel Management (OPM) to the Executive Office of the President (EOP)

OPM is outdated and in need of reform. Created in Title II of the 1978 Civil Service Reform Act, OPM was designed to manage personnel and management functions of the federal government.<sup>122</sup> OPM's most important duty is to conduct personnel support for executive branch policy staff which is easily overshadowed by the work of individual agencies like the General Services Administration (GSA), which has arose to conduct overlapping responsibilities in the modern government structure.

Congress should codify the White House proposal to elevate the OPM's policy work in personnel management to the EOP. This would enhance the work of OPM policy personnel staff by better resourcing them through the EOP and centralizing their role in the overall mission of a President to hire competent policy staff in the White House and across all agencies.

### Consolidate the Department of Energy's (DOE) Applied Energy Programs into an Office of Energy Innovation

Under the current structure of the Department of Energy, much of the research and development (R&D) funding that is invested in energy research is compartmentalized by energy source. This structure effectively contradicts the vision of the Trump administration to have an all energy source, free-market, approach that promotes American energy independence. It also invites commercial energy interests to lobby for funding for their individual energy interest without gearing their argument toward a wholistic national policy vision.

<sup>121</sup> White House Office of Management and Budget, *supra* note 118, at 39.

<sup>122</sup> 5 U.S. Code § 1103. (2019).



The GEAR Task Force recommends that Congress codify the White House proposal to combine and consolidate applied energy programs into a new office called the Office of Energy Innovation.<sup>123</sup> This structural change would recognize that all R&D funding in energy research should be conducted in the interest of America's energy independence. By having all R&D programs funded out of the same office, funding would be tied to merit-based arguments. Having competition in funding promotes the national interest and competition, rather than the interest of a single industry. Furthermore, lawmakers will be able to provide better oversight of R&D funding, as it would be housed in a unified location.

## **PROVIDE ACCOUNTABILITY FOR PROGRAMS**

The GEAR Task Force recognizes that making the federal government more efficient and accountable requires a frank discussion identifying some of the misguided programs crafted by our elected representatives. It is unreasonable to expect perfection from anyone, including from our federal lawmakers, but constant evaluation of past decisions is a prerequisite to an efficient and accountable government. This means that lawmakers must regularly determine what programs warrant continued operation, in their present form or otherwise.

Conservatives recognize it would be impossible for every program to be a resounding success. In fact, the web of federal agencies and activities has grown so large, that the federal government cannot even keep track of how many programs it has.<sup>124</sup> In 2010, Congress enacted the Government Performance and Results Act (GRPA), a bill that among other things required OMB to list all federal programs by October 1, 2012 on a single website.<sup>125</sup> The executive branch not only missed this deadline, but to date has been unable to accurately determine exactly how many programs exist within the federal government. Seven years later, the Trump administration OMB stated that the data infrastructure was not in place for a federal program inventory in 2012.<sup>126</sup>

To address this the GEAR Task Force recommends that Congress pass the Taxpayers Right to Know Act, introduced in the House of Representatives by Rep. Tim Walberg (MI-07).<sup>127</sup> This legislation would create an online inventory of all federal programs by using program activities defined by agencies in the budget cycle as the basis for creating a federal program database. This practice was recommended by OMB in 2019.<sup>128</sup> Under the status quo, if government cannot keep track of the totality of federal programs, it should be expected that the merit and efficiency of individual programs must be reviewed from time-to-time. The evaluation process of programs by

---

<sup>123</sup> White House Office of Management and Budget, *supra* note 118, at 65.

<sup>124</sup> Andrew Lautz, How Many Government Programs Are There?, NATIONAL TAXPAYERS UNION, (Jul. 22nd, 2019), <https://www.ntu.org/publications/detail/how-many-federal-government-programs-are-there>

<sup>125</sup> 5 U.S.C. § 306(a)(5)

<sup>126</sup> Russel Vought, Letter to Senator Lankford regarding GPRMA, White House Office of Management and Budget (Oct. 8th, 2019) [https://gallery.mailchimp.com/d4254037a343b683d142111e0/files/1545c47c-7109-49db-ac49-fec53691bb40/2019\\_10\\_08\\_OMB\\_GPRMA\\_Response\\_Letter.pdf](https://gallery.mailchimp.com/d4254037a343b683d142111e0/files/1545c47c-7109-49db-ac49-fec53691bb40/2019_10_08_OMB_GPRMA_Response_Letter.pdf)

<sup>127</sup> Taxpayers Right to Know Act of 2019, H.R. 3830, 116th Cong.

<sup>128</sup> Russell Vought, *supra* note 127.



lawmakers could result in a reduction in scope of a program, a reform of its internal operation, or even its complete elimination. Moreover, the reasons why federal lawmakers may reconsider the continued operation of a federal program are many. For instance, a federal program could be obsolete, fail to produce expected outcomes, become redundant of other programs, or surpass the bounds of federal authority. A few federal programs may even laughably defy common sense. With this in mind, the GEAR Task Force has supplied a sampling of federal programs across a broad subject matter that lawmakers should reevaluate.

## **ARTS & SCIENCES/SERVICE**

### **National Capital Arts and Cultural Affairs Grant Program**

This grant program provides funding for Washington D.C. cultural institutions. This revenue could be generated by outside ticket sales, private donations, and private investors.<sup>129</sup> The goal of offering art for the public is a noble one, but it forces taxpayers to become the patrons of projects that private individuals support. It also puts the government in the impossible situation of deeming what is art and what is not art.



### **D.C. Streetcar Funding**

The D.C. Streetcar program is a highly inefficient form of public transportation in Washington D.C. Despite its peculiarity it is comically unpopular. The program has already cost over \$200 million to the taxpayer.<sup>130 131</sup>

### **National Endowment for the Humanities (NEH) and for the Arts (NEA)**

The NEH and NEA fund a broad scope of arts and cultural projects. While some are popular, they routinely use taxpayer money to fund questionable initiatives. For instance, in 2017, these programs funded an all dog performance of Hamlet and a climate change art camp for adults. Whether or not any initiative is worthy of being called art is something the American people can and should debate. But this debate should not be decided by Washington bureaucrats with taxpayer funding.<sup>132</sup>

### **Save America's Treasures (SAT) Grants Program**

The SAT program was created to help preserve historic locations throughout the country. Sadly, its funding has been directed toward unessential causes like the San Francisco Art collection. There have been issues of improper use of grant funds in the past too. In 2017, the city of Derby had to return \$110,000 in grant funds originally awarded to help restore an opera house.<sup>133 134</sup>

### **Stennis Center for Public Service**

This program exists to recruit young people to careers in Congress and public life. The Stennis Center for Public Service annually costs \$1.4 million to American taxpayers. Jobs in public life are already popular and competitive making the Stennis Center superfluous.<sup>135</sup>

<sup>135</sup> Daren Bakst, Budget Book, HERITAGE FOUNDATION (2015), <https://budgetbook.heritage.org/agriculture/eliminate-conservation-technical-assistance-program/> (last visited Jan. 8th, 2020).

## National Science Foundation Research of Social Sciences

---

Originally, the National Science Foundation was created to fund projects promoting American scientific interests, such as STEM or medical research for national defense purposes. Instead, the program has poured billions of dollars into questionable social science studies examining topics such as, the “social impacts” of tourism in the northern tip of Norway, and “whether hunger causes couples to fight” according to the Washington Examiner. The National Science Foundation was appropriated over \$8 billion for FY 2019. STEM research that promotes our national interest may warrant taxpayer funding, but social sciences and arts simply do not rise to the same level.<sup>136</sup>

## ENVIRONMENT/CONSERVATION

### Aquatic Plant Control Research Program

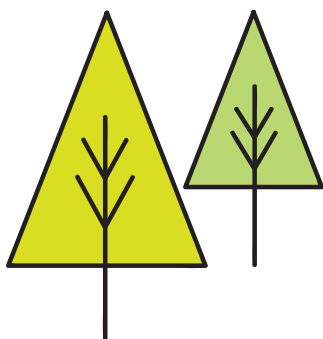
---

The Aquatic Plant Control Research Program is administered by the U.S. Army Corp of Engineers. It funds individual projects to research and combat invasive aquatic plants in domestic waters. According to Citizens Against Government Waste, the program has funded 24 earmarks since 1994, totaling over \$58 million for aquatic plant control projects. One such earmark was \$400,000 from Senator Schumer (D-NY) to upstate New York to help eradicate undesired plants in the Finger Lakes.<sup>137, 138</sup>

### Brown Tree Snake Eradication Program

---

The Brown Tree Snake is an invasive species from Australia that has become a major problem for Guam. The snake is responsible for eliminating 10 of 12 birds indigenous to Guam. To eliminate the Brown Tree Snakes, the federal government resorted to an unusual method of animal control.<sup>139</sup> The government pumps rats full of acetaminophen, basically Tylenol, which is poisonous to snakes.<sup>140</sup> Then the government drops the poison-filled rodents onto the island of Guam by parachute in the hopes that the hungry snakes will scavenge them up and slowly die over 60 hours. As serious as this snake problem is, there must be more efficient ways to address it than dropping dead drug filled rodents out of planes by parachute.



---

<sup>136</sup> David Muhlhausen, et. al, supra note 25.

<sup>137</sup> Citizens Against Government Waste, supra note 57.

