

# FEDERAL FUMBLES

100 WAYS THE GOVERNMENT DROPPED THE BALL  
VOL. 2

BY US SENATOR JAMES LANKFORD



# INTRODUCTION

My Fellow Taxpayers:

Thank you for reading the 2nd annual edition of *Federal Fumbles: 100 Ways the Government Dropped the Ball*. As taxpayers, you have the right to know how your federal government spends your money and the impact government regulations have on your families, neighbors, and the businesses that serve your community.

This book lists only a small fraction of the wasteful and duplicative spending from our government over the last few years. *Federal Fumbles* also highlights burdensome federal rules and regulations that crush small businesses and cost American consumers billions each year. With each of the 100 problems identified, I also suggest a common-sense and often simple solution. Our job requires us to do the challenging work to actually fix the problems we see. I publish this book as a first step to get this work done.

By the end of 2016, our national debt will be more than \$19.5 trillion, and on our current path, it will probably reach \$22 trillion by the end of the decade. Last year our federal government spent \$223 billion, or 6 percent of all discretionary spending,<sup>1</sup> on interest payments alone. By the start of the next decade, we will spend more on interest than we do on our national defense.<sup>2</sup> For many Americans the dollar figures are so large that it is hard to actually fathom how massive they really are.

So here is another way to look at it. In the last fiscal year, the federal government spent \$439 billion more than it took it in.<sup>3</sup> Sadly, overspending now seems almost routine. However, if Congress were able to balance the budget, keep it balanced, and create a yearly surplus of \$50 billion, it would still take 460 years to pay off our national debt. Let me give you a moment to let that sink in.

Finding a way to balance the budget will not be easy or quick—no one can accomplish it in one year. Creating a long-term surplus to begin paying down the debt will be an immense challenge, but it is imperative we make the hard choices now. Our current spending habits are unsustainable and irresponsible. Members of Congress from both parties—with cooperation from the President—have a moral obligation to our children and grandchildren to leave them a country on a path to eliminate its overwhelming national debt.

In this book you will see many examples of wasteful, duplicative, and inefficient use of your tax dollars. The book highlights irresponsible grants, similar or even identical programs that exist across multiple federal agencies, and money spent inefficiently. For many of the entries, you will find legislative solutions to eliminate wasteful spending and force agencies to make more responsible decisions. Unfortunately some of the spending you will read about comes through one-time expenditures—like a grant used to purchase custom Snuggies or a study to find out that kids do not like to eat food that has been sneezed on. For those examples there is not a specific program which Congress can eliminate to prevent further spending of this nature. *Federal Fumbles*, however, with assistance from congressional oversight, provides an important reminder to federal agencies that they must spend your money responsibly and in a way that truly benefits the American public.

In the following pages you will also read examples of just a few of the regulations that cost business and families billions each year. It is a custom in the last year of an administration for federal agencies to rush and put in place a huge number of “midnight” regulations that are primarily designed to cement the President’s legacy. Whether they cover energy development, labor rules, or even dolphin tourism, the rushed rules place an unnecessary restriction on the American people and prevent areas of economic growth, resulting in increased costs.

# INTRODUCTION

So what can you do? As a taxpayer, you have an important voice in demanding action from your representatives in Congress. Many of the wasteful and duplicative spending items listed in this book cannot simply be eliminated with legislation. They are prevented through common-sense decision making on the part of federal agencies, which can only be guaranteed by constant oversight from Congress. Major congressional action only comes when you call, email, or write to your Members of Congress and demand action. So reach out to the men and women you send to Congress, and make your voice heard. It can make a difference.

Last year in *Federal Fumbles* I discussed the Taxpayers Right-to-Know Act. Once enacted and implemented, the legislation will enable you and all taxpayers to access a database with all federal spending and programs. Importantly, the legislation also requires every federal agency and department to list the metrics they use to grade the effectiveness of each of their programs, if they grade them at all. I am very proud that this legislation is on its way to passage and that you will soon be able to easily learn more about how your government uses your money.

I also want to introduce you to the Grant Reform and New Transparency (GRANT) Act, which sets a government-wide standard for transparency on how grant sections are issued and will help prevent federal duplication. In 2015 \$617 billion in federal tax dollars were awarded as grants by federal agencies. The money was spent with limited oversight and transparency and little to no feedback to organizations that did not win the grant. The GRANT Act corrects all of this, providing you the opportunity to clearly see how the grant process works and how your money is spent. The bill was passed by the U.S. Senate Homeland Security and Government Affairs Committee, and I hope it will be passed by Congress by the end of the year.

As we enter into a new year—with a new President and new Congress—it is past time to focus on fixing the problems facing our nation. The consequences of inaction will not be felt just by the people of a certain state or political party. The decisions made today impact all of us and countless future generations. The challenges we must overcome have national implications and require national attention. For me, the items listed in this book are a to-do list for the next year. They are examples of violations of the public's trust that must be prevented from happening again.

I look forward to working with my fellow Members of Congress to rein in wasteful, duplicative, and unnecessary spending while also ensuring the federal government does not constrain economic development through over-regulation. I hope this edition of *Federal Fumbles: 100 Ways the Government Dropped the Ball* can serve as a starting point for this important work.

In God We Trust,



James Lankford  
United States Senator for Oklahoma

# ABBREVIATIONS

|           |   |
|-----------|---|
| AAP:      | American Academy of Pediatrics                            |
| ATF:      | Bureau of Alcohol, Tobacco, Firearms, and Explosives      |
| BOP:      | Bureau of Prisons   |
| CBO:      | Congressional Budget Office                               |
| CDC:      | Centers for Disease Control                               |
| CFPB:     | Consumer Financial Protection Bureau                      |
| DEA:      | Drug Enforcement Agency                                   |
| DOD:      | Department of Defense                                     |
| DOJ:      | Department of Justice                                     |
| DOL:      | Department of Labor                                       |
| Ed:       | Department of Education                                   |
| FCC:      | Federal Communications Commission                         |
| FWS:      | Fish & Wildlife Service                                   |
| EPA:      | Environmental Protection Agency                           |
| GAO:      | U.S. Government Accountability Office                     |
| HHS:      | Department of Health and Human Services                   |
| HUD:      | Department of Housing and Urban Development               |
| ICE:      | Immigration and Customs Enforcement                       |
| IG:       | Inspector General   |
| IHS:      | Indian Health Service                                     |
| IMLS:     | Institute of Museum and Library Services                  |
| Interior: | Department of Interior                                    |
| IRS:      | Internal Revenue Service                                  |
| NASA:     | National Aeronautics and Space Administration             |
| NEA:      | National Endowment for the Arts                           |
| NEH:      | National Endowment for Humanities                         |
| NIH:      | National Institutes of Health                             |
| NOAA:     | National Oceanic and Atmospheric Administration           |
| NSF:      | National Science Foundation                               |
| OIG:      | Office of the Inspector General                           |
| OIRA:     | Office of Information and Regulatory Affairs              |
| OPM:      | Office of Personnel Management                            |
| PPACA:    | Patient Protection and Affordable Care Act                |
| SAMHSA:   | Substance Abuse and Mental Health Services Administration |
| SBA:      | Small Business Administration                             |
| State:    | Department of State                                       |
| Treasury: | Department of Treasury                                    |
| USCIS:    | U.S. Citizenship and Immigration Services                 |
| USDA:     | Department of Agriculture                                 |
| USPS:     | United States Postal Service                              |
| VA:       | Department of Veterans Affairs                            |

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# GAS STATION TOFU

## *USDA proposed a regulation to require gas stations and convenience stores to sell items like tofu, shrimp, and almond milk if they want to continue accepting food stamps*

Last year about 45 million people, or 22 million households, participated in the Supplemental Nutrition Assistance Program (SNAP).<sup>4</sup> For many Americans SNAP—more commonly referred to as food stamps—provides the necessary assistance to ensure children do not go hungry and families have food on the table. Americans who utilize the program are given a certain amount of money each month, no more than \$140 per person or \$275 per family,<sup>5</sup> to purchase food at their local grocery or convenience store.<sup>6</sup> In an effort to encourage recipients to use the money to purchase healthy food, the federal government set a new regulation that will burden local small businesses with added costs without any evidence that it will help the American people eat healthier.

Based on limited changes to the program in the 2014 Farm Bill, USDA proposed a new regulation in February 2016 to require stores that accept food stamps to double the available selection of meats, vegetables, dairy products, and other healthy food items.<sup>7</sup> The proposal would impact neighborhood gas stations, convenience stores, and any other store of any size that accept food stamps.<sup>8</sup> USDA recommends businesses that want to meet the new regulations begin selling items like almond milk, tofu, fresh or frozen catfish, goat's milk, and shrimp.<sup>9</sup>

In addition to requiring an expanded selection, USDA's proposal also requires the same stores to cut back on their hot food sales, like hot dogs, fried foods, or pizza, or risk losing the ability to accept food stamps.<sup>10</sup> Specifically, USDA states that any company that earns 15 percent<sup>11</sup> or more of its profits from the sale of hot foods would no longer be allowed to accept food stamps, even though hot foods already cannot be purchased using the SNAP card.<sup>12</sup> It is estimated that 195,000 small gas station and convenience stores would be impacted by the rule.<sup>13</sup> Many small gas stations have already stated they would be forced to stop accepting food stamps, thus eliminating an option to buy food for many food stamp recipients in rural areas and inner-city food deserts.<sup>14</sup>

Several years ago USDA also announced another change to the SNAP program. In that change food stamps could be used to purchase a fountain drink as long as the drink had a lid and did not have a straw.<sup>15</sup> In other words you can take the straw with you as you leave the store, but you cannot have the straw in the cup when you purchase it with a SNAP card.<sup>16</sup> In 2013 energy drink companies like Red Bull® and Monster® changed their labels to add the word *nutrition*, which made them eligible for food stamp purchases.<sup>17</sup> Food stamps may also be used to purchase soda drinks in a bottle or can, candy, and some alcoholic beverage mixers.<sup>18</sup>

## **RECOVERY**

If the intent of food stamps is to provide supplemental nutrition assistance to low-income families, then good, healthy food close to home should certainly be a priority. The USDA interpretation and proposed regulation will cause small convenience stores to stop accepting food stamps, which will make it even tougher for people with limited transportation and without nearby grocery options. Small gas stations and convenience stores should not be required to sell tofu and shrimp just to continue accepting food stamps, especially since they have no guarantee that they will be able to sell the items before they expire. This rule will require some rural and inner-city business owners to tell SNAP customers they are no longer welcome to buy groceries in their store because the standard to sell to them is too high.

USDA should use strict requirements for the type of food that can be purchased with a SNAP card instead of limiting the places where food can be purchased. USDA and Congress need to develop clear standards for food stamp purchases to ensure the funding does indeed supply families with nutritious meals. But USDA and Congress also need to design standards that do not place an undue burden on small businesses seeking to serve all members of their community.

# **BUT WHAT IF THEY ALSO SAID, “BLESS YOU!”**

## *NIH funded a \$2 million, multi-year study about how kids don't like to eat food that's been sneezed on*

NIH recently invested almost \$2 million in a grant to study what influences a child's views on food.<sup>19</sup> In their application the grantees stated they wish to determine whether the way food is presented to the child and who presents it have an impact on the child's preference for it.<sup>20</sup> For instance, the grantees intended to study whether a person's gender, race, or accent influenced which food a child will select.<sup>21</sup> For the one-year-olds, the grantee planned to test whether the emotion of the person providing food influenced the child's eating habits.<sup>22</sup>



NIH has funded this grant since 2012, and the grantees have published 7 papers discussing their results.<sup>23</sup> In April 2015 the grantees published a paper stating that when children aged 5-8 were given the choice between allegedly sneezed-on food and clean food, they chose the clean food.<sup>24</sup> In 2014 the grantees published a report stating that when given the option, children prefer being wealthy as opposed to poor.<sup>25</sup> Finally, earlier this year the grantees published a report that children who learn more than one language tend to have better communication skills.<sup>26</sup> This is all clearly groundbreaking research.

## **RECOVERY**

Research on childhood cancer and other rare medical conditions that lack treatments or cures are certainly national priorities worthy of federal funds. Spending almost \$2 million to find out what is already common knowledge is obviously an ineffective use of American tax dollars. NIH is supposed to serve the American people by researching medical issues that seriously impact the public wellbeing, where the private sector and/or individuals cannot or do not provide the research. NIH should utilize its resources on projects that have a true, tangible benefit to all Americans, not on redundant or unnecessary research.

# ICELANDIC GRAVE DIGGERS

*NSF funded multiple grants, totaling nearly \$500,000, to find the connection between religion, politics, and cemeteries in 12th-century Iceland*

Norwegians and Celts first settled Iceland in the 9th and 10th centuries.<sup>27</sup> A Danish colony for centuries, Iceland gained full independence in 1944.<sup>28</sup> Its economy is primarily based on fishing, and although not a member of the European Union, Iceland is part of the European Economic Area, which allows free trade and travel with Europe. Iceland has also been the focus of countless American federal grants over the years.

Some of the grants NSF authorized for studies in Iceland this year include \$61,000 to study volcanoes,<sup>29</sup> \$375,000 to look at the “calcium and strontium isotope geochemistry of weathering,”<sup>30</sup> \$1.1 million to look at the flow of water from Denmark to Iceland (and Greenland),<sup>31</sup> and \$102,531 (so far) to study the spread of flies at a lake in Iceland.<sup>32</sup>

Over the last several years, NSF also provided more than \$500,000 to study the impact of religion in Iceland, focusing on locating church cemeteries from centuries past for excavation.<sup>33</sup> One grant, totaling more than \$400,000, looked at how religion impacted “the development of political power in Iceland between AD 870 and 1300.”<sup>34</sup> The researchers recognize that in the 12th century a transition occurred from family churches to communal churches. The grantees would like to know whether community churches were originally placed on prominent farms or located on farms that later “became important political and economic centers.”<sup>35</sup> The other grants, one for \$46,688<sup>36</sup> and the other for \$26,680,<sup>37</sup> attempt to determine the best method to scan the ground for churchyards and cemeteries so archeologists know exactly where to dig during excavations.



## **RECOVERY**

Iceland is certainly an important NATO ally and friend to the US. But that friendship does not require adding to our national debt to study the country’s 12th-century cemeteries. It is difficult to justify to many hard-working American families spending more than they make in a year<sup>38</sup> to fund one grant to study how to locate cemeteries in Iceland. If the Icelandic people, who already have an extremely high tax rate, view this project as important, it is one in which they should invest their own money. NSF should fund important research projects in the US or in places where it will provide a benefit to the American people to invest our hard-earned tax dollars. While our families continue to struggle to make ends meet<sup>39</sup> and our national debt continues to skyrocket, we should not spend money on archeological work in other countries.

# FLOPPY NUKES

*Even though the federal government spends \$80 billion a year on IT, much of that money goes to support legacy technology that could be more than 50 years old*

It is perhaps the greatest understatement that technology has changed a lot over the last few decades. Our cell phones can do more than any computer could manage just 10 years ago. It is now cheaper to talk to someone on the other side of the planet than it is to drive to the next state. As technology advances, so does the type of technology Americans use. Americans between the ages of 18 and 29 who own computers decreased by 10 percent from 2010 to 2015, while the number of Americans using smart phones almost doubled.

The federal government spends \$80 billion on technology-related expenses each year.<sup>40</sup> Approximately 75 percent of that goes solely to the cost of operating and maintaining existing technology, and that percentage has continued to increase over the last few years.<sup>41</sup> As a result, the government invested less and less in new technology, which would provide enhanced capabilities and potentially decrease the cost of operation and maintenance.<sup>42</sup>

In fact, GAO found that in FY15, federal agencies and departments planned to spend \$55 billion of their \$80 billion technology budgets on “services that do not use solutions often viewed as more efficient.” That is to say, the agencies spend money on older technology instead of utilizing cheaper and more efficient options like cloud-based computing and storage.<sup>43</sup> According to GAO, DOD still utilizes 8-inch floppy disks for a computer system that controls our nation’s nuclear weapons. Treasury utilizes a computer code from the early 1960s to catalogue taxpayers, and the VA utilizes programming code written in the 1950s to track veteran claims for benefits and employee timecards and payroll.<sup>44</sup>

In 2014 Congress passed the Federal Information Technology Acquisition Reform Act,<sup>45</sup> which required OMB to develop a method—with metrics—to ensure agencies updated their technology, but unfortunately agencies have not yet universally adopted the rules.<sup>46</sup> GAO reports

that while OMB has put out a metric for agencies to follow, it has not fully developed the goals to go with the metrics, and “agencies may be limited in their ability to evaluate progress” in updating their technology.<sup>47</sup> In fact, GAO states that DOD, Treasury, and the VA have not yet even set a plan to update much of their oldest technology.<sup>48</sup>



## **RECOVERY**

If an agency believes the technology it currently has is the absolute best to complete a task, the agency should retain it. However, spending on operation and maintenance for technology continues to expand, and investment in *new* technology continues to decrease. Mix that with the fact that some agencies use computer systems older than the average American,<sup>49</sup> and it is mostly likely time to look for something new.

Since 2011 GAO has made 800 recommendations for agencies to update their technology.<sup>50</sup> By the end of October 2015, 68 percent of those recommendations had not been implemented.<sup>51</sup> With more than \$80 billion spent each year on technology, American taxpayers have the right to know that money is spent responsibly and efficiently.<sup>52</sup> As of now, it does not appear that they receive the best return on their investment.

# SEA DUCK CENSUS

*FWS offered a \$180,000 grant for an outside group to develop an effective way to count and tag sea ducks*



In the 1980s and 1990s, Canada, Mexico, and the United States created the North American Waterfowl Management Plan. Formed through FWS, the Management Plan is “a project to rebuild the waterfowl (geese, ducks, and swans) population in the three countries.”<sup>53</sup> One endeavor to come out of this project was the Sea Duck Joint Venture, an effort from the three countries to “improve management and conservation of North American sea ducks.”<sup>54</sup> Though this Joint Venture began in 1998 (almost 20 years ago!), FWS has failed to develop an accurate method to count the sea duck population or determine whether the sea duck population is truly in danger.

However, in late 2016 FWS announced a \$180,000 funding opportunity for one or more organizations to help the Service develop an effective measure to count the sea duck population, a sound method to tag sea ducks for post-release monitoring, and a method to decide whether there is an adequate number of each species of sea duck.<sup>55</sup>

FWS does not know how many birds have been missed during its census of sea ducks. In fact, FWS estimates their bird counts could be off by as much as 10 percent to 75 percent, depending on the species and the person conducting the count.<sup>56</sup> FWS also needs a new method of tagging the sea ducks because the current method may actually kill the ducks. According to the funding announcement, sea ducks tagged with the current method have a 20 percent to 70 percent higher mortality rate (depending on the species) than non-tagged ducks.<sup>57</sup>

## **RECOVERY**

For almost 20 years, FWS has evidently used a method to count sea ducks that it knew or suspected was ineffective. It is tragic that American taxpayers have funded a program that may have killed the very ducks the federal government claims our nation needs to protect. But it is nonsensical for the federal government to spend \$180,000 to have someone else teach FWS how to properly count and tag ducks.

Fish and Wildlife’s mission statement is “work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people.”<sup>58</sup> To achieve any of these goals, FWS must first determine by scientific means whether or not the sea ducks are actually in danger. The Service should not continue to spend money on a broken count and spend additional money to fund a new one. American business owners could not continue to waste money on a machine or process that does not work; the federal government should not either.

# REALLY OLD FISH BONES

*In the last year, NSF gave almost \$200,000 to study 500-year-old fish bones in a Tanzanian city to determine the connection between food and social status*



The port city of Songo Mnara, Tanzania, was a major trading hub for the Indian Ocean from the 1300s to the 1500s, where gold, ivory, silver, perfumes, Chinese porcelain, and other valuable goods were traded among what is now the Middle East, India, and China.<sup>59</sup> Now recognized as a UN World Heritage Site, the ruins of the city are used for research on the development of Swahili culture as well as studies on architecture and trading habits.<sup>60</sup> For NSF the city serves as an opportunity to spend almost \$200,000 to study how the daily meal impacted the social status of the city's inhabitants more than 500 years ago.<sup>61</sup>

Last year NSF approved a multi-year study entitled "Fish as a delicacy and a staple: Social status and the daily meal at the 14th- to 16th-century town of Songo Mnara, Tanzania."<sup>62</sup> The grant recipient intends to determine whether there is any correlation between where a family was in the social ladder and the type of food eaten.<sup>63</sup> Specifically, the recipient will study "fish bone and ceramic fragments from a selection of households representing diverse levels of social standing."<sup>64</sup> Explaining the reason for this study, the recipient states that looking to the consumption of food "reveals the social interactions and constructions of meaning associated with past daily practices that form the fabric of a society."<sup>65</sup>

## **RECOVERY**

The City of Songo Mnara and its ruins are an important part of human history, which is why the UN named it a World Heritage Site and why the Tanzanian government enacted a preservation plan for the city.<sup>66</sup> With an obvious focus on science, NSF was founded "to advance the *national* health, prosperity, and welfare" [emphasis added].<sup>67</sup> It is difficult to determine, and NSF does not explain, how studying the remains of food consumed 800 years ago in a city on the other side of the planet accomplishes that mission.