<sup>138</sup> Office of U.S. Senator Schumer, SCHUMER ANNOUNCES, AFTER HIS PUSH TO SECURE FEDERAL FUNDING THIS SUMMER TO ATTACK INVASIVE HYDRILLA, ARMY CORPS WILL SPEND \$400K TO REMEDIATE 27 ACRE AREA OF HYDRILLA IN CAYUGA LAKE, (Jun. 15th, 2017), <https://www.schumer.senate.gov/newsroom/press-releases/schumer-announces-after-his-push-to-secure-federal-funding-this-summer-to-attack-invasive-hydrilla-army-corps-will-spend-400k-to-remediate-27-acre-area-of-hydrilla-in-cayuga-lake-senator-says-these-federal-funds-will-help-eradicate-invasive-species->

<sup>139</sup> Ker Than, Drug Filled Mice Air-Dropped Over Guam to Kill Snakes, NATIONAL GEOGRAPHIC, (Sept. 26th, 2010), <https://www.nationalgeographic.com/news/2010/9/100924-science-animals-guam-brown-tree-snakes-mouse-tylenol/>

<sup>140</sup> M. Alex Johnson, Two thousand mice dropped on Guam by parachute — to kill snakes, NBCNEWS.COM, (Dec. 2nd, 2013), <https://www.nbcnews.com/news/us-news/two-thousand-mice-dropped-guam-parachute-kill-snakes-flna2D11685572>

### The Maritime Guaranteed Loan Program

The maritime guaranteed loan program provides loan guarantees to cover the costs of ship building and rebuilding in American shipyards. This loan program has been suspended in the past for loan defaults and has long been criticized.<sup>141</sup> President George W. Bush called the program an “unwarranted corporate subsidy” and Senator McCain described it as an “egregious example of pork barrel spending.”<sup>142</sup> The government should not provide services that more reasonably could be obtained through the free market.

### The Conservation Technical Assistance Program

The Natural Resources Conservation Service runs this program as an advisory resource for governmental and private landowners.<sup>143</sup> The program provides technical assistance for the maintenance of land and soil conservation as well as legal assistance. This program uses taxpayer money to offer services landowners could reasonably purchase in the private sector. As currently structured, the program will cost \$4.8 billion over the next 5 years.

### National Estuarine Research Reserve System

The National Estuarine Research Reserve System is a federal network of 29 protected coastal estuaries that are preserved for conservation and research efforts. The work of preserving estuaries should belong to local communities. Taxpayers in Alabama, Illinois, and Pennsylvania should not be forced into funding the San Francisco Bay National Estuarine Research Reserve System, which recently studied the impact of climate change on oysters.<sup>144</sup> Furthermore, research is already done by many private organizations and academic institutions pertaining to these issues at no federal cost. This program has an annual cost of \$23 million.<sup>145</sup>

### Sea Grant Program

The Sea Grant is duplicative of many federal programs, such as other NOAA coastal funds that study ecological issues at the Great Lakes. This includes two National Estuarine Research Reserves in the Great Lakes region. Furthermore, due to the narrow scope, this issue falls within the purview of state and local governments. This program costs \$73 million.<sup>146</sup>

---

<sup>141</sup> Citizens Against Government Waste, *supra* note 57. 38.

<sup>142</sup> Ryan Sibley, Government Agency with a History of Losses Keeps it Up, SUNLIGHT FOUNDATION (Apr. 12th, 2010) <https://sunlightfoundation.com/2010/04/12/government-agency-history-taxpayer-losses-keeps-it/>

<sup>143</sup> Daren Bakst, *supra* note 136.

<sup>144</sup> San Francisco Bay National Estuarine Research Reserve, Current and Past Research, (Dec. 2nd, 2013), <http://www.sfbaynerr.org/research/current-and-past-research/>

<sup>145</sup> Wasson and Zabin, et. al, A Guide to Support Olympia Oyster Restoration and Conservation, SFBAYSUB-TIDAL.org (Jun, 2015), <http://www.sfbaysubtidal.org/OYSTERGUIDE-FULL-LORES.pdf>

<sup>146</sup> Chelsea Harvey & Chris Mooney, Trump’s proposed NOAA cuts would disarm our coasts in the face of rising seas, scientists say, WASH. POST (Mar. 10th, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/03/10/proposed-noaa-cuts-would-disarm-our-coasts-in-the-face-of-rising-seas-scientists-say/>

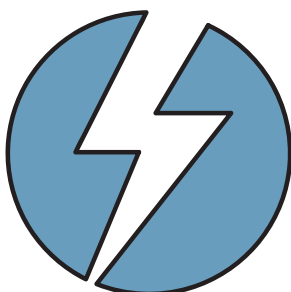
## Pacific Coast Salmon Recovery Fund

The Pacific Coast Salmon Recovery Fund disproportionately benefits the West Coast and a narrow fishing industry interest. There is no precedent for creating funds to conserve every vulnerable fish population. This issue could more appropriately be dealt with at the state level or by private industry. This fund has cost the American taxpayer \$1.4 billion since its creation in 2000.<sup>147</sup>

## **ENERGY**

### Advanced Technology Vehicle Manufacturing Loan Program

The Advanced Technology Vehicle Manufacturing Loan Program provides subsidies for manufacturers producing technology that promote national energy independence. This fund exists largely to encourage companies into introducing more fuel-efficient cars, rather than letting manufacturers produce solely what the market dictates. Having a subsidy that encourages producers to ignore the will of consumers is wasteful and puts government inappropriately in the board room of a private company. This program was created in 2007 and given \$25 billion of taxpayer-backed loan authority that it has used to extend credit to some of the largest auto manufacturers in the world.<sup>148</sup>



### ENERGY STAR Program

This program promotes partisan environmental policy outside the purview of the executive branch by selectively providing subsidies to companies that reduce carbon emissions. According to a GAO study in 2010 this program is vulnerable for fraud and abuse.<sup>149</sup> GAO created four fake manufacturing companies to submit 20 products with fake emissions claims. Under this program 15 were certified and offered federal subsidies.<sup>150</sup>

### Domestic Energy Subsidies

In 2017, American consumers spent \$1.1 trillion on their energy needs.<sup>151</sup> This staggering amount of money supported an industry that makes up 5.8 percent of our nation's GDP.<sup>152</sup> Thus, one might question why the federal government spends billions in direct subsidies and tax breaks to support research and development in the private sector.

<sup>147</sup> National Oceanic and Atmospheric Administration, Pacific Coast Salmon Recovery Fund, NOAA.GOV, <https://www.fisheries.noaa.gov/grant/pacific-coastal-salmon-recovery-fund-0>

<sup>148</sup> U.S. Department of Energy, ADVANCED TECHNOLOGY VEHICLES MANUFACTURING (ATVM) LOAN PROGRAM, NOAA.GOV, <https://www.energy.gov/lpo/advanced-technology-vehicles-manufacturing-atvm-loan-program>

<sup>149</sup> Government Accountability Office, Covert Testing Shows the Energy Star Program Certification Process Is Vulnerable to Fraud and Abuse, (Mar. 5th, 2010) <https://www.gao.gov/products/GAO-10-470>

<sup>150</sup> Citizens Against Government Waste, *supra* note 57.note 57.

<sup>151</sup> University of Michigan, U.S. ENERGY SYSTEM FACTSHEET, Center for Sustainable Systems (2019), <http://css.umich.edu/factsheets/us-energy-system-factsheet>

<sup>152</sup> *Id.*

Moreover, the federal government funds various energy programs that favor certain types of energy over others to artificially prop up certain industries with taxpayer dollars. Intervening in the private market in this way fuels inefficiency and ultimately produces higher overall costs for Americans. The federal government should not pick and choose winners in the energy market.<sup>153</sup>



## **LABOR AND ECONOMIC DEVELOPMENT/FINANCE**

### Neighborhood Reinvestment Corporation

This program is duplicative and has an infamous history. GAO found NeighborWorks gave grants to the now notorious company Acorn.<sup>154</sup> ACORN employees were caught advising people on how to commit various criminal actions including trafficking prostitutes and evading the IRS.<sup>155</sup> It is also duplicative of already existing programs at HUD, according to CBO.<sup>156</sup>

### Susan Harwood Training Grants

These safety training grants to non-profits duplicate already existing Occupational Safety and Health Administration (OSHA) activities.<sup>157</sup> Funding is not well targeted as it may also be used for non-training related goals, such as paying for overhead. The LIUNA Training and Education Fund requested grant money in 2017 in order to pay toward supporting the salary of five employees making six-figures each.<sup>158</sup>

### Trade Adjustment Assistance

The Trade Adjustment Assistance program provides aid to individuals whose jobs were displaced by international trade. Regardless of one's thoughts on whether this is a proper role of government, Congress appropriates over \$800 million annually, but only about 37% of aid recipients report landing jobs in their targeted field.<sup>159</sup>

### DOL Office of Federal Contract Compliance Programs

This office is a costly bureaucratic mess for federal managers and is redundant of the EEOC. The Federal Contract Compliance Programs office cost over \$103 million in FY 2019 alone.<sup>160</sup>

---

<sup>153</sup> Energy sector subsidies cover production methods such as hydroelectric, wind, solar, geothermal, natural gas, crude oil, coal, nuclear, and biomass.

<sup>154</sup> Government Accountability Office, Letter: NeighborWorks America: Availability of Appropriations for Grants to Affordable Housing Centers of America, (Sept. 29th, 2010) <https://www.gao.gov/decisions/appro/320329.htm>

<sup>155</sup> Bill Tucker, Chris Murphey and Steve Turnham, ACORN workers caught on tape allegedly advising on prostitution, CNN (Sept. 10th, 2009) <https://www.cnn.com/2009/POLITICS/09/10/acorn.prostitution/>

<sup>156</sup> Citizens Against Government Waste, *supra* note 57. Citizens Against Government Waste, *supra* note 57.