The GRANT Act and the Taxpayers Right-to-Know Act would enable the public and Congress to better monitor how agencies use federal tax dollars and provide oversight to ensure agencies properly justify each expenditure. But it is up to the agencies to better ensure each grant truly advances the interests of American taxpayers who provide the funding. American families are cautious and careful with their money and expect the federal government to show the same care when spending tax dollars.

# MORE POWER, MORE MONEY, MORE PROBLEMS

## *Exempt from effective government oversight, CFPB has questionable spending practices that cannot be reformed through congressional appropriations*

Created in 2010 by the Dodd-Frank Act, the Consumer Financial Protection Board<sup>68</sup> was formed to implement, supervise for compliance, and enforce federal consumer financial laws.<sup>69</sup> Dodd-Frank intentionally made CFPB super-independent and put all of its powers in the hands of a single director whose only oversight constitutes semi-annual hearings before Congress.<sup>70</sup> Even though it is still in its infant stages, CFPB's regulatory agenda has already imposed 49 final rules at a price of \$2.8 billion.<sup>71</sup> The rules adversely impact critical consumer credit products such as mortgages, auto loans, and payday loans.<sup>72</sup> While CFPB often bypasses standard rulemaking procedures by simply suing and setting precedent, when they do follow standard procedures, they roll out rules at an astounding pace.<sup>73</sup> One report found that on average, the CFPB rulemaking process is 3.5 times faster than other agencies.<sup>74</sup>

Unlike most federal agencies, CFPB receives its funding each year directly from the Federal Reserve Bank, rather than through the regular congressional appropriations process.<sup>75</sup> Each year CFPB is authorized by law to draw up to 12 percent of the yearly earnings of the Federal Reserve System.<sup>76</sup> In FY16 CFPB was allocated \$605.9 million and is slated to receive \$636.1 million in FY17.<sup>77</sup> The Federal Reserve is required to turn over the money to CFPB and cannot provide oversight into how the funds are utilized, whether the spending is appropriate, and whether the money is used efficiently.<sup>78</sup> That means neither Congress nor the Federal Reserve has oversight capabilities of CFPB spending. Recently federal courts have even ruled that the current structure of CFPB is unconstitutional.

CFPB's freedom from congressional budgetary oversight has created questionable spending decisions by the Bureau. A report from *The Wall Street Journal* found that in just the first half of 2016, the Bureau spent more than \$15 million on Internet ads to direct browsers to its website.<sup>79</sup> The costs include a \$12.5 million contract for the same advertising firm used by the presidential campaigns of Barack Obama and Hillary Clinton.<sup>80</sup> CFPB spends more than twice as much of its budget on advertising than most agen-

cies; where most federal agencies use less than 1 percent of their budgets on advertising, CFPB has used 2.5 percent of its budget.<sup>81</sup> In 2013 Chairman Jeb Hensarling of the US House of Representatives Finance Committee estimated that CFPB spent almost \$12 million on employee travel when the Bureau employed 1,168 people. That represents more than \$10,000 per employee in one year.<sup>82</sup> It is not surprising that CFPB is outside the authority of OMB guidelines and rules, which help ensure effective and efficient use of federal dollars.<sup>83</sup>

## **RECOVERY**

While there is merit to laws that protect consumers from unscrupulous financial practices, the creation of a \$600-million-per-year federal agency empowered to create and enforce regulations impacting millions of Americans and companies and that is completely immune from any oversight or accountability is anathema to our nation's democratic principles. Almost everything the CFPB does is redundant to another federal agency; it should never have been created. The best use of funds would be to abolish the CFPB and spend the available dollars to reform and appropriately staff the other regulatory entities. At a minimum, CFPB's authority should be reined in by making it accountable to Congress through the appropriations and authorizing processes. In October 2016 the US Court of Appeals for the District of Columbia ruled some of the CFPB's broad power is unconstitutional because there are few executive or congressional oversight authorities written into the law.<sup>84</sup> The Obama Administration has vowed to appeal the ruling, making the certainty of congressional reform legislation essential. In May 2015 Senator Perdue and 17 other Senators introduced the Consumer Financial Protection Bureau Accountability Act.<sup>85</sup> This simple legislation brings additional oversight and accountability to the CFPB by requiring it to seek appropriations from Congress through the normal budget process instead of receiving funding from the Federal Reserve.

# PANDA PROBLEMS

*Halfway through a four-year grant, NSF paid more than \$2 million to find out whether climate change has impacted China's giant panda population*



There has been much debate over the last few decades over whether or not human activities cause the Earth's climate to change. Each year the federal government spends more than \$10 billion on climate research and programs.<sup>86</sup> Various federal departments and agencies, such as EPA, Ed, NASA, Treasury, DOJ, Interior, and NSF, all dip into that pot of money.<sup>87</sup> The US also funds climate activities internationally (see page 50 for information about the Green Climate Fund).

One area NSF studies is the believed impact of climate change on the habitat of China's giant panda population.<sup>88</sup> And in late 2014 NSF gave Michigan State University more than \$2 million for a four-year study to assess any impact on giant pandas.<sup>89</sup> The study specifically looks at whether there are common changes over the 65 different panda reserves throughout China.<sup>90</sup> The recipients hope to learn more by studying the entire species of

panda, instead of only looking at pandas in certain areas. However, as of fall 2016, the \$2 million project has only produced an eight-page report in *Science* magazine.<sup>91</sup>

Giant pandas are an endangered species, numbering fewer than 2,000 in the wild and in captivity.<sup>92</sup> A recent *National Geographic* article states the major challenge to re-growing the panda population is the loss of habitat space due to expanding population and activities such as farming.<sup>93</sup> The article points out that "the panda population is almost sacred to the Chinese and the government goes to great lengths in protecting the surviving population."<sup>94</sup>

## **RECOVERY**

The recent birth of the giant panda, Bei Bei, at the National Zoo renewed Americans' love for the giant panda.<sup>95</sup> Countless children and families have visited the zoo over the last year to catch a glimpse of the quickly growing panda.<sup>96</sup> However, we have already saddled those same children with \$19 trillion in federal debt. Spending more than \$2 million to find out whether climate change affects animals native to another country is not the best use of American federal dollars. It is also ironic that the federal government spends millions to study an animal within the country to which we currently owe more than \$1 trillion.<sup>97</sup> NSF should remain focused on important research and projects that have a direct impact and benefit to Americans and ensure that any future spending truly benefits the American public's health and well-being.



# EARLY OR LATE RETIREMENT

*Even with countless modern advances in computing, OPM continues to process retirement benefits for federal employees on paper—causing major delays before retirees receive the benefits they earned*

“Innovative solutions,” “cost savings,” and “efficiency”—these are not some of the widely used terms to describe how the federal government tackles problems and conducts its operations. One agency that has failed to employ modern software and technology solutions to run a significant portion of its operations is OPM, which is responsible for processing retirement benefits for all federal workers.<sup>98</sup>

For more than 30 years, OPM has failed multiple times at the task of transitioning to an electronic file system for retired federal employees.<sup>99</sup> Incredibly, much of the work is still done by hand on paper by 600 OPM employees in a converted limestone mine in western Pennsylvania.<sup>100</sup> To call this antiquated system inefficient would be a gross understatement.



OPM’s archaic retirement processing system translates to extremely poor performance rates in processing retirement claims. In FY15 OPM fell far short of its goal of processing 90 percent of retirement claims within 60 days; only 70 percent were completed within this reasonable time frame.<sup>101</sup> As a result, thousands of federal workers from across the country have to wait more than 60 days to receive their earned retirement benefits.<sup>102</sup> Most people cannot wait months to start receiving their retirement benefits. This model of inefficiency puts recently retired federal workers in dire circumstances immediately after they leave their federal service.

## **RECOVERY**

Retiring federal employees deserve their retirement claims to be processed within reasonable time frames. OPM needs to revamp its retirement processing by following the private sector’s lead and using up-to-date software. Where the federal government fails to provide innovative solutions to satisfy customer demands, the private sector excels. Retirement plan management software has had many years to mature in the private sector.<sup>103</sup> If it cannot quickly design its own system, OPM should look at existing private sector solutions as opposed to trying—and failing—to reinvent the wheel yet again. OPM should also work with each agency to create a standard set of forms and information to submit to them to expedite processing.

# FEDERAL TRAFFICKING

## *HHS's ineffective system could cause unaccompanied minor children to be placed in abusive and dangerous homes*

People from all over the world seek to come to our nation through our legal immigration system. Unfortunately, some do not. Tragically, some parents in Central and South America decide to send their children to the US alone to seek a better, more prosperous life. In FY14 and 15, more than 80,000 children flooded through our south-west border,<sup>104</sup> with the number of children crossing in October and November 2015 106 percent higher than the same time-frame in the previous year.<sup>105</sup>

The US should do more to prevent anyone from illegally crossing the border, but once a child has crossed, we have both a moral and legal responsibility to ensure the children are safe while we work to return them to their home countries. According to the Trafficking Victims Protection Reauthorization Act, that responsibility falls on HHS.<sup>106</sup> Due to the massive number of children crossing the border and a willingness to place children here illegally with adults already here illegally, HHS gradually chose not to follow many of the standards put in place to ensure the children are placed in safe homes.<sup>107</sup> From no longer requiring fingerprints from all adults who volunteer to house an unaccompanied minor to ceasing FBI background checks, HHS sought to speed up the process to approve a person to house a child, which simultaneously put the children in potential danger.<sup>108</sup>

An investigation conducted by the Associated Press revealed the relaxed standards led to several instances of children placed in unsafe homes. For example, one child was forced to work 12 hours a day in a restaurant to pay rent to the family with whom he was placed by HHS.<sup>109</sup> Another teen, when not locked in the placement family's home, was also forced to work at a restaurant and clean

houses.<sup>110</sup> According to an investigation by HSGAC's Permanent Subcommittee on Investigations, HHS also placed several children with human traffickers in Ohio, where the children were forced to work every day on a farm.<sup>111</sup> The children and their families were threatened with death or other physical harm if they did not turn over their paychecks to the traffickers.<sup>112</sup>

## **RECOVERY**

Congress and the incoming Administration have an obligation to reform our nation's immigration policies. Not only do our borders need to be more secure, but our policies for those who enter and stay in the country illegally must be addressed, especially for children. HHS must resume full background checks on the individuals and families with whom it places unaccompanied minors, and HHS should not place children in the home of someone living in the US illegally. HHS should also do more to check on the well-being of children after placement. During a congressional hearing in January 2016, HHS incorrectly claimed it does not have the authority to perform safety and wellness checks once a child has been placed.<sup>113</sup> The Trafficking Victims Protection Reauthorization Act actually does give HHS that authority, and at Sen. Lankford's request, the Senate Appropriations Committee included the following language in the FY17 Labor-HHS Appropriations Committee Report: "The Committee notes that HHS is responsible for providing post release services, including home visits, for certain children it places with a sponsor pending adjudication of their immigration status."<sup>114</sup>

# MISDIRECTED INTERNATIONAL AID

*Congress thought it funded job training, energy development, drug interdiction, and anti-governmental corruption aid in three Central American countries, but the Administration had other plans*

In March 2015, Vice President Biden spent several days meeting with Central American leaders in Guatemala.<sup>115</sup> He announced that the Obama Administration would seek to increase US spending in Guatemala, Honduras, and El Salvador, countries that together comprise what is called the Northern Triangle of Central America.<sup>116</sup> Vice President Biden stated that the investment (called the United States Strategy for Engagement in Central America<sup>117</sup>) will bring “stability to this impoverished and violent region.”<sup>118</sup> Congress agreed with the incredible need and the national security risks created by an unstable Central America, so it provided \$750 million in FY16 for the work to begin.

Vice President Biden stated there were three main areas of focus in the new strategy. First, the strategy would improve security to “help stabilize neighborhoods and eradicate transnational criminal networks that threaten Central America’s communities and our own.”<sup>119</sup> Second, it would provide good governance to instill fairer courts, government contracting, and help the countries do a “better job collecting and managing revenues to invest in their own futures.”<sup>120</sup> Third, the strategy would focus on offering “technical expertise to help Central American countries attract significantly greater private investment.”<sup>121</sup> As required by the law authorizing the \$750 million in funding, State submitted a Spending Plan to the House and Senate Appropriations Committee detailing how the money would be spent. The State Department submitted the Plan to Congress in June 2016, six months after Congress appropriated the Central America assistance package and more than a year after the President’s budget request that called for \$1 billion to Central America. The Plan, however, a mere five pages long, did not adequately provide Congress with any meaningful detail of how taxpayer dollars would be spent. The State Department finally submitted a revised, detailed Spending Plan the next month.

Unfortunately, when the revised Plan arrived in July, it told a very different story than what was promised up front. More than \$57 million is intended to be spent on green climate and other initiatives unrelated to the priorities set out by the Vice President last year.<sup>122</sup> For instance, \$750,000 was designated to be spent on labor rights issues in El Salvador and \$7,189,004 in Guatemala for “natural resource management and biodiversity conservation.”<sup>123</sup> In Honduras \$1.5 million was set aside for labor rights issues and \$750,000 for forestry protection.<sup>124</sup> The Plan also aimed to spend \$4.7 million in Honduras for ‘building resilience into ecosystems and livelihood,’ which includes funding to encourage “natural resources conservation” and “income diversification.”<sup>125</sup> It should also be noted that the Spending Plan submitted to Congress included some inaccurate funding calculations, and the totals spent on climate-related endeavors could be marginally higher or lower than stated in the Plan.

## **RECOVERY**

American taxpayers benefit from an economically strong and secure Central and South America. As economies in those nations grow and more job opportunities exist, the number of citizens from Northern Triangle countries seeking to enter the US illegally to find employment will decrease. Strong and effective drug interdiction efforts will limit the illegal drug trafficking that ends up in our communities and families. It is a smart investment for the US and for Central America. However, spending \$57 million on efforts unrelated to this endeavor is an inefficient use of American tax dollars and fails to meet any of the goals originally agreed to by the Legislative and Executive Branches. Funds should be restricted to efforts that actually support the strategy.

# \$1 MILLION IN GOLD AND SILVER TO TELL YOU NOT TO BRONZE

## *NIH spent more than \$1 million on a campaign to tell mothers to prevent their teenage daughters from tanning*

A recent report in an American Medical Society publication showed that fewer than 10 million people, just 4.2 percent of adults, use tanning beds.<sup>126</sup> That number has decreased over the last few years, even for young people, who tan 3 percent less than in 2010.<sup>127</sup> In fact, other than men over the age of 40, all demographics show a marked decrease in tanning-bed use over the last few years.<sup>128</sup> Though the evidence is not definitive, it is likely that widening concerns of skin cancer drive people away from tanning beds.

Despite the generally decreased use of tanning in the US, NIH has provided \$1.3 million since 2015 to fund a social media campaign aimed at encouraging mothers to tell their teenage daughters not to use tanning beds.<sup>129</sup> Titled “Likes, Pins, and Views: Engaging Moms on Teen Indoor Tanning Thru Social Media,” the grantee hopes to prove a social media campaign can lead to “decreasing mothers’ permissiveness for daughters” using tanning beds and cause more mothers to support bans on teenage tanning.<sup>130</sup> Upon receipt of funding, the grantee promised to develop social media campaigns on Instagram, Facebook, Twitter, Pinterest, and YouTube to reach mothers.<sup>131</sup> The grantees also plan to ask mothers

“to take actions to advocate for a ban to their state legislators.”<sup>132</sup> As of fall 2016, NIH has not released any metrics or goals for how many people the program is intended to reach.<sup>133</sup>

## **RECOVERY**

Every person who uses a tanning bed should be notified of any health implications of spending time under the UV lights. But by now most people are likely aware of the potential health issues associated with tanning beds, and statistics back that up. Federal taxpayers should not have to fund a campaign to put ads on Pinterest that encourage mothers not to let their teenage daughters tan. And the federal government should not fund a grant that encourages people to support specific legislation (like this campaign purports to do).<sup>134</sup> Parents should definitely have a conversation with their children about the health risks of tanning. But it is not the federal government’s job to spend tax dollars to implore parents to have the conversation. Using a tanning bed is a choice that any adult is free to make. NIH funds should be utilized to support medical research and knowledge, not impact personal decisions.



# MEDIEVAL SMELLS

*Three federal agencies have combined to spend \$495,000 to support a temporary exhibit to share the best of medieval smells*

Our family vacations often involve travel to places like Washington DC, Philadelphia, or Boston to learn more about the founding of our nation. There are countless museums throughout the country that document specific items from our history.



Seeking to shine a light on an area of history less likely to garner national interest, NEH,<sup>135</sup> NEA,<sup>136</sup> and Institute of Museum and Library Services<sup>137</sup> have combined to spend \$495,000 to support "A Sense of Beauty: Medieval Art and the Five Senses." The temporary exhibit will include "130 works of art focusing upon the senses created from the 12th to the 16th centuries."<sup>138</sup> The museum housing the exhibit intends to provide attendees with the sights, sounds, smells, feel, and tastes of medieval times.<sup>139</sup> As of fall 2016, the exhibit has yet to be opened to the public, but there is an 85-day exhibition beginning later this year that includes these same topics.<sup>140</sup>

## RECOVERY

There are multiple flags on this play. First, while some people may be interested in an exhibit of medieval smells, it is not the responsibility of every hard-working taxpayer to fund olfactory experiences. Individuals interested in the exhibit are certainly free to raise private funds instead of relying on taxpayers and adding to our mountain of federal debt. Second, federal agencies should not fund a group already receiving taxpayer dollars from another agency to do the exact same work. Only one of the three agencies should fund the exhibit, not three. The duplication limits the amount of money available to support federal priorities. American families will always share an interest in our history and continue to support those who preserve it. But that support is not limitless, and federal spending should always seek to overtly reflect our common American interests.

# SCAMMED CITIZENSHIP

*A recent IG report revealed that 1,029 people, one of whom has ties to terrorism, obtained US citizenship due to incomplete DHS and FBI records*

Over the last ten years, more than seven million people have become naturalized US citizens, with 729,995 earning that right in 2015.<sup>141</sup> To become a US citizen, a person must meet a long list of requirements, including that he or she has been a “lawful permanent resident for at least five years,” can speak and read English, knows US history, and is “a person of good moral character.”<sup>142</sup> Applicants must also submit their fingerprints and provide a list of any former names or identities so USCIS can check them against records held by DHS and FBI.<sup>143</sup> Theoretically, the process will ensure no one who has committed a crime or is scheduled to be deported will become a naturalized US citizen. Unfortunately, it does not always work that way

In September DHS’s IG revealed that 1,029 people became naturalized US citizens even though they were ineligible, with “at least 858 individuals ordered deported or removed under another identity” granted US citizenship by USCIS due to incomplete fingerprint records held by DHS and FBI.<sup>144</sup> Specifically, the IG found that when IDENT (the fingerprint program now operated by DHS) was created in 1994,<sup>145</sup> older records were not digitized and put into the system.<sup>146</sup> The IG noted that the FBI database is missing records because ICE and its predecessor agency, the Immigration and Naturalization Service, have not always shared fingerprint records with FBI.<sup>147</sup>

In 2011 ICE discovered that about 315,000 people who were either convicted of a crime or received final deportation orders were not included in the DHS and FBI fingerprint databases.<sup>148</sup> While work began in 2012 to update the databases by digitizing old records, just under half have still not been uploaded into the system.<sup>149</sup> In other words when USCIS checks fingerprint databases after receiving an application for US citizenship, there are 148,000 records that will not be searched.<sup>150</sup>

Once a person has been granted US citizenship, he or

she receives the full rights and privileges that come with it. As pointed out by the IG, that includes the right to sponsor others to receive citizenship and obtain security clearances.<sup>151</sup> In fact, three people who were not qualified for citizenship but gained it due to the incomplete records, did obtain a security clearance to work in either commercial airports or maritime facilities.<sup>152</sup> ICE also reported to FBI that two of the people who gained citizenship have links to terrorism.<sup>153</sup> To revoke US citizenship from a person who has improperly received it, a federal court case must be filed by a US Attorney. Of the 1,029 known cases of people gaining US citizenship even though they were ineligible, US Attorneys have only filed actions against two and have declined to pursue action against 26 others.<sup>154</sup>

## **RECOVERY**

It is absolutely unacceptable that a multi-agency fumble led to more than 1,000 people falsely gaining US citizenship. While the IG noted that the \$5 million in funding from Congress to digitize fingerprint records ran out before all 315,000 could be finished,<sup>155</sup> that was not a justification for USCIS to continue approving citizenship applications knowing it was searching incomplete databases. DHS and FBI should immediately report to Congress on the tools necessary to complete the digitalization of their records. ICE must review and digitize all remaining available fingerprint cards and create a fully functioning system. USCIS should ensure relevant US Attorneys are given all necessary documentation so proceedings may immediately begin to revoke US citizenship for those who would have had their applications denied if DHS and FBI databases were up-to-date. DHS has stated that they will complete all fingerprint records by June 2017, but until then, records should be checked manually, just like they were before.