<sup>157</sup> *Id.*

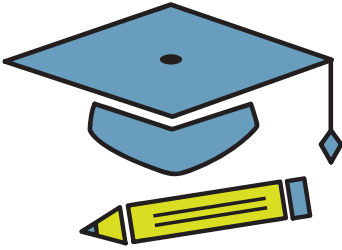
<sup>158</sup> ALG Research, The Labor Department's Harwood Grant Program Should Be Eliminated, (May 17th, 2019) <http://algresearch.org/2019/05/labor-departments-harwood-grant-program-eliminated/>

<sup>159</sup> Eric Morath, President Trump's Fiscal 2019 Budget Proposal -- Live Analysis, WSJ (Feb. 12th, 2018), <https://www.wsj.com/livecoverage/trumps-2019-budget-proposal-live-analysis/card/1518462457>

<sup>160</sup> U.S. Department of Labor, Congressional Budget Justification, (2019) <https://www.dol.gov/sites/dol-gov/files/general/budget/2020/CBJ-2020-V2-10.pdf>

## National Technical Information Service

NTIS is a laboratory in the Department of Commerce created for helping American industry be more competitive.<sup>161</sup> Considering how inefficient federal practices and structures are, it is unlikely American industry needs the governments advice on competition. This fund received \$985 million in FY 2019 alone.<sup>162</sup>



## **EDUCATION**

### Student Support and Academic Enrichment Grants

Education policy, including funding, is best handled at the state and local level. This program allows communities to underfund programs they intend to use knowing they can count on additional federal funding to plug the holes. Costing over \$1 billion annually, this fund has almost no restraints on it.<sup>163</sup>

### Supporting Effective Instruction State Grants

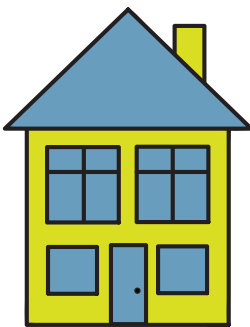
This program provides funds to recruit, train, and support local schoolteachers. These grants makeup the third largest program at the Department of Education, yet evidence shows that the program conveys little value for teacher development.<sup>164</sup>

### Federal Supplemental Educational Opportunity Grants

This program provides need-based grants for individual undergraduate education. This is duplicative of other federal financial subsidies for college education and cost over \$800 million in FY18.<sup>165</sup>

### 21st Century Community Learning Centers

These centers, which cost \$1 billion annually, exist to help students perform better on standardized tests. The efficacy of the program has not been measured in collected data.<sup>166</sup>



## **HOUSING**

### Public Housing Capital Fund

This fund assists public housing agencies in modernizing their facilities. These federal funds are duplicative of state and local programs that are better suited to address housing. This program is funded at \$2.78 billion.<sup>167</sup>

<sup>161</sup> Doug Bandow, The More Wasteful a Federal Program Is, the More Essential It Is to Washington, FORBES (Jan. 6th, 2014) <https://www.forbes.com/sites/dougbandow/2014/01/06/the-more-wasteful-is-the-federal-government-program-the-more-essential-it-is-to-washington/#7cb768e36cb4>

<sup>162</sup> Paul Bedard, Trump to cut \$4 billion in domestic programs, elimination of Legal Services Corporation, WASH. EXAMINER (Mar. 11th, 2019), <https://www.washingtonexaminer.com/washington-secrets/trump-to-cut-4-billion-in-domestic-programs-elimination-of-legal-services-corporation>

<sup>163</sup> Alyson Klein, What's in ESSA's Big Flexible-Spending Pot, ED. WEEK, (Jun. 8th, 2018) <https://www.edweek.org/ew/articles/2018/06/06/whats-in-essas-big-flexible-spending-pot.html>

<sup>164</sup> Lindsay M. Burke, "What Trump's Education Budget Gets Right, and Where It Can Improve" HERITAGE FOUNDATION, <https://www.heritage.org/education/commentary/what-trumps-education-budget-gets-right-and-where-it-can-improve>

<sup>165</sup> Klein, supra

<sup>166</sup> Bedard, supra note 163.

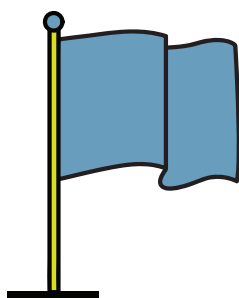
<sup>167</sup> Donna Kimura, Fiscal 2019 HUD Budget Approved, AFFORDABLE HOUSING FINANCE (Feb. 20th, 2019), [https://www.housingfinance.com/news/fiscal-2019-hud-budget-approved\\_o](https://www.housingfinance.com/news/fiscal-2019-hud-budget-approved_o)

### Public Housing Operating Fund

This program provides federal funds for housing agencies to supplement the cost of their daily operations. This federal program is duplicative of state and local programs that are better suited to address housing.<sup>168</sup>

### Home Investment Partnership Program

This program seeks to help improve low-income housing. Housing is an issue that primarily falls within the purview of state and local government. This federal intrusion into housing funds provides a shield from accountability for state governments who can fall back on the federal funding debate when faced with scrutiny.<sup>169</sup>



## **FOREIGN POLICY**

### McGovern-Dole International Food for Education Program

The McGovern-Dole program, run by the United States Department of Agriculture (USDA), provides foreign aid through NGOs working in impoverished nations. There is no evidence to say that this program eliminates food insecurity.<sup>170</sup>

### Cultural Exchange Programs

The State Department offers Cultural Exchange Programs through the Bureau of Educational and Cultural Affairs. These programs sponsor students, teachers, and other leaders to travel to other nations for a cultural exchange. This service is offered privately by many universities and non-profits. This program costs over \$300 million with over 90 percent of expenses unaccounted for.<sup>171</sup>

### Clean Technology Fund

This fund helps and encourages developing countries to use green energy technology and costs American taxpayers \$5.4 billion annually.<sup>172</sup>

### Strategic Climate Fund

This program funds international efforts to limit carbon caused by deforestation, create “climate resilience,” and develop renewable energy technology in developing nations. The fund functions through a multilateral agreement and costs billions of dollars to impose partisan energy policy on sovereign nations.<sup>173</sup>

---

<sup>168</sup> Id.

<sup>169</sup> U.S. Department of Housing and Urban Development, FY 2016: HOME INVESTMENT PARTNERSHIPS PROGRAM, (2016) [https://www.hud.gov/program\\_offices/comm\\_planning/affordablehousing/programs/home/](https://www.hud.gov/program_offices/comm_planning/affordablehousing/programs/home/)

<sup>170</sup> Tim Worstall, A Good Part Of Donald Trump’s Budget - Eliminating McGovern-Dole, FORBES.COM (Mar. 18th, 2017), <https://www.forbes.com/sites/timworstall/2017/03/18/a-good-part-of-donald-trumps-budget-eliminating-mcgovern-dole/#486f8f344ff3>

<sup>171</sup> Bedard, supra note 163.

<sup>172</sup> Climate Investment Funds, Clean Technologies Fund, <https://www.climateinvestmentfunds.org/topics/clean-technologies>

<sup>173</sup> Climate Investment Funds, About the Funds, <https://www.climateinvestmentfunds.org/node/5>

### Green Climate Fund

The Green Climate Fund invests in developing nations' efforts to combat "climate change."<sup>174</sup> President Trump announced the U.S. would no longer pay into this fund when he pulled America out of the Paris Climate Accords. Initially, President Obama had pledged \$3 billion, but Trump saved over \$2 billion from being wasted on it.<sup>175</sup>

### Global Environment Facility

This program operates through NGOs around the world to provide support for addressing environmental issues.<sup>176</sup> The program functions as an account for environmental initiatives that governments can invest in without further control over where that money is spent. Since 1994, the U.S. has given \$2.7 billion to this multilateral slush fund for environmental policies.<sup>177</sup>

### United States Emergency Refugee and Migration Assistance Fund

This program was created to help Cuban refugees in 1962 who did not qualify for the status of refugee, or the aid associated with the status. The authority to use the fund has been reinterpreted and broadened by DOJ rulemaking. This program is almost entirely rolled into USAID in the President's budget.<sup>178</sup>

### DOL International Labor Affairs Bureau

The DOL International Labor Affairs Bureau (ILAB) costs nearly \$70 million annually and most of its budget is spent on advocating on foreign labor practices. The program was originally created to advocate for American labor interests in trade negotiations.<sup>179</sup>

### Contributions to the International Development Association

This is a Department of the World Bank that is charged with helping developing countries. It advances partisan policies on climate and gender. Any American aid should be given directly through State and USAID.<sup>180</sup>

### Contributions to the International Bank for Reconstruction and Development

Originally created to help rebuild Europe after WWII, this office has become a global slush fund with evolving purposes. Any American aid should be given directly through State and USAID.<sup>181</sup>

---

<sup>174</sup> The Green Climate Fund Website, <https://www.greenclimate.fund/home>

<sup>175</sup> Associated Press, Nations pledge \$9.8B to global climate fund to help the poor, AP (Oct. 25th, 2019), <https://apnews.com/ae7e3e749afa4dc788ff6303ad01006c>

<sup>176</sup> The Global Economic Facility Website, <https://www.thegef.org/>

<sup>177</sup> Congressional Research Service, Paris Agreement: U.S. Climate Finance Commitments, (Oct. 2nd, 2019), <https://fas.org/sgp/crs/misc/IF10763.pdf>

<sup>178</sup> Rachel Oswald, Lawmakers from both parties resist humanitarian and refugee aid changes, ROLL CALL (Mar. 22nd, 2019), <https://www.rollcall.com/news/congress/lawmakers-resist-humanitarian-refugee-aid-changes>

<sup>179</sup> Bedard, supra note 163.

<sup>180</sup> Congressional Research Service, 2018 World Bank Capital Increase Proposal (Dec. 14th, 2018), <https://fas.org/sgp/crs/misc/IF10895.pdf>

<sup>181</sup> Id.



### Complex Crises Funds

This program was originally created as DOD funding for evolving geo-political situations. Now, it is a USAID fund with little restrictions, managed solely at the discretion of the USAID Administrator.<sup>182</sup>

### U.S. Trade and Development Agency

This independent agency is duplicative of many federal offices including the Office of the U.S. Trade Representative. It costs over \$50 million annually.<sup>183</sup>

### Foundations

The federal government contributes to multiple funds that are used as a resource for NGOs with a focus on a specific geopolitical region. While debating foreign aid is important, investing in foundations that indiscriminately fund NGOs over an entire region may not provide enough accountability for policymakers to target U.S. investment overseas. Furthermore, NGOs that specifically target different regions can operate on private donations and investors, they do not need American taxpayer money. Examples of these programs include the Inter-American Foundation, the Asia Foundation and Development Bank, and the African Development Foundation and Bank.