# USDA LOOKS FOR MORE WINE DRINKERS AND PRUNE EATERS

*Each year USDA uses Value Added Producer Grants to help preferred companies expand their market share*

While EPA spends tax money to hinder local farmers,<sup>156</sup> USDA spends tax dollars to expand the market for certain farm products.<sup>157</sup> Created in the Agriculture Risk Protection Act of 2000, Value Added Producer Grants were intended to assist in the development of a marketing plan to grow the market for agriculture products.<sup>158</sup> Originally funded at \$15 million,<sup>159</sup> the program grew to \$44 million in FY16.<sup>160</sup>

Contradicting the purpose of the grant, \$49,869 was given through the grant program last fall to a company in Massachusetts to begin selling hard cider that will be for sale only at its on-site farm store.<sup>161</sup> USDA used \$142,000<sup>162</sup> to help expand the market for an Alabama-based winery owned by a multi-state company with its own company jet.<sup>163</sup> Additionally, \$250,000<sup>164</sup> went to Sunsweet, a privately-owned cooperative which has revenues in the hundreds of millions of dollars annually,<sup>165</sup> to assist in marketing a new prune supplement. USDA also gave \$250,000 to another privately owned cooperative, Ocean Spray, which has sales in the billions of dollars each year,<sup>166</sup> for the production and shipment of three new drinks.<sup>167</sup> Additional funds went to expand the market and facilities for eggs, pork, coffee, cheese, and other products.<sup>168</sup> Finally, \$3.5 million in grants went just to help expand the market for wine.<sup>169</sup>



## **RECOVERY**

After the Dust Bowl and Great Depression, farmers in Oklahoma and many other states benefited from USDA assistance.<sup>170</sup> Over the years USDA has provided assistance and information to family farms during hard times, and USDA continues to have a sizable role in American agriculture. But USDA has no business providing six-figure grants to billion-dollar companies or spending millions to expand the market for and consumption of alcohol. More importantly, USDA should not play favorites in the market by selecting which companies should and should not receive assistance to expand markets. Congress should restore Value Added Producer Grants to the originally intended \$15 million per year while also considering whether it actually remains necessary for American taxpayers to finance this very uncapitalistic endeavor.

# A BILLION HERE, A BILLION THERE

*Medicaid has wasted billions annually on improper payments,  
with \$142.7 billion lost just since 2009*

Medicaid was created by Congress in 1965 as a state-run program to provide quality healthcare options for low-income individuals and families.<sup>171</sup> Originally, each state operated its own Medicaid program in a manner designed to best meet the needs of that particular state with partial funding and basic program requirements from the federal government. Over the last 60 years, new funding streams were coupled with more and more federal requirements.<sup>172</sup> In 2013 states were allowed to expand Medicaid eligibility with the promise that the federal government would fully cover the cost for newly eligible enrollees for a few years.<sup>174</sup> In 2017 the federal reimbursement for new enrollees will begin to drop until it reaches 90 percent in 2020.<sup>175</sup> Unfortunately, as states expand Medicaid and the number of enrollees rises, the number of improper Medicaid payments made because of mistakes, fraud, and ineligible enrollees has also risen.<sup>176</sup>

In 2012 Medicaid reported its improper payments totaled \$19.2 billion.<sup>177</sup> In 2015 improper payments in Medicaid reached 9.8 percent, totaling \$29.1 billion.<sup>178</sup> Unfortunately, that is not the worst, as Medicaid predicts improper payments will rise to 11.5 percent or \$38.9 billion in 2016.<sup>179</sup> A recent GAO study found that major contributors to the rising costs include enrollees with fake Social Security numbers and payments to people who should not be enrolled because they are either enrolled in another state, are in jail, did not provide accurate information to prove they qualify, or were deceased. A GAO review of just four states where Medicaid spending totals \$3.5 billion found improper payments totaling \$448 million in just one year due to the use of fake Social Security numbers<sup>180</sup> and improper payments (more than \$48 million) to those who were either dead or should not have been enrolled in the program.<sup>181</sup>

In an August 2016 alert that was later removed, CMS, which operates Medicaid for the federal government, posted on its webpage suggestions for states to bring down improper Medicaid payments.<sup>182</sup> Suggestions included “conducting site visits to verify provider address-

es,” “ensuring that providers are screened upon enrollment and revalidation,” and “monitoring billing and compliance processes.”<sup>183</sup> It is unclear why the alert was removed from CMS’s webpage since it contained common-sense ideas for states working to eliminate wasteful state and federal spending.

## **RECOVERY**

Medicaid’s improper payments this year will equal the total tax payments of more than 1.9 million households.<sup>184</sup> In 2011 CMS issued regulations intended to help screen providers and in 2013 mandated that states use a federal database to verify enrollee qualifications.<sup>185</sup> However, since improper payments have doubled since then, the efforts seem to be ineffective.

It is time for Congress to go back to the drawing board with Medicaid. As long as states have an unlimited supply of federal money and no consequence to their state budgets, there is no urgency for any state to confront fraud. States should have a fixed amount of money for Medicaid and the flexibility to provide quality healthcare and fraud reduction. The new approach will help decrease improper payments and provide greater healthcare outcomes for the most vulnerable in our nation.

CMS must work to ensure program integrity is a central focus of the agency. As state Medicaid programs across the nation struggle with fraud and abuse within their programs, GAO and the HHS-OIG have identified a number of areas in which critical safeguards should be put in place to prevent improper payments. To improve protections within the program, CMS should partner with the Social Security Administration to identify deceased beneficiaries and fake Social Security numbers. CMS can also verify provider enrollment and eligibility, monitor provider licensure status, track and update provider locations, and prevent providers with criminal backgrounds from being eligible for the program.



# FAA SHOULD HAVE CALLED IN FOR GUIDANCE

*FAA recently announced it would leave a New York TRACON facility on Long Island, a location requiring higher wages for employees, instead of moving it to a more cost-effective location*

Terminal Radar Approach Control Facilities (TRACON) are used by FAA air traffic controllers (ATCs) “to guide aircraft approaching and departing airports” with radar and radio contact.<sup>186</sup> The facilities house the ATCs who only monitor aircraft by radar.<sup>187</sup> Since they are not the line-of-sight controllers located in an ATC tower, they do not necessarily need to be located at an airport.<sup>188</sup> As a result, while some TRACONs around the country are located at airports, others are miles away.<sup>189</sup>

In 2014 FAA announced that the Long Island TRACON facility, which serves JFK, LaGuardia, Newark, and other smaller airports in the area, would be rebuilt and modernized at a cost of \$245 million.<sup>190</sup> The renovation was a major alteration to a previously announced plan to consolidate the existing TRACON location on Long Island with a nearby ATC center into one Integrated Control Facility to be located somewhere within 150 miles of NYC.<sup>191</sup> While the \$245 million price tag to rebuild the TRACON facility in NYC is half of the total cost of constructing the originally planned Integrated Control Facility, the long-term costs are likely to far exceed the initial savings because the salaries that must now be paid to workers at the TRACON facility are much higher than anywhere else due to the higher cost of living.<sup>192</sup>

Most federal employee salaries are based on a set federal pay scale with 15 “grade” levels that have gradually increasing entry level salaries.<sup>193</sup> The type of job, work experience, and other factors determine on which grade an incoming employee’s salary is based.<sup>194</sup> The average ATC can have a base salary ranging from \$52,432 to \$164,887 a year.<sup>195</sup> In NYC, due to the higher cost of living, the base salary is raised to a range of \$59,241 to \$185,100.<sup>196</sup> With around 259 employees, the cost of operating the TRACON facility on Long Island is likely tens of millions more just in salary than it would be in an area with a lower cost of living. Since TRACON facilities can be located many miles away from the airports they serve

and FAA had originally planned to move this facility up to 150 miles away, it seems FAA made the decision to intentionally leave the facility in a more expensive location.



## **RECOVERY**

ATCs have a difficult and very important job. Airlines in the US carry more than 800 million passengers each year,<sup>197</sup> and ATCs help ensure they will arrive at their destination safely. It is reasonable for FAA to do all it can to ensure its ATCs are well paid and have all the necessary tools to do their job well. In the case of TRACON facilities, where location is not as important a factor as the standard line-of-sight airport towers, it is also reasonable for FAA to take into consideration the long-term costs of facility placement. If FAA feels the TRACON facility now on Long Island could have been moved to a less expensive location without diminishing the ability of ATCs to do their jobs, then the FAA should have moved locations. Leaving a TRACON facility on Long Island may be the politically expedient thing for FAA to do, but that does not make it the right thing to do with American tax dollars.

# UBER INEFFICIENCY

*The federal government operates 42 different programs to transport low-income people to obtain regular medical care*



Last year, the CDC reported that 1 out of 5 adults living in the United States have some form of disability with the percentages ranging from 16.4 percent to 31.5 percent in each state.<sup>198</sup> In 2014 (the most recent year with information available from the Census Bureau) 14.8 percent of the US population (46.7 million people) lived in poverty.<sup>199</sup> More than a million individuals living under the poverty line are our nation's veterans, and more than 3.5 million veterans are disabled.<sup>200</sup> Many disabled and low-income Americans are eligible for a wide range of healthcare options, particularly for veterans through the VA. However, finding transportation for low-income Americans makes reaching a healthcare facility a distinct challenge.

Federal funding is available for individuals with a "transportation-disadvantage."<sup>201</sup> Specifically, there are 42 programs throughout the federal government, from USDA, to HUD, to the VA, that can help people obtain transportation to seek medical care.<sup>202</sup> While not all the departments track exactly how much they spend on the programs, HHS estimates it spends more than \$1 billion per year.<sup>203</sup> Recent GAO analysis found that coordination to prevent duplication and overlap between the dozens of programs is "limited."<sup>204</sup>

The Coordinating Council on Access and Mobility is actually responsible for coordinating these types of programs. However, GAO reported that the Council has not held a meeting since 2008 and "has not issued key guidance documents that could promote coordination."<sup>205</sup> To fill the void of federal cohesiveness, GAO found states try to coordinate funding streams for transportation but Medicaid and the VA "largely do not participate in [these] coordination activities in the states GAO visited."<sup>206</sup>



## **RECOVERY**

This fumble should be easy to recover since there is already a mechanism in place, the Council on Access and Mobility, to help bring coordination to transportation assistance programs. The federal government should not spend billions of dollars to operate 42 programs, largely with the same goals. The Council should begin meeting immediately to develop a plan to provide Congress options to eliminate duplication, provide efficient service for people in need, and increase coordination between the various federal departments.

# THOSE AREN'T EVEN OUR COWS

## *EPA knowingly allowed federal grant money to lobby for a change in Washington State's agriculture laws*

Everyone wants clean drinking water, especially American farmers. Throughout the United States there are 2.2 million farms where these farmers produce enough food for American families and provide exports of more than \$100 billion each year to families around the world.<sup>207</sup> Due to rising costs, net farm income is forecast to continue decreasing this year, falling by more than half since 2011.<sup>208</sup> Any American can see the importance of our nation's farms. However, as falling revenues put family farms out of business<sup>209</sup> and tax dollars are limited, one would think the federal government would at least not fund those who attack farmers.

In 2011 EPA gave a \$3 million, five-year grant to the Northwest Indian Fisheries Commission, knowing the funds would be disbursed to various Tribes in the Commission.<sup>210</sup> Over the years EPA remained in contact with the Commission and had knowledge of how the funds were utilized.<sup>211</sup> One Tribe receiving money from EPA through the Commission hired a marketing firm to conduct polling and focus groups on water pollution and views on farmers.<sup>212</sup> The outreach led the Tribe, using funding from EPA, to pay the firm to begin a marketing campaign to convince people that agriculture causes severe water pollution in local waterways.<sup>213</sup>

The campaign, titled "What's Upstream," encouraged local residents to contact the Washington State Legislature in support of legislation to require farms to be at least 100 feet from all rivers.<sup>214</sup> Multiple billboards were erected with the caption "Unregulated agriculture is putting our waterways at risk" and directed people to visit the campaign's webpage.<sup>215</sup> Ironically, the billboards included a photo of cows standing in a river, implying it was a local farming practice and a danger for waterways, but neither the cows, nor the photo came from Washington State.<sup>216</sup> Importantly, the campaign's webpage included a "take action" button to facilitate letter-writing campaigns to local legislators to support the restricting legislation.<sup>217</sup> There was no indication on the billboards or the website that federal dollars were used to support the lobbying effort.

At first EPA denied the actions of the campaign were in violation of federal rules against using federal grant funds

to lobby.<sup>218</sup> However, after pressure from congressional oversight, EPA acknowledged federal funds were used for "a campaign which should not be using EPA funds."<sup>219</sup> Senators Jim Inhofe, Chairman of the Senate Environment and Public Works Committee, and Pat Roberts, Chairman of the Senate Agriculture Committee, have requested a review (currently ongoing) from EPA's IG.



PHOTO: SAVE FAMILY FARMING

## **RECOVERY**

The original agreement between EPA and the Commission clearly states that funds may not be utilized for lobbying efforts. It states the responsibility of the Commission to ensure any funds it awarded to others were also used in accordance with the rules,<sup>220</sup> which did not happen. EPA has been unable or unwilling to state exactly how much federal funding went to the campaign, though press reports estimate it is close to \$600,000.<sup>221</sup> EPA should require the return of all funds used in violation of federal anti-lobbying rules. EPA's IG should conduct an investigation into how the use of federal funds for lobbying efforts was overlooked for multiple years and whether anyone at EPA willfully ignored the violation of federal law. Finally, Congress should consider legislation to strengthen anti-lobbying rules for grant recipients to ensure no federal funds may be used to lobby for specific legislation or a cause more generally. American families should be able to use their own money to support a cause or issue dear to their hearts. But they should not be required to fund a cause through their federal tax dollars.

# IT'S MIDNIGHT IN AMERICA

*Regulations rushed out during the final minutes of an Administration are often overly burdensome, costly, and ill-conceived*



At the end of a President's second term, the Administration usually instructs federal agencies to quickly issue costly "midnight" regulations in order to build a desired political legacy. The last-minute agenda items are accomplished by dramatically increasing the pace of rulemaking before the Administration's term ends.<sup>222</sup> Past administrations quickly published many of these midnight regulations during their final January in office without providing enough time for OIRA to do a rigorous review of regulatory analysis or give the public necessary notice to comment on the costs and effects of the regulations.<sup>223</sup>

According to Reginfo.gov, in 2015—the second-to-last year of the Obama Administration—executive agencies issued 62 economically significant rules, compared to the 36 and 44 economically significant rules promulgated in the second-to-last years of the Clinton and Bush Administrations, respectively.<sup>224</sup> Moreover, George Washington University's Regulatory Studies Center used Reginfo.gov to determine that as of January 2016, the Obama Administration published 5.2 rules per month during the Administration's second-to-last year in office.<sup>225</sup> Compared to the Clinton and Bush Administrations' rules-per-month averages of 3 and 3.6, respectively, the Obama Administration appears to be on track to issue significantly more regulations in its final days than previous administrations.<sup>226</sup>

The federal government publishes the *Unified Agenda of Federal Regulatory and Deregulatory Actions* twice a year.<sup>227</sup> The Agenda provides a guide to what the government intends to regulate—or in very rare cases deregulate—over the upcoming year.<sup>228</sup> The November 2015 *Unified Agenda* outlined 76 economically significant rules that executive agencies plan to issue through at least November 2016.<sup>229</sup> However, presidents are not limited to only set regulations mentioned in the *Unified Agenda* and in the past have finalized regulations at the last minute that were not previously mentioned in the *Unified Agenda*.<sup>230</sup> When the federal government issues costly midnight regulations not outlined in the *Unified Agenda*, the American public is not given the necessary time to comment, and small businesses can be caught off guard.

## **RECOVERY**

Agencies should only issue rules outlined in the *Unified Agenda* to ensure impacted American families and businesses have time for analysis and review, rather than issuing burdensome midnight regulations in an administration's final days. Agencies must provide OIRA the time necessary to conduct rigorous review with the necessary time for public comment on the costs and effects of all economically significant regulations. Small businesses, which often plan their budgets while considering the impacts of costly regulations, cannot plan for the future effectively when the federal government bombards them with unexpected midnight regulations.

To protect small business owners, Congress should prevent the federal government from blindsiding American businesses by passing Senator Joni Ernst's S. 2582, the Midnight Rule Relief Act of 2016, which would stop any president from issuing regulations during an administration's final days in office. Burdensome regulations may be the legacy some presidents want, but the crushing financial burden is not what American small business owners need.

# TELL ME ABOUT YOUR FATHER

*NEA provided a \$60,000 grant to a group in Los Angeles to record the family history of immigrants to post online and air on public radio*

Our American story is heavily influenced by immigrants. Other than American Indians, we all descend from people who have come from somewhere else. It is important to acknowledge our own family histories and where we came from so we can pass on that knowledge and history to our children and grandchildren. Some do that by recording major events in the family Bible. Others may do it by verbally passing on family stories or by creating family mementos.

However, NEA chose to authorize a \$60,000 grant to a group in California to set up sound booths in Los Angeles for immigrants, mainly from Central and South America, to record their family histories.<sup>231</sup> The families can then upload videos and pictures through the Internet to create a full production that might later be broadcast somewhere on public radio.<sup>232</sup>

The program, called “Sonic Trace” and operated by NPR affiliate KCRW, has collected these family stories sporadically since 2012.<sup>233</sup> While they received the federal grant in the spring of 2015, as of the fall of 2016, the most recent story posted is from October 2014.<sup>234</sup> Their Twitter account similarly went inactive shortly after the grant was announced (and tweeted).<sup>235</sup> It is therefore unclear how the taxpayer money was utilized or whether the money was ever spent on its intended use.

## **RECOVERY**

Telling the story of our individual histories is important. But it is not the job of the federal government to spend the tax dollars of hard-working American families to document any other family's history. Currently we will best be remembered for passing on more than \$19 trillion in debt to our children and grandchildren. As has been discussed elsewhere in the book, the GRANT Act will bring to light grants like this to help ensure wiser decisions are made in the future. NEA should utilize far more stringent standards when providing funding and provide better oversight to ensure in cases like this there is something to show for the money spent.



# INDEPENDENT OF WHOM?

*Currently, independent agencies like the SEC do not have the same requirements as other agencies to give public notice of and allow comment on the economic and financial impact of proposed rules and regulations*

Executive Orders issued by presidents over multiple administrations require executive agencies (like EPA, DOL, or Ed) to analyze the costs and benefits of all proposed rules with economic effects exceeding \$100 million.<sup>236</sup> Federal agencies in the Executive Branch must conduct this cost-benefit analysis in a transparent manner, allowing the public to comment on an agency's analysis of the rule and give affected businesses the opportunity to weigh in on the rule's analysis.<sup>237</sup> Unfortunately, regulations issued by independent regulatory agencies—such as SEC and CFPB—are not subject to these basic regulatory analysis requirements, which means they can issue rules with less thorough, if any, economic analyses.<sup>238</sup> Cost-benefit analysis is required to force agencies to think about less costly or burdensome alternatives before they put out a rule. If independent agencies can skip that requirement, they can also issue rules without consideration of the cost or economic benefit.

In a 2015 report to Congress, OMB found that 10 of the 16 major rules issued by independent agencies in 2014 provided incomplete information on benefits and costs.<sup>239</sup> Similarly in 2014, GAO reported that executive agencies estimated the costs of 97 percent of their economically significant rules, while independent agencies only provided estimates for 78 percent of their major rules.<sup>240</sup> In June 2015 seven bipartisan former-OIRA administrators penned a letter supporting the principle of applying the same regulatory cost-benefit analysis requirements to independent regulatory agencies as those governing Executive Branch regulatory agencies.<sup>241</sup> Why is it a good idea for some agencies to closely examine the cost and benefit of a new rule, but other agencies do not need to consider the cost or benefit of a new rule?

If we are still a nation of the people, by the people, and for the people, shouldn't people be involved in the basic decisions that affect their families, lives, and businesses? Under the Administrative Procedure Act (APA), federal agencies like FCC are required to provide the public with notice of and the opportunity to comment on proposed regulations.<sup>242</sup> On March 2, 2016, a Senate Homeland Security and Governmental Affairs Committee report uncovered alarming emails between FCC officials revealing that the agency may have violated APA mandated notice-and-comment procedures with its Net Neutrality rules.<sup>243</sup> Specifically, FCC's reclassification of broadband as a Title II common carrier service lacked a supporting public record, and as such, FCC officials believed the rule should have been open for the required public comment.<sup>244</sup> But it was not.