---

<sup>182</sup> Congressional Research Service, Department of State, Foreign Operations Appropriations: A Guide to Component Accounts (Apr. 10th, 2019), <https://fas.org/sgp/crs/misc/IF10763.pdf>

<sup>183</sup> Daren Bakst, supra note 136.

# REFORM GOVERNMENT PERSONNEL POLICIES STEP THREE

A perfect plan, policy, or system is meaningless without having the right people. Yet, without a federal workforce made up of true civil servants that are talented, patriotic, and hardworking, meaningful reform cannot be implemented. Unfortunately, the Trump Administration has at times been burdened as commonsense proposals are undermined by partisan federal bureaucrats.

By contrast, in the world of business, a company cannot be successful without having the right people in place. The need to have effective personnel policies in order to maximize efficiency and success is true for any employer, including the federal government. After all, the federal government is the largest employer in the nation. Businesses go to great lengths to develop successful personnel policies from hiring, to compensation, to promotion and accountability. It is past time that government function more like a business.

Most federal workers are passionate and devoted to carrying out the mission of their office. Sadly, the behavior of the worst bad actors in the federal government undermines the commitment of our hardworking civil servants. The Task Force commends those federal workers that approach each day as an opportunity to serve the American people but are guided by the age-old truth that a chain is only as strong as its weakest link. With this in mind, the Task Force seeks to advance reforms that ensure that the federal government has the strongest links possible for the sake of ensuring the American people are served by an efficient and accountable government.

Instances of unacceptable federal employee behavior have been well-documented over the years. Some involve a federal employee abusing their position at the expense of coworkers. Take for example Paula M. Steen, an IT Specialist at the U.S. Department of Agriculture (USDA).<sup>184</sup> Paula scammed three of her co-workers, including a blind individual, out of over \$100,000 over the course of four years using false charges, loans, and repayments. In other occurrences, federal workers, including supervisors, have knowingly looked the other way as employees took advantage of taxpayers. In one instance an assistant commissioner of the Bureau of Public Debt committed fraud to the point of hardly working while earning \$170,000 a year.<sup>185</sup> She would come in hours late, if at all and leave early. She also used much of her official time to conduct personal business for the Humane Society. Investigators estimated she was paid for \$100,000 in hours she did not work. Her supervisor also admitted to knowing about these issues and not acting.

Perhaps the most incredible instance of fraud committed by a federal employee in the last decade was done by a man named John Beale.<sup>186</sup> Over 13 years, Beale

<sup>184</sup> U.S. Department of Justice, Former Federal Employee Pleads Guilty to \$113,000 Scheme to Steal from Co-workers (Dec. 18th, 2013), <https://www.justice.gov/usao-wdmo/pr/former-federal-employee-pleads-guilty-113000-scheme-steal-co-workers> (last visited Jan. 8th, 2020).

<sup>185</sup> Luke Rosiak, Top Treasury employees swindled thousands of dollars, in-the-know bosses did nothing, WASHINGTON EXAMINER (Feb. 27th, 2014), <https://www.washingtonexaminer.com/top-treasury-employees-swindled-thousands-of-dollars-in-the-know-bosses-did-nothing> (last visited Jan. 8th, 2020).

<sup>186</sup> Ian Simpson, Ex-EPA adviser admits to fraud, CIA stint claim, 13 years of lies, REUTERS (Sept. 27th ,

skipped work as an EPA advisor while claiming to work for the CIA. If having a fake career with the CIA was not egregious enough, Beale further pretended to have malaria to receive a special parking spot that cost hundreds of dollars per month. It is believed John Beale cheated the government out of nearly \$1 million all by himself.

While these are a few extreme examples of misconduct by federal employees, unfortunately there are other misdeeds happening in our agencies today that left unaddressed impact the morale of the many diligent civil servants operating in our government today. It is with those individuals in mind that the RSC GEAR Task Force has accumulated proposals that collectively create a transformative vision for civil service reform. If the ideas, legislation, and policies espoused in this section were enacted, it would move our government toward parity with the private sector, empower managers to lead, and honor hard work.

## **REFORM HIRING AND REMOVAL OF FEDERAL EMPLOYEES**

Hiring and removal of employees in the United States federal government is a mess. Unlike in the private sector, federal employees generally do not work at the will of their boss or supervisor. Instead, removing a federal employee is extremely difficult and time consuming. It currently takes about a full calendar year to remove one federal employee. The federal system for hiring and removing does not empower managers, office executives, or department leaders. Instead managers are effectively forced to keep problematic employees to the detriment of effective federal workers. The reforms supported by the RSC GEAR Task Force will allow agencies to utilize more efficient and fair hiring and removal practices resembling those used in the private sector.

### Modernize the Hiring Process

The federal government cannot expect to have a more professional workforce without having a faster and more reliable process for hiring highly qualified candidates. Unfortunately, one of the largest gaps in efficiency between the practices of business versus that of government is in hiring. According to the Office of Personnel and Management (OPM), the 2016 Merit Principles Survey found that federal supervisors believe their most difficult workforce management task is getting a pool of quality candidates.<sup>187</sup> Additionally, only 42 percent of respondents to the 2018 Federal Employee Viewpoint Survey (FEVS) believe that their work unit is able to recruit people with the appropriate skills.<sup>188</sup>

---

2013), <https://www.washingtonexaminer.com/top-treasury-employees-swindled-thousands-of-dollars-in-the-know-bosses-did-nothing> (last visited Jan. 8th, 2020).

<sup>187</sup> Margaret Weichert, Memo on Strategies to Advance Mission Outcomes, OFFICE OF PERSONNEL MANAGEMENT (Sept. 19th, 2019), [https://www.chcoc.gov/sites/default/files/OPM Memo Improving Federal Hiring through the Use of Effective Assessment Strategies to Advance Mission Outcomes.pdf](https://www.chcoc.gov/sites/default/files/OPM%20Memo%20Improving%20Federal%20Hiring%20through%20the%20Use%20of%20Effective%20Assessment%20Strategies%20to%20Advance%20Mission%20Outcomes.pdf)

<sup>188</sup> Office of Personnel Management, 2018 Federal Employee Viewpoint Survey Results, (2019) <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-management-report/governmentwide-report/2018/2018-governmentwide-management-report.pdf>

On average, it takes federal agencies three times longer than private entities, to complete the hiring process for a single employee.<sup>189</sup> In 2017, it took an average of 106 days to complete a hire within a federal agency.<sup>190</sup> Being without a worker for that long could deter managers from seeking to upgrade their employees.

Wisely, the Trump administration has made overhauling federal hiring practices a major priority for OPM.<sup>191</sup> The administration has begun the process of empowering human resources to utilize better business techniques when hiring. One reform that is currently being implemented is an aggressive expansion of training for human resources staff under the delegated examining (DE) system. Congress should assist the Trump administration in empowering professionals in charge of hiring to work more efficiently like their private sector peers. Congressional action should focus on two intertwined goals: constructively utilizing hiring managers and automating human resources functions<sup>193</sup>.

The present hiring system is administered by OPM. OPM is responsible for posting vacancies, screening and compiling applicants, and referring most qualified candidates to hiring managers at agencies. Hiring managers are not able to recruit or consider applicants outside of OPM's initial referral. Furthermore, subject matter experts at agencies are completely separated from the process. Hiring managers are seldomly included in a constructive way during the current hiring system. This paradigm jeopardizes the ability to hire a highly qualified candidate because the people most essential to hiring are largely removed from the hiring process.

Furthermore, OPM's standardized screening of candidates leaves too much latitude for applicants to self-certify their qualifications, which can leave hiring managers with a pool of applicants who lack genuine accreditation. Congress should require executive branch agencies to create new hiring standards that tangibly tie in the hiring manager. By requiring hiring managers to be a more significant part of the process, efficiency can be brought back to the hiring process in a way that is consistent with the agency culture. Furthermore, Congress should require that hiring managers include advice from subject matter experts in the hiring process. Each agency hires personnel to fill a broad spectrum of functionality. In order to help ensure that an agency is hiring the best personnel for each role, it makes sense to include feedback from those who best understand the job and policies it covers.

---

<sup>189</sup> Volcker Alliance, Volcker Alliance and Partnership for Public Service Launch Civil Service Reform Initiative (Sept. 5th, 2017), <https://www.volckeralliance.org/news/volcker-alliance-and-partnership-public-service-launch-civil-service-reform-initiative>

<sup>190</sup> Volcker Alliance, Renewing America's Civil Service (Oct., 2018), <https://www.volckeralliance.org/projects/renewing-americas-civil-service> (last visited Jan. 8th, 2020)

<sup>191</sup> Office of Personnel Management, Technology Systems, <https://www.opm.gov/services-for-agencies/technology-systems/>

<sup>192</sup> White House Office of Management and Budget, Improving the Hiring Process Action Plan, (Dec. 2019), [https://www.performance.gov/OPM/2019\\_dec\\_OPM\\_Improve\\_the\\_Hiring\\_Process.pdf](https://www.performance.gov/OPM/2019_dec_OPM_Improve_the_Hiring_Process.pdf)

<sup>193</sup> Jeff Neal, What it would take to create real hiring reform, FEDERAL NEWS NETWORK (Apr. 13th, 2017) <https://federalnewsnetwork.com/commentary/2017/04/what-it-would-take-to-create-real-hiring-reform/>

The Trump administration recently had success with a pilot program that put hiring managers and subject matter experts at the center of the hiring process. The Department of Interior and Department of Health and Human Services recently placed eight subject matter experts in the hiring process for every two human resources staff.<sup>194</sup> Baseline data shows that selecting a new hire took on average 37 days in the tested categories. During the pilot, selection took 11 and 16 days respectively.<sup>195</sup>

The GEAR Task Force recommends that Congress also conduct oversight on the use of automation in hiring preclearance procedures.<sup>196</sup> OPM employees are charged with trying to prescreen applicants for referral. By reasserting a hiring manager's role in hiring, the need to have a nuanced preclearance process is removed. Instead human resources functions should be focused on quickly removing unqualified applicants. Congress should investigate best practices used in the private sector, such as automation to better track and remove unqualified job applicants through techniques like key word usage.<sup>197</sup>

Another hiring reform that has been tested as a pilot program is called "hiring to attrition." This pilot, carried out by the Federal Bureau of Investigations (FBI) involved hiring candidates based on the rolling needs of the FBI rather than simply hiring when a new position became available. In other words, the FBI created and maintained a pipeline of qualified candidates to ensure that they bureau maintained adequate staffing. This concept is important because the federal government has a significantly higher attrition rate when compared to the private sector. Under the pilot program, the FBI recently faced 78 percent employment levels and an annual attrition rate of 9 percent but was able to create a fully operational pipeline of applicants and have a fill rate approaching 98 percent.