## **RECOVERY**

American business owners and consumers have the right to know about and comment on the rules and regulations set by their government. Understanding the full costs and benefits of a rule helps Americans decide if it is something they support. Last year, several Senators introduced the Principled Rulemaking Act.<sup>245</sup> This legislation will codify requirements currently under Executive Orders, ensuring that they apply to all agencies—both executive and independent—and mandate that all agencies comply with the same regulatory analysis requirements.<sup>246</sup> It will ensure that all hard-working Americans have a fair chance to learn about the federal regulations that will impact them and have an opportunity to have their voices heard.

# ONE HAND PUBLICLY TIED BEHIND YOUR BACK

*Earlier this year DOL announced a rule forcing employers to make public any assistance, including legal advice, sought before entering into labor negotiations with unions*

Of the more than 133 million people working in the US, 14.8 million belong to unions.<sup>247</sup> These are men and women of all socioeconomic and demographic backgrounds, making a living as construction workers, teachers, police officers, truck drivers, and everything in between. They work hard to earn their paychecks, pay their taxes, and take care of their families. They are employed by men and women who also work very hard to run a business or organization so they can earn their paychecks, pay their taxes, and take care of their own families and the families of their employees.

Periodically employers will enter into negotiations with their employees on new terms of employment, which may include wages, hours worked, employment benefits, and insurance. Employees can negotiate through their unions and employers can seek guidance from consultants.<sup>248</sup> Traditionally the communications between unions and employees, along with any communications between employers and consultants, have been protected in a manner similar to attorney-client privilege,<sup>249</sup> at least until now.

Earlier this year DOL released a new rule that required employers and their consultants to report almost all communications and activities involving employees and collective bargaining, even if the consultants never speak to the employees.<sup>250</sup> DOL then immediately makes the information public for anyone to see. The information that is required to be made public may also include information that would otherwise be considered protected under attorney-client privilege.<sup>251</sup> DOL created this rule after reinterpreting a law passed in 1959 that, until now, was seen to only require reporting if the consultants met face-to-face with employees.<sup>252</sup>

Under the new rule, if a large company hires consultants to train mid-level managers about how to handle any communications with union employees during contract negotiations, the company and the consultant are now

required to report that to DOL, which then shares it with the public.<sup>253</sup> If consultants assist the company to create informational flyers or documents for the employees about the negotiations, that must also be reported. Preliminary court challenges to the new rule have raised constitutional concerns. Over the summer 2016 a federal judge in Texas put in place a temporary injunction against enforcement of the rule stating it “burdens and chills employers’ First Amendment rights.”<sup>254</sup> In November 2016 the same judge struck down the rule and found DOL had exceeded the scope of the law and congressional intent. Challengers of the new rule also argue that it will “make it virtually impossible for most lawyers to offer advice to business owners” because they would then have to break attorney-client privilege to report the advice to DOL.<sup>255</sup>

## **RECOVERY**

The rule is a major invasion of the First Amendment rights of small business owners and companies throughout the country. By removing the opportunity for employers to seek private advice and assistance before engaging in negotiations with unions and employees, it is also highly punitive to one side of the negotiating table. DOL would never require unions to disclose to the public the communications and guidance they provide to employees or the contents of any outside assistance unions may seek for negotiations. DOL would also certainly never require unions to reveal advice that would otherwise be considered protected by attorney-client privilege.

DOL should continue to ensure that basic protections for employees and employers are kept in place. However, DOL severely overstepped its authority by reinterpreting a rule that stood for more than half a century, through Democrat and Republican Administrations. DOL is forcing employers, especially small businesses, to enter into labor negotiations either without the benefit of legal assistance or with the unions’ knowledge of exactly what will be said. DOL should return to the previous interpretation of the law that worked for 57 years.

# DON'T TEXT AND CHEW

*NIH provided nearly \$500,000, so far, for a program to send text messages to discourage chewing tobacco*

Last year, *Federal Fumbles* highlighted a \$2.6 million program to send motivational weight loss text messages to truck drivers.<sup>256</sup> The recovery to that fumble noted that while everyone should be encouraged to make healthy living decisions, it was not the federal government's job to engage in that type of outreach campaign.<sup>257</sup> Over the last year, NIH continued its questionable practice by providing almost half a million dollars to a text campaign aimed at discouraging chewing tobacco use by rural Americans.<sup>258</sup>

According to the CDC, 3.4 percent of the American adult population, including nearly seven percent of men, use chewing tobacco.<sup>259</sup> In states with high rural or farming populations, that number **is** higher. In Wyoming, 8.8 percent of the adult population chews tobacco, and in West Virginia it is 8.5 percent.<sup>260</sup> In 2009 Congress enabled the FDA to require chewing tobacco containers have warning language similar to those found on cigarette packages.<sup>261</sup> The packages warn of mouth cancer, gum disease, and tooth loss and remind users that chewing tobacco is not a safe alternative to regular cigarettes.<sup>262</sup>

The NIH-funded study is a three-year program that will send text messages to a group of rural Americans over the course of four weeks to determine the frequency of chewing tobacco use three and six months later.<sup>263</sup> The grantees chose the methodology because they view rural Americans as "a vulnerable group at high risk for tobacco-related illness" and who "lack access to innovative and effective interventions."<sup>264</sup>



## **RECOVERY**

NIH research should focus on cures, not behavior modification. There are tremendous research needs for cancer, diabetes, Alzheimer's, Parkinson's, and many other conditions. Every dollar spent texting someone the same message already written on the package in hand is a dollar taken away from critical cures. If consumers continue to use a legal substance like chewing tobacco, it is their choice. NIH should invest its limited resources in medical research in areas where it can more effectively make a difference.



# YOU PAID FOR IT... OBAMA'S \$1.7 BILLION HANDOUT TO SUPPORT TERRORISM

## *Violating long-standing US policy, the Obama Administration paid a \$400 million ransom, part of a \$1.7 billion payment, for the release of US prisoners held by the world's top state sponsor of terrorism, Iran*

In 1979 the government of Iran was overthrown by Ayatollah Khomeini, and the country was transformed into an Islamic republic.<sup>265</sup> During the revolution Iranian students took over the American embassy in Tehran and held 52 American hostages for more than a year and a half.<sup>266</sup> While the revolution was ongoing, the US government froze an Iranian government bank account in the US and held \$400 million.<sup>267</sup> The bank account was created by the now former leader of Iran to purchase US military equipment for the Iranian military.<sup>268</sup>

Though designated by the State Department for the last 32 years as a state sponsor of terrorism<sup>269</sup> and often labeled the world's largest state sponsor of terrorism,<sup>270</sup> President Obama announced an agreement in January to give Iran the \$1.7 billion in cash, \$400 million from the account and another \$1.3 billion in what the Administration calls interest.<sup>271</sup> On January 17, as part of the \$1.7 billion payment, the equivalent of \$400 million was stacked on wooden pallets and loaded onto an unmarked plane bound for Iran.<sup>272</sup> The money was compiled using currencies procured from the central banks of the Netherlands and Switzerland.<sup>273</sup> It has been reported that Iran Air, an Iranian airline carrier formerly blacklisted for its involvement in smuggling "missile or rocket components to Syria,"<sup>274</sup> was used to physically transport the cash to Iran.<sup>275</sup> After the payment was prepared but before it was flown from Switzerland to Iran, the regime released four Americans who had been held as prisoners.<sup>276</sup>

President Obama initially stated that the payment was required under the terms of the recent nuclear agreement and denied any correlation between the payment and the release of the Americans.<sup>277</sup> On August 4 the President stated, "We do not pay ransom. We didn't here, and we won't in the future."<sup>278</sup> One of the released prisoners, a pastor, contradicted that claim by stating Iranian officials told him his flight out of the country could not take off until they had evidence of movement of a second plane, believed to be the plane holding the \$400 million.<sup>279</sup> Just over two weeks after President Obama's claims to the contrary, State finally admitted that the payment was connected to the release of the hostages, with State's spokesman stating, "Payment of the \$400 million was not done until the prisoners were released."<sup>280</sup>

The media reported in September that the other \$1.3 billion was paid in cash to Iran in the same manner as the first installment of \$400 million.<sup>281</sup> The money came from a taxpayer-

funded account, known as the Judgment Fund, and was labeled by the State Department as a "compromise on interest."<sup>282</sup> That means over the course of three days in January 2016, the United States paid the government of Iran \$400 million in cash, lifted sanctions to facilitate the cash payment, secured the release of four prisoners, and then transferred an additional \$1.3 billion in cash from a taxpayer-funded account as an interest payment to the Islamic Republic.<sup>283</sup> The Administration was also forced to backtrack on their excuse for sending cash, rather than a wire transfer, when it was disclosed that the US also used a wire transfer to Iran in July 2015 and another multi-million dollar wire transfer to Iran in 2016.<sup>284</sup>

In May Iran's Guardian Council approved a budget that showed \$1.7 billion was transferred directly from the central bank to the military.<sup>285</sup> That is the same military sending commanders to Syrian President Bashar al-Assad's forces in Syria, Hezbollah units in southern Lebanon, Houthi rebels in Yemen, and sending training and arms to radical Shiite militias in Iraq right under our noses.<sup>286</sup> It is far from clear how \$1.7 billion to Iran's military is expected to do anything but counter American interests in the region. So when the next terror attack happens in Israel, Lebanon, Syria, or Yemen, remember we paid for it.

## **RECOVERY**

The Obama Administration has shown an unconscionable willingness to placate an anti-American Islamist regime, bent on destroying the State of Israel and spreading its radical ideology to every corner of the world. The Iranians and innocent people throughout the region who face injury or even death due to the terrorism funded by that \$1.7 billion will find little comfort in the constantly changing stories and excuses.

It is obviously in our national interest to do all we can diplomatically to ensure Iran does not obtain nuclear weapons. But we should not give Iran \$1.7 billion to use to sponsor terrorism in other countries. President Obama has a responsibility to be truthful and transparent with the American people about the nature of the payment. Congress should also enact legislation like S. 3213, the Judgment Fund Transparency and Terrorism Financing Prevention Act, introduced by Sens. Lankford and Fischer to prohibit any future president from sending cash to another state sponsor of terrorism.