To maximize the value of targeted recruitment and combat federal attrition rates, all federal agencies should build off of the FBI's pilot program to continuously vet current civil servants for vacant roles across government. This tactic could allow for quicker transitions and higher employment levels to combat the unique nature of federal employment. Continuous vetting of federal employees would maximize the utility of the federal workforce and would likely be more efficient than passive recruiting efforts including non-targeted job postings.

---

<sup>194</sup> Jessie Bur, Can agencies improve hiring by letting current feds in on the process?, FEDERAL TIMES, <https://www.federaltimes.com/management/hr/2019/10/23/can-agencies-improve-hiring-by-letting-current-feds-in-on-the-process/>

<sup>195</sup> Erich Wagner, Efforts to Reform Federal Hiring Already Showing Results, GOVEXEC.COM, (Oct. 22nd, 2019) <https://www.govexec.com/management/2019/10/efforts-reform-federal-hiring-already-showing-results/160781/>

<sup>196</sup> Society for Human Resource Management, Screening by Means of Pre-Employment Testing (Sept. 10th, 2018), <https://www.shrm.org/ResourcesAndTools/tools-and-samples/toolkits/Pages/screeningbymean-sofpreemploymenttesting.aspx>

<sup>197</sup> Suresh Sambandam, The New Age of Automation in the Recruitment Process, HRTECHNOLOGIST.COM (May 1st, 2019) <https://www.hrtechnologist.com/articles/recruitment-onboarding/the-new-age-of-automation-in-the-recruitment-process/>

## Enact the MERIT Act

It is a fact of modern life that not every employee that gets hired is a shining star. For this reason, it is just as critical to have an efficient mechanism for removing toxic employees as it is to hire new workers. The MERIT Act, introduced by GEAR Task Force member Rep. Barry Loudermilk (GA-11), offers much needed reforms to enhance employee removal practices in the federal government.<sup>198</sup> This legislation would shorten the timeframe necessary to remove a bad employee to 30 days. On average, it currently takes over 300 days to remove a toxic federal worker. By eliminating the red tape that exists when taking adverse actions against a bad actor in the federal government and allowing for senior executives to be removed rather than demoted, the MERIT Act offers a framework much closer to the efficiency and rigor found in the private sector.

Another commonsense reform offered by Rep. Loudermilk's legislation is to limit the retirement compensation awarded to a federal employee removed for committing a felony in abuse of their official duties. The period of service during which the crime occurred would be eliminated when calculating the annuity owed to a criminal federal employee. The MERIT Act also reins in unnecessary appeals. The bill would prohibit union appeals to the Merit Systems Protection Board (MSPB) based upon adverse personnel actions. Further, it would prohibit appeals to the MSPB in response to short-term furloughs or furloughs during a government shutdown.

Finally, the MERIT Act grants managers the authority to recoup bonuses paid to employees who were later found to have committed workplace violations, if that violation would have led to a bonus not being granted in the first place.

## Provide Mandatory Removal of Federal Employees Who Commit Crimes

Without question, federal employees who commit crimes during their tenure of service in the government should be removed from public service. Under current law, agencies may indefinitely suspend without pay an individual who committed a serious crime, while their removal is processed.<sup>199</sup> However, it is not uncommon that agencies claim they are required to keep employees guilty of committing serious crimes, arguing removal would equate to wrongful termination. For example, in 2016, the VA admitted to demoting, but keeping on staff an individual who was convicted of assisting an armed robbery.<sup>200</sup> The decision was made because the individual supposedly did not pose a direct threat to VA employees. There should be no gray area or hesitation when it comes to firing serious criminals.

<sup>198</sup> MERIT Act of 2017, H.R. 559, 115th Cong.

<sup>199</sup> Ian Simpson, MSPB Reminds Agencies They Don't Need Airtight Proof to Get Suspected Criminals Off the Payroll, GOVEXEC.COM (May 24th, 2016), <https://www.govexec.com/management/2016/05/mspb-reminds-agencies-they-dont-need-airtight-proof-get-suspected-criminals-payroll/128567/> (last visited Jan. 8th, 2020).

<sup>200</sup> Eric Katz, Employees Can Be Involved in Armed Robberies as Long as It's On Their Own Time, VA Says, GOVEXEC (Apr. 25th, 2016) <https://www.govexec.com/federal-news/2016/04/employees-can-drive-getaway-cars-armed-robberies-long-its-their-personal-time-va-says/127771/>

## Modernize the Evidentiary Threshold Necessary for Removal

Current federal regulation requires federal managers who seek to remove an employee to show that a preponderance of evidence must exist to support their removal.<sup>201</sup> Furthermore, managers must demonstrate evidence that the removal of an employee would improve the overall performance of their agency. This effectively imposes an enhanced judicial standard of evidence on federal managers, rather than allowing them to make sensible business-minded removal decisions. After all, the goal of federal personnel policy should be to provide the best possible value to the American taxpayer, not make Washington bureaucrats even less accountable for their actions.

To make upgrading personnel more efficient, the legal standard for removing a poor performing federal employee should be reformed so that managers are not overly hamstrung in these decisions. A good starting point would be to adopt the standard proposed by The Heritage Foundation, under which managers would have to possess “substantial evidence” supporting the decision to remove the employee. For context, this is the standard used in administrative law to review the decisions of administrative law judges. This standard simply means, “that a reasonable person could come to that conclusion, although another reasonable person could look at the evidence and disagree.”<sup>202</sup> Considering that this standard would still generally insulate federal employees more than their private sector counterparts from adverse employment actions, the GEAR Task Force urges lawmakers to consider reducing this standard even further.

By creating a new evidentiary standard that appropriately entrusts a manager’s ability to make a judgement pertaining to efficiency while simply requiring reasonable grounds for that judgment, firing practices in the federal government will become more businesslike and less like arduous court proceedings.

## Reform Adverse Employment Action Authority

In addition to establishing an appropriate evidentiary standard for removing problematic federal employees, the scope of offenses for which employees are regularly removed should be rightsized to promote accountability as well. A great place to start is updating the Anti-Deficiency Act.

Under the Anti-Deficiency Act, spending taxpayer money on a program or during a time-frame for which there is no appropriation is punishable by firing, fines, and even jail time. Sadly, no one has ever been prosecuted under this statute.<sup>203</sup> This is despite the fact that in the last 10 years, 197 violations were reported with the

---

<sup>201</sup> 5 CFR 1201.4

<sup>202</sup> Rachel Greszler and James Sherk, *Why it is Time to Reform Compensation for Government Employees*, HERITAGE FOUNDATION (July 27th, 2016), <https://www.heritage.org/jobs-and-labor/report/why-it-time-reform-compensation-federal-employees> (last visited Jan. 8th, 2020).

<sup>203</sup> Arnold, William G. (2009). *The Antideficiency ACT Answer Book*. Management Concepts. p. 112.

estimated value of violations equaling \$9.66 billion dollars.<sup>204</sup> Over this period, only eight federal employees were suspended or removed. Moreover, violations were not hidden away deep in administrative files, but rather made headline news. The New York Times reported that the Obama administration paid health insurance companies around \$7 billion despite failing to receive congressional appropriation.<sup>205</sup> In addition, the Obama administration's prisoner transfer deal for the famous deserter Bowe Bergdahl involved violations of the Anti-Deficiency Act too.<sup>206</sup>

The Anti-Deficiency Reform and Enforcement Act, introduced by Rep. Paul Mitchell (MI-10), is a good first step in rightsizing the scope of the actions for which a federal employee can be punished.<sup>207</sup> It would expand grounds for removing employees under the Anti-Deficiency Act to include misusing an official vehicle or aircraft for personal travel. Furthermore, the legislation would strengthen the Anti-Deficiency Act by incentivizing reporting and requiring agency action when anti-deficiency violations are reported. Under this legislation individuals who report violations can be given a monetary award up to \$1,000 or 1 percent of the value of the violation.

### Ban Taxpayer-Funded Union Work

While unions can offer employees a range of resources and purport to contribute to a healthy work environment, they can also restrict workers' ability to represent themselves, force members to pay dues, and even put their own interests over those of their membership and the American people. According to OPM, under current law, federal employees are paid for the time they spend "performing representational work for a bargaining unit in lieu of their regularly assigned work." OPM further explained "[i]n other words, official time is treated as work time, [and] thus is funded by the American taxpayers."<sup>208</sup>

The RSC GEAR Task Force recognizes that the concept of "official time" violates basic principles of stewardship to the American taxpayer. As such, it should be explicitly banned and treated as a fireable offense. In order to move toward such a change, Congress should enact two pieces of legislation sponsored by Rep. Jody Hice (GA-10).<sup>209210</sup> Rep. Hice's bills would provide needed accountability regarding federal official time policy. First, the Official Time Reform Act, would ban federal employees from lobbying while on official time. Second, the Official

<sup>204</sup> Gordon Gray, Primer on the Anti-Deficiency Act, American Action Forum (Aug. 3rd, 2016) <https://www.americanactionforum.org/research/antideficiency-act-primer/>

<sup>205</sup> Carl Hulse, In a Secret Meeting, Revelations on the Battle over Health Care, NEW YORK TIMES (May 30th, 2016)

<sup>206</sup> Government Accountability Office, Letter: Department of Defense—Compliance with Statutory Notification Requirement, (Aug. 21st, 2014) <https://www.gao.gov/assets/670/665390.pdf>

<sup>207</sup> Anti-Deficiency Reform and Enforcement Act of 2019, H.R. 1203, 116th Cong.

<sup>208</sup> U.S. Office of Personnel Management, FY2016 Report on Official Time Usage in the Federal Government, (May 2018) <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/reports/2016-official-time-usage-in-the-federal-government.pdf>

<sup>209</sup> Official Time Reporting Act of 2019, H.R. 605, 116th. Cong.

<sup>210</sup> Official Time Reform Act of 2017, H.R. 1364, 115th Cong.



Time Reporting Act would simply require OPM to report to Congress on all agency personnel conducting union duties at work.

### Limit Adverse Employment Action Appeals

Partially covered by the MERIT Act, appeals of adverse action should be limited and well defined. Currently, the appeals process employees can take in response to adverse action is overly broad and redundant. The prospect of time-consuming appeals can deter federal managers from taking adverse employment actions that are warranted against a poorly performing employee. According to Rachel Greszler of The Heritage Foundation, federal employees can appeal certain decisions “through union grievances or the Merit Systems Protection Board, and ultimately through the court system.”<sup>211</sup>

The GEAR Task Force supports a reform proposed by Rachel Greszler to limit outside appeals to formal disciplinary actions, such as removal or demotion, but not to compensation decisions.<sup>212</sup> Barring appeals of management decisions such as performance ratings and step increases would cut down on frivolous appeals and increase efficient managerial decisions.

Furthermore, Congress should enact legislation that limits the venue for outside appeals to be heard. Under current law the U.S. Merit Systems Protection Board (MSPB), U.S. Federal Labor Relations Authority, (FLRA), Office of Special Counsel (OSC), and Equal Employment Opportunity Commission (EEOC) are all available venues for appeals to be processed. Legislation should be enacted limiting appeals to any one of these offices in response to disciplinary action.

## **PAY AND BENEFITS**

The GEAR Task Force recognizes that modernizing the federal workforce must include reforming how federal employee pay and benefits are structured. The federal government’s current compensation framework largely ignores the more efficient compensation approach that has evolved out of the private market. In the federal government, employees receive on average 17 percent more in total compensation, when benefits are included, than their counterparts in the private sector. This amounts to \$31 billion per year in added compensation costs that are borne by the American taxpayer. It does not adequately incentivize productive behavior, overcompensates many employees at the cost of undercompensating others, and relies on hidden and overgenerous benefits. Unfortunately, this approach only tends to fuel the poor performance of federal workers and overall operation of the federal government.

---

<sup>211</sup> Rachel Greszler and James Sherk, *Why it is Time to Reform Compensation for Government Employees*, HERITAGE FOUNDATION (July 27th, 2016), <https://www.heritage.org/jobs-and-labor/report/why-it-time-reform-compensation-federal-employees> (last visited Jan. 8th, 2020).

<sup>212</sup> *Id.*

## Incentivize Performance and Recruitment of Highly Qualified Employees

---

If people working in federal offices are expected to innovate, their managers must be empowered to develop individuals and teams to their full potential. Rewarding employees based on performance is critical to achieving this. Unfortunately, the existing compensation system for federal employees is almost entirely devoid of a merit-based component.

Federal employee base pay uses a standardized, seniority-based system that revolves around the General Schedule (GS) pay scale. It entitles federal employees to a “step increase” pay raise every year that they demonstrate an “acceptable level of competence.” In other words, federal employees get a raise for merely not getting fired—which as was noted above, is virtually impossible to carry out. Furthermore, managers are largely limited in trying to prevent a below adequate employee from getting scheduled raises within one paygrade. For a manager to delay a within grade pay raise, they must assess the employee as performing below an “acceptable level of competence” before a scheduled raise. After a denial is made, a manager must reassess the decision every 52 weeks, as they look for results that the employee has reformed their practices and become relatively competent in their performance.<sup>213</sup>

Federal compensation is further inflated because employees are entitled by statute to an annual cost of living adjustment (COLA) pay increase. This COLA varies year-to-year, but cannot exceed 3%, based upon inflation. With a compensation package almost completely removed from merit, employees have little incentive to perform at a higher level that would ultimately benefit the American taxpayer.

Employees are also eligible to receive bonuses that are supposed to be merit-based, but even these are deeply flawed. These so-called ratings-based awards are virtually guaranteed to all employees. According to the GAO, over 99 percent of federal employees were rated high enough to receive a ratings-based award.<sup>214</sup>

The GEAR Task Force recognizes that from an incentives perspective, a standard bonus for everyone equates to a bonus for none. Starting in FY2020, the relative size of employee bonuses will be increased as a way of injecting more merit-based considerations into federal compensation.<sup>215</sup> This move unfortunately has historically been negated by the fact that nearly every employee qualifies for this type of bonus.

---

<sup>213</sup> U.S. Office of Personnel Management, Handling Issues Within Grade Increase Denials, <https://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/handling-issues-related-to-within-grade-increases.pdf>

<sup>214</sup> Government Accountability Office, Distribution of Performance Ratings Across the Federal Government, 2013, <https://www.gao.gov/products/GAO-16-520R>

<sup>215</sup> For FY 2010 to FY 2017, bonuses were capped at 1 percent of aggregate funds spent on salaries for non-Senior executive Service (non-SES) level employees. For the same time period, SES level employees were capped at 4.5 percent. From FY 2017 to FY 2020 those numbers have shifted to 1.5 percent and 7.5 percent, respectively. <https://chcoc.gov/content/guidance-awards-ses-and-slst-employees-fiscal-year-2017>

Wisely, the Trump administration, under the direction of Margaret Weichert, the Acting Director of OPM, has issued guidance designed to better reward high performers with bonuses. For instance, in July 2019, Acting Director Weichert directed federal agencies to “ensure only employees who have demonstrated the highest levels of individual performance receive the highest annual ratings of record and the highest performance awards.”<sup>216</sup>

Also in July 2019, Weichert and Acting Director of OMB Russell Vought, directed agencies to “adjust as appropriate, the balance between rating-based awards and individual contribution awards (e.g., special act awards)” as a more effective way “to reward and recognize high performing employees and those with talent critical to mission achievement.”<sup>217</sup> The new policy also calls for agencies to utilize their “Work Force Funds” to carry out these goals.

While these recent administrative changes are a welcome shift toward merit-based compensation, there are still other changes that can and should occur. The Task Force urges Congress to statutorily reduce the federal government’s reliance on annual step increases. Managers should be given reasonable discretion to determine how employees progress up the GS pay scale based on performance. As a first step to accomplishing this, the extent to which a federal employee’s compensation automatically grows over every year by virtue of advancing one “step” should be cut in half. Savings from doing so should then be used to give discretion to the manager to award raises to those employees that deserve them based on their job performance and increase managers’ authority to reward annual bonuses.

Additionally, OPM’s description of “fully successful” provided by its July 2019 guidance, while an improvement over current agency practice, still falls short of describing the level of performance that many Americans would deem worthy of a bonus. The guidance describes this updated threshold as follows:

Performance at the Fully Successful level is a positive notation. Fully Successful individuals deliver on behalf of our citizens, meeting prescribed objective, measurable outcomes relating to the duties that they perform. Fully Successful should be seen as the category for employees who are meeting valid performance standards designed to deliver on what the American public should be able to expect from their civil servants.<sup>218</sup>

---

<sup>216</sup> Chief Human Capital Officer Council, Guidance on Awards for SES and SL/ST employees for Fiscal Year 2017, (Aug. 12th, 2016) <https://chcoc.gov/content/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing>

<sup>217</sup> Chief Human Capital Officer Council, Guidance on Awards for Employees and Agency Workforce Fund Plan (Jul. 12th, 2019)<https://chcoc.gov/content/guidance-awards-employees-and-agency-workforce-fund-plan>

<sup>218</sup> Id.

The GEAR Task Force believes that bonuses should not be rewarded for a level of performance that simply meets expectations. They should be reserved for those employees that exceed expectations. Therefore, the Task Force recommends making “Exceeds Fully Successful” the new benchmark for bonuses. Exceeds Fully Successful, according to the new OPM guidance is “reserved for the individuals who are delivering measurable outcomes for the American public in a way that is measurably beyond the standard set for fully successful.” Additionally, pursuant to this enhanced standard, Departments should be required to set their own explicit framework for managing benchmarks guiding positive financial reinforcement for employees.<sup>219</sup>

Finally, the Task Force recommends repealing current law prohibiting basing bonus decisions on the relative performance of an employee compared to their peers. In other words, employees cannot be “graded on a curve”, or competitively.<sup>220</sup> Repealing this prohibition would simply add another tool to the toolbox for managers freeing them to design innovative incentive models for the top performers and encourage increasingly productive behavior.

### Reform the GS Pay Scale to Attract Higher Performing Employees

Another flaw in the federal employee compensation system is the fact that it overcompensates less qualified employees while undercompensating employees with higher qualifications. The natural byproduct of this incongruity—along with the dearth of performance incentives noted above—is to repel highly qualified candidates while incentivizing those with less qualifications to retain federal employment. According to the Congressional Budget Office (CBO), federal employees with a high school diploma or less receive wages 34 percent higher than those of their private sector counterparts, while federal employees with a doctorates and professional degrees were underpaid by 24 percent.<sup>221</sup>

The GEAR Task Force urges lawmakers to explore options for rightsizing the wages of federal workers to better match their qualification in order to ensure that the federal workplace does not become a bastion for low-achieving employees. For example, the GS scale could be expanded at both ends to accommodate higher and lower wage-earners. Lawmakers could also expand the usage of Special Rates, which OPM currently uses to address staffing problems. These challenges are caused by, among other things, “significantly higher non-Federal pay rates than those payable by the Federal Government within the area, location, or occupational group involved.”<sup>222</sup>

<sup>219</sup> Kettl, et. al., supra note 11.

<sup>220</sup> Chief Human Capital Officer Council, Applying Rigor in the Performance Management Process and Leveraging Awards Programs for a High-Performing Workforce (Jul. 12th, 2019 <https://chcoc.gov/content/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing>)

<sup>221</sup> Chart of Federal Employee Pay Compared to Private Sector, CONGRESSIONAL BUDGET OFFICE (Apr. 25th 2017), <https://www.cbo.gov/publication/52637#section1> (last visited Jan. 8th, 2020).

<sup>222</sup> Special Rate Requests, OFFICE OF PERSONNEL MANAGEMENT, <https://apps.opm.gov/SpecialRates/srsrequest.aspx> (last visited Jan. 8th, 2020).

Congress should also limit having to make a performance improvement plan only for those they want to take an adverse employment action against. Performance improvement plans are burdensome and requiring them is an inefficient use of managerial resources and taxpayer funds.

### Reform Federal Retirement Plans

The other weakness of the federal compensation system is the bloated benefits package the federal workforce receives. Not only are these benefits expensive to fund, they tend to mask the true costs of the workforce and further fuel a compensation system lacking performance incentives.

Federal retirement benefits account for the largest benefit-based expense of the federal government. The primary driver of retirement benefits is the federal pension called the Federal Employee Retirement System (FERS). Federal employees also receive a 401k-style Thrift Savings Plan (TSP), but unfortunately this makes up a much smaller piece of the retirement

package. According to the Congressional Budget Office (CBO), in 2016, these exorbitant benefits cost taxpayers \$91 billion, with \$83 billion for federal pensions and only \$8 billion for TSP contributions.<sup>223</sup>

The FERS system is simultaneously immoderate and unstable, while remaining a burden on the American taxpayer. While federal employees enjoy benefits from both types of retirement plans, only 56 percent of private sector employees have a job where they participate in some type of retirement benefit.<sup>224</sup> Federal employees also receive benefits worth 14.0 to 14.2 percent of their wages, while the average retirement benefit for private sector employees is 3 percent.<sup>225</sup> Moreover, this massive system is an inherently unstable retirement model. For the pension system to work as designed, it requires a very low rate of error based upon many assumptions.

## DIFFERENCES IN AVERAGE HOURLY COMPENSATION BETWEEN FEDERAL AND PRIVATE-SECTOR WORKERS, BY EDUCATIONAL ATTAINMENT

Difference by Percentage

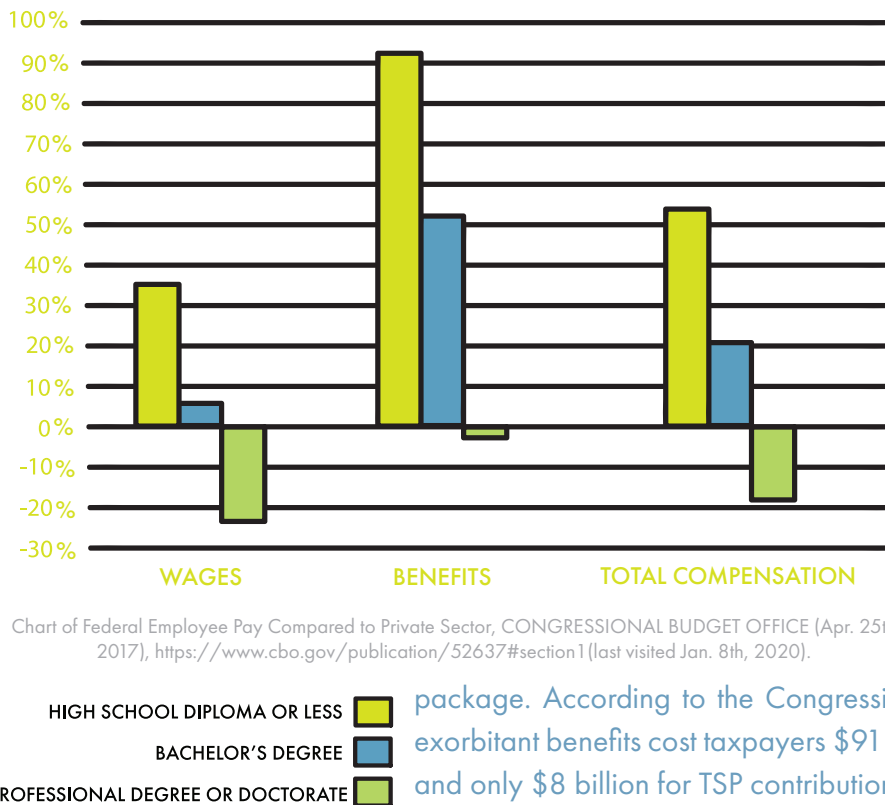


Chart of Federal Employee Pay Compared to Private Sector, CONGRESSIONAL BUDGET OFFICE (Apr. 25th 2017), <https://www.cbo.gov/publication/52637#section1> (last visited Jan. 8th, 2020).

HIGH SCHOOL DIPLOMA OR LESS

BACHELOR'S DEGREE

PROFESSIONAL DEGREE OR DOCTORATE

<sup>223</sup> Justin Falk, et. al., Options for Changing the Federal Retirement Service, CONGRESSIONAL BUDGET OFFICE (Aug. 2017), <https://www.cbo.gov/publication/53003>

<sup>224</sup> National Compensation Study: 2019, U.S. Bureau of Labor Statistics (Sept. 2019), <https://www.bls.gov/ncs/ebs/benefits/2019/employee-benefits-in-the-united-states-march-2019.pdf>

<sup>225</sup> Andrew Biggs, Have Public Pensions Become More Generous, FORBES.COM (Aug. 14th, 2018) <https://www.forbes.com/sites/andrewbiggs/2018/08/14/have-public-employee-pensions-become-more-generous-or-less/#57be31611e20>

The evidence of failed pension systems litters the entire United States.<sup>226</sup> According to ALEC, the staggering unfunded liabilities of state administered pension plans exceeds \$6 trillion.<sup>227</sup> Sadly, even the best managed, most stable, state pension plans have a significant funding gap.<sup>228</sup>

The GEAR Task Force supports a phase-out of the FERS system for future federal hires, eventually offering an enhanced TSP-only system in its place.<sup>229</sup> This would raise the base federal TSP contribution as well as the cap on federal matches. This approach would create savings for the taxpayer, while granting greater certainty to future contributors. By having a higher contribution threshold with an increased benefit option, employees will one-day invest more personally in their savings and have a more transparent view of their personal responsibility in saving for retirement.

### Optimize Paid Leave Benefits

In recent years many private sector businesses have been moving to provide a paid leave program to their employees to meet a growing market demand in the talent retention and recruitment space. In December of 2019, Congress reacted to this by passing into law a 12-week paid parental leave program that applied to nearly all federal workers.<sup>230</sup> CBO has estimated that this plan will cost taxpayers approximately \$8 billion over ten years.<sup>231</sup>

On its face this may seem like a prudent act designed to allow the federal government to compete with the private sector for personnel. However, when viewed in the context of overall federal paid leave policy, this only adds to an already bloated compensation and benefits system for federal workers in comparison to private sector workers.

In 2015, private sector employees at large companies received an average of 29 days of paid leave, including vacation, sick leave, and holidays.<sup>232</sup> On the other hand, federal employees with just three years of service are able to receive 43 days of paid leave per year, can access up to 30 days of advanceable sick leave for reasons such as illness, childbirth, and adoption,<sup>233</sup> and now, pursuant to the paid

<sup>226</sup> Powers, et. al., Unaccountable and Unaffordable, AMERICAN LEGISLATIVE EXCHANGE COUNCIL (Dec. 2017) [https://www.alec.org/app/uploads/2017/12/2017-Unaccountable-and-Unaffordable-FINAL\\_DEC\\_WEB.pdf](https://www.alec.org/app/uploads/2017/12/2017-Unaccountable-and-Unaffordable-FINAL_DEC_WEB.pdf)

<sup>227</sup> Id.

<sup>228</sup> Id.

<sup>229</sup> Greszler & Sherk, supra note 217.

<sup>230</sup> Jack Kelly, In A Historic Bill, Federal Workers Will Receive 12 Weeks Of Paid Parental Leave, FORBES.COM (Dec. 19th, 2019), <https://www.forbes.com/sites/jackkelly/2019/12/19/in-a-historic-bill-federal-workers-will-receive-12-weeks-of-paid-parental-leave/#6ef6f3722902>

<sup>231</sup> Congressional Budget Office, Letter regarding Statutory Pay-As-You-Go Effects of S. 1790, the National Defense Authorization Act for Fiscal Year 2020 and the Budgetary Effects of the Federal Employee Paid Leave Act, (Dec. 11th, 2019) <https://www.cbo.gov/system/files/2019-12/s1790paygosenate.pdf>

<sup>232</sup> Greszler & Sherk, supra note 217.

<sup>233</sup> Fact Sheet: Advanced Sick Leave, OFFICE OF PERSONNEL MANAGEMENT, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/advanced->

parental leave expansion of 2019, get an additional 12 weeks of paid parental leave. Thus, a qualifying federal employee could be paid for nearly an entire year of leave. This calculation does not even account for the “wide range of leave options and workplace flexibilities” available to federal employees “to assist an employee who needs to be away from the workplace” that include “leave under the Family and Medical Leave Act (FMLA), donated leave under the voluntary leave transfer program, leave without pay, alternative work schedules, credit hours under flexible work schedules, compensatory time off and telework. Agencies may also have a voluntary leave bank program.”<sup>234</sup>

The GEAR Task Force recognizes that this imbalance between federal employee and the private sector leave policy is simply gratuitous and should be corrected as part of a larger goal of shifting federal personnel policies closer to those driven by the private employment market. To do so, the GEAR Task Force recommends that lawmakers make the newly available 12 weeks of parental leave count against existing paid leave days. Additionally, lawmakers should phase in a reduction in the total amount of traditional paid leave days to match the 29 days available in the private sector.

#### Promote Responsible Federal Employee Health Insurance Plans

Lastly, federal employee health insurance benefits should be restructured to incentivize employees to choose more affordable plans. Currently under the Federal Employee Health Benefits program (FEHB) participants choose from a range of plans and pay for about 30 percent of premiums, with the federal government covering the remaining 70 percent.<sup>235</sup> Since this ratio does not change with the higher-priced coverage options, federal employees have no incentive to choose the cheaper plan, as the majority of the cost is covered by the government.

The GEAR Task Force supports transitioning to a premium support system under which the government would offer a standard, flat federal contribution toward the purchase of health insurance and employees would be responsible for paying the rest. This option is designed to encourage employees to purchase plans with the appropriate amount of coverage that fits their needs.

---

sick-leave/ (last visited Jan 7, 2020)

<sup>234</sup> Fact Sheet: Voluntary Leave Bank Program, OFFICE OF PERSONNEL MANAGEMENT, <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/voluntary-leave-bank-program/>

<sup>235</sup> Greszler & Sherk, *supra* note 217.

## THE CONCLUSION

The expectations in Washington D.C. are different than those experienced by the rest of the nation. Around the country, hardworking Americans are expected to be efficient and accountable when running their businesses, their households, and their personal lives.

On the other hand, in Washington D.C., expectations are hardly the same. Government efficiency and accountability is the exception, not the rule. This tolerance of waste and irresponsibility has further engrained a toxic mindset in government that puts bureaucracy over American citizens.

While well-intended, the answers offered by the political Left are not solutions, but rather superficial stopgaps that prolong problems while also creating new ones. Democrats would continue to abdicate legislative power to an administration that shares their policy goals. They would create more executive offices and programs to spend taxpayer money on wishful campaign promises. They would continue to allow judges to create policy in spaces where they encounter political resistance within the legislative process. In short, the answer the Left has offered, is the same that they will continue to propose: more government, more spending, and more bureaucrats.

The RSC GEAR Task Force has offered a practical vision to achieve an efficient and accountable government with three simple steps:

1. Reform Government POWER structures
2. Reform Government PRACTICES
3. Reform Government PERSONNEL policies

This proposal offers over 100 commonsense policy solutions to transform the government and deliver better results to the American people.

Most people would agree that the government should not pay benefits to dead people and that it should be able to count how many programs it has. Most people would also agree that the three branches of government should function efficiently and with accountability to the American people. The federal government should waste no time in working toward this simple vision of efficiency and accountability. Congress should lead this reform by beginning to enact the policies recommended in this report so that our government can live up to the expectations of the American public.



# GEAR TASK FORCE REPORT: POLICY RECOMMENDATION LIST

## REFORM GOVERNMENT POWER STRUCTURES

### Restrain Executive Rulemaking Authority

1. Enact the REINS Act
2. Expand Usage of the Congressional Review Act (CRA)
3. Codify CRA Coverage of Regulatory Dark Matter
4. Enact the Article I Restoration Act
5. Cap National Emergencies Act Authority

### Contain the Costs of Federal Regulations

6. Enact the Article I Regulatory Budget Act
7. Enact the Regulatory Accountability Act
8. Enact the Unfunded Mandates Information and Transparency Act

### Increase Regulatory Transparency

9. Create Regulatory Report Cards for Agencies
10. Require Agency Data Disclosure in Support of New Proposed Rules
11. Require all Regulatory Submissions to be Made through OMB's Office of Information on Regulatory Affairs
12. Enact the ALERT Act
13. Enact the Providing Accountability Through Transparency Act
14. Require Independent Agencies to Comply with Existing Rulemaking Requirements
15. Enact the Guidance Out of Darkness (GOOD) Act
16. Reform the National Emergencies Act

### Regulatory Reform through Litigation and the Judiciary

17. Subject Regulatory Impact Analysis to Judicial Review
18. Enact the Separation of Powers Restoration Act
19. Enact the REVIEW Act
20. Prevent Sue and Settle
21. Enact the Sunshine for Regulatory Decrees and Settlements Act

## REFORM GOVERNMENT PRACTICES

### Governmentwide Practices

22. Create a Best Practices Study on Metrics
23. Require Agencies to Harmonize Data Collection Terminology
24. Utilize Excess Federal Office Space
25. Extend NASA Enhanced Leasing Authority
26. Enact the Transparency in Federal Buildings Projects Act
27. Leverage Common Contracts
28. Enact the Stopping Improper Payments to Deceased People Act
29. Enact the Federal Permitting Reform and Jobs Act
30. Enact the Endangered Species Transparency and Reasonableness Act
31. Enact the Critical Habitat Improvement Act

### Overhaul Federal Technology Practices

32. Push Agencies to Fully Implement FITARA
33. Require Reporting on Data Center Consolidation to OMB

34. Incentivize Data Center Consolidation
35. Increase Use of Software Asset Management
36. Require Agencies to Eliminate Redundant Software Purchases
37. Codify Administration Push to Convert Paper Records to Electronic

#### Efficient Practices for National Security

38. Reduce Security Clearance Delays by Codifying GAO Recommendations
39. Require Interagency Development of Cybersecurity Plan to Implement GAO Recommendations
40. Require Agencies to Report on Cybersecurity and Data Privacy to Congress
41. Safeguard State Secrets through Security Clearance Reform

#### Enact Fundamental Reform to Federal Judicial Practices

42. Enact the Judicial Administration and Improvement Act
43. Enact Rep. Lesko's Legislation to Hire More Immigration Judges
44. Enact the Judgment Fund Transparency Act
45. Enact the Nationwide Injunction Abuse Prevention Act

#### Consolidate and Restructure of Government

46. Merge the Department of Education into the Department of Labor
47. Move Non-Commodity Nutrition Programs into Department of Health and Human Services
48. Merge National Marine Fisheries Service and Fish & Wildlife Service
49. Move the Policy Function of Office of Personnel Management to the Executive Office of the President
50. Consolidate Department of Energy Applied Energy Programs to a consolidated Office of Energy Innovation

#### Provide Accountability for Programs

51. Enact the Taxpayers Right to Know Act
52. National Capital Arts and Cultural Affairs Grant Program
53. D.C. Streetcar Funding
54. National Endowment for the Humanities (NEH) and for the Arts (NEA)
55. Save America's Treasures Grants Program
56. Stennis Center for Public Service
57. National Science Foundation Research of Social Sciences
58. Aquatic Plant Control Research Program
59. Brown Tree Snake Eradication Program
60. The Maritime Guaranteed Loan Program
61. The Conservation Technical Assistance Program
62. National Estuarine Research Reserve System
63. Sea Grant Program
64. Pacific Coast Salmon Recovery Fund
65. Advanced Technology Vehicle Manufacturing Loan Program
66. ENERGY STAR Program
67. Domestic Energy Subsidies
68. Neighborhood Reinvestment Corporation
69. Susan Harwood Training Grants
70. Trade Adjustment Assistance
71. DOL Office of Federal Contract Compliance
72. National Technical Information Service
73. Student Support and Academic Enrichment Grants
74. Supporting Effective Instruction State Grants
75. Federal Supplemental Educational Opportunity Grants

76. 21st Century Community Learning Centers
77. Public Housing Capital Fund
78. Public Housing Operating Fund
79. Home Investment Partnership Program
80. McGovern-Dole International Food for Education Program
81. Cultural Exchange Programs
82. Clean Technology Fund
83. Strategic Climate Fund
84. Green Climate Fund
85. Global Environment Facility
86. United States Emergency Refugee and Migration Assistance Fund
87. Department of Labor International Labor Affairs Bureau
88. Contributions to the International Development Association
89. Contributions to the International Bank for Reconstruction and Development
90. Complex Crises Funds
91. U.S. Trade and Development Agency
92. Inter-American Foundation
93. Asia Foundation and Development Bank
94. African Development Foundation and Bank

## **REFORM GOVERNMENT PERSONNEL POLICIES**

### Reform Hiring and Removal

95. Require Agencies to Include Hiring Managers and Subject Matter Experts in Federal Hiring
96. Investigate Automated Tools to Assist in Civil Service Hiring
97. Build an Applicant Vetting Pipeline to “Hire to Attrition”
98. Enact the MERIT Act
99. Remove Federal Employees Who Commit Crimes
100. Modernize the Evidentiary Threshold Necessary for Removal
101. Enact the Anti-Deficiency Reform and Enforcement Act
102. Ban Taxpayer-Funded Union Work
103. Enact the Official Time Reform Act
104. Enact the Official Time Reporting Act
105. Limit Basis for Adverse Employment Action Appeals
106. Limit Venue for Outside Appeals

### Pay and Benefits

107. Reduce the Federal Government’s Reliance on Automatic Pay Increases
108. Require a Higher Standard of Performance to Receive a Bonus
109. Reform the GS Pay Scale to Attract Higher Performing Employees
110. Allow for Competitive Bonuses
111. Reform Federal Retirement Plans for Future Hires
112. Optimize Paid Leave Benefits by Creating Parity with the Private Sector
113. Provide a Fixed Federal Employee Health Benefit Contribution

**RSC**