# ARTISTIC FUMBLE

*NEA provided a \$35,000 grant to the City of San Francisco to assist with public housing options for artists*



NEA was created by Congress in 1965 to provide a mechanism for the federal government to support the arts.<sup>287</sup> From funding a silent adaption of Shakespeare to helping pay for the Academy of Motion Picture and Science's museum, NEA earned multiple mentions in the 2015 edition of *Federal Fumbles*.<sup>288</sup> Unfortunately it makes a return this year as well.

In the fall of 2015, NEA announced a \$35,000 grant to the San Francisco Arts Commission to "support affordable housing and sustainable communities for San Francisco Artists."<sup>289</sup> The intent of the grant is to allow the Arts Commission to work with the City government to ensure local low-income artists are properly informed of housing assistance opportunities.<sup>290</sup> The funds, nearly as much as the average US salary,<sup>291</sup> may be utilized for "comprehensive services integrating outreach, education, individualized support, workshops, peer-support," and other opportunities.<sup>292</sup> Basically, they used the money for housing subsidies for artists.

The federal government has a long history of providing housing assistance.<sup>293</sup> Since 1965, HUD has worked to ensure there are "quality affordable homes for all."<sup>294</sup> Additionally, for those artists (and non-artists) living in San Francisco, the Mayor's Office of Housing and Community Development (MOHCD) is available to provide necessary assistance.<sup>295</sup> Indeed, Mayor Lee's current proposed budget includes the commitment that the city's "Art Commission will work closely with the [MOHCD] over the coming years to build the City's first affordable housing development solely dedicated to housing artists."<sup>296</sup> With these local and federal options already in place, it should not fall on NEA to provide a grant to ensure artists in San Francisco can find housing options.

## **RECOVERY**

HUD and MOHCD are responsible for housing assistance. NEA should have simply brought the issue to HUD's attention and returned to its responsibilities. In addition, it is not within the proper role of the federal government to subsidize housing for certain citizens simply because they want to pursue a career in the arts. Should tax dollars now be used for specialized housing for construction workers? Zoo employees? Waiters? Computer engineers? Many struggling American taxpayers would like to see more of those tax dollars stay in their own pockets instead of going to pay for artist housing promotion in San Francisco. While the GRANT Act will certainly provide additional oversight and transparency, this type of grant is best prevented by agencies recognizing their congressionally-defined role and staying within it.

# CHICAGO-STYLE JUSTICE

## DOJ has given more than \$300 million in grants to sanctuary cities

Last year *Federal Fumbles* highlighted the dangers that come from localities ignoring federal law and prohibiting law enforcement cooperation with federal immigration officials.<sup>297</sup> Sanctuary cities violate federal law, specifically 8 USC § 1373 (signed into law in 1996 by President Bill Clinton), which requires communication between local law enforcement and ICE.<sup>298</sup> Just as important, sanctuary cities allow repeat offenders to go back on the street where they could commit more crimes.<sup>299</sup>

Mentioned in last year's book was the tragic story of Kate Steinle, a young woman who was murdered by an illegal immigrant who was protected from deportation by the city of San Francisco.<sup>300</sup> Sadly, this is just one example in which illegal immigrants committed crimes after the sanctuary city refused to turn them over to ICE.<sup>301</sup>

In May 2016 DOJ's IG released a report confirming that sanctuary cities are in violation of 8 USC § 1373 and that in spite of the violation, DOJ continues to provide at least some of them with grant funding through the Office of Justice Programs through the Byrne JAG program, State Criminal Alien Assistance program, and the Office of Violence Against Women.<sup>302</sup> The IG cited Chicago, a sanctuary city, as an example. A city ordinance prohibits local law enforcement from sharing the immigration status of any individual without either the consent of the individual or a court order.<sup>303</sup> The IG noted that Chicago, like other sanctuary cities, has a limiting provision in the ordinance stating "except as otherwise provided under applicable federal law," that would ordinarily allow compliance with § 1373.<sup>304</sup>

However, as the IG pointed out, with the purpose of the ordinance to "restrict and largely prohibit the cooperation of city employees with ICE," it is unlikely any city officials would give full weight to that provision.<sup>305</sup> Even with the provision, Chicago continues to receive federal grant funding.<sup>306</sup>

It is the ultimate irony that DOJ continues to use grant funds to combat violence in cities that openly allow illegal immigrants who have already committed crimes and could continue to commit crimes to remain.

## **RECOVERY**

In response to concerns raised by Rep. John Culberson (TX), DOJ acknowledged that sanctuary cities are violating § 1373 and that DOJ sent guidance to those receiving certain grants that they are required to comply with the law.<sup>307</sup> Unfortunately, while the guidance and supporting documents clearly state the grantee must comply with federal law (namely § 1373), there is no automatic termination of grant funds or an automatic requirement that funds be returned to the federal government.<sup>308</sup> Instead, the documents state that funding could be withheld and eligibility for future grants *could* be denied.<sup>309</sup> DOJ made the right decision to release guidance reminding grantees that they must comply with federal law. However, DOJ should complete the job by clarifying that any sanctuary city not in compliance with § 1373 will lose its federal grants and will be required to refund any grants received while non-compliant.

# EQUAL PAY FOR NEW YORKERS?

## FUHGEDDABOUDIT

*FAA announced every air traffic controller (ATC) would receive a one-percent bonus for agreeing to a new employment contract, then also announced ATC trainers at the NY TRACON facility would earn more than trainers anywhere else*

In May 2016 FAA announced a new collective bargaining agreement<sup>310</sup> to replace the existing 2009 agreement that was previously extended in 2012.<sup>311</sup> The agreement outlines the responsibilities of FAA to its employees, standards for employee conduct, employee salary and benefits, and the process for handling grievances.<sup>312</sup> The agreement also includes a Memorandum of Understanding stating that “each employee shall receive a lump sum payment equal to one percent (1%) of his/her Base Pay effective the first full pay period of August 2016.”<sup>313</sup> For ATCs earning the average salary of \$122,950,<sup>314</sup> that comes out to \$1,129.50.

Separate from the new collective bargaining agreement, FAA announced in July 2016 an agreement between the agency and the New York Terminal Radar Approach Control (TRACON) employees. In the agreement, ATCs at that specific TRACON facility will have their hourly pay rate increased by 15 percent if they train newly hired ATCs.<sup>315</sup> That increase comes on top of a 10-percent hourly pay rate increase that applies to ATCs throughout the country who train new hires.<sup>316</sup> In other words ATCs at the NYC TRACON location, which, as discussed on page 23, already pays controllers more than anywhere in the country, now also pays employees more to train new hires than anywhere else in the country. Additionally, the agreement also states that for each new hire who achieves certification, all ATCs working in that operational area, including the new hire, will also receive a \$3,000 bonus.<sup>317</sup> That is a nice welcome to the Big Apple.



## **RECOVERY**

It is unclear why FAA believed controllers who train new hires in New York deserved to earn a higher incentive pay than trainers in any other part of the country. It is likely employees in other locations throughout the country will begin to expect the higher pay as well, further draining FAA's already limited budget. If FAA has trouble training new hires in the New York area, it should first consider whether it would be more cost effective to complete all or most of the employees' training elsewhere to reduce the amount of training in New York.

# MILLION-DOLLAR MURAL

*GSA awarded an almost \$1 million contract to provide one photograph to be cut into six pieces and hung in a new federal courthouse in California*



In 2012 GSA finalized a \$318 million contract to build a new federal courthouse in Los Angeles.<sup>318</sup> The new 550,000 square-foot building would feature 24 courtrooms and have offices for 32 federal judges, the US Marshals Service, and the US Attorneys' office.<sup>319</sup> Complying with a federal practice to reserve 0.5 percent of the estimated contract cost for artwork, federal taxpayers will spend \$1.59 million on art for the courthouse.<sup>320</sup>

It was announced in 2015 that \$925,000 of the \$1.59 million (almost 60 percent of the total) art budget would be spent on a picture taken of Yosemite Falls, the largest waterfall at Yosemite National Park. The photo will be cut into six pieces and hung in the atrium of the building's six floors.<sup>321</sup> The complete picture will not be viewable at any place in the building, instead visitors must go to each floor to view the individual sections, 8.5' by 11.5', of the photo one at a time.<sup>322</sup> Apparently by turning one scene into six parts, the goal is to evoke "the loss of personal liberties that many people entering the court system or heading to prison experience."<sup>323</sup>

## **RECOVERY**

Art and decorations in federal buildings are not strictly necessary to do the work of the people, but they bring color and beauty to often drab federal buildings. However, just as a football team does not spend the majority of their practices preparing a single trick play, the federal government should not spend the majority of the set-aside art budget on one piece. Hard-working American families in Ohio or Georgia should not be forced to pay almost \$1 million for a photograph of Yosemite Falls that has been cut into six pieces to convey a political message. Going forward, GSA should utilize greater common sense when approving art contracts.

*Photo: Catherine Opie Studio, Catherine Opie, Courtesy of Regen Projects, Los Angeles and Lehmann Maupin, New York and Hong Kong  
Source: The Art Newspaper*

# SHOCKINGLY BAD CONSTRUCTION

## *The State Department entered into an almost \$800 million contract for the construction of two buildings in Afghanistan with deadly electrical wiring*

In 2009 and 2010 State signed two contracts, then totaling \$625.4 million, for the construction of much-needed office and living buildings near the US Embassy in Kabul, Afghanistan.<sup>324</sup> The offices were designed to hold more than 900 employees, and the apartments were designed to house at least 300 people.<sup>325</sup> Through changes to the contracts, the total price for the two contracts has risen to \$792.9 million<sup>326</sup> in the past five years. Despite people moving into completed areas in late 2015, delays pushed final completion of the buildings to the latter half of 2017.<sup>327</sup> Unfortunately the contractors forgot one important step during construction: ensuring a lethal electrical current did not flow through both of the buildings, which might electrocute inhabitants.

Earlier this year State's IG conducted an audit and inspection of the buildings.<sup>328</sup> In the office building, unwanted current, or "the electrical current occurring on the grounding wiring of a building"<sup>329</sup> of up to 16.7 amps was discovered. Objectionable current of up to 27 amps was found in the apartments,<sup>330</sup> which well exceeds the 6-amp threshold the CDC sets for objectionable current. That level of objectionable current can cause "cardiac arrest, severe burns, and probable death," while industry standards hold that anything greater than 10 amps can cause death.<sup>331</sup> The IG blamed faulty electrical wiring along with appliances and equipment as the reasons for the unsafe currents.<sup>332</sup>

What is especially troubling is that the issue arose despite an entity already in place in Afghanistan that is responsible for overseeing electrical issues in the country to "prevent the loss of life and government property."<sup>333</sup> Created in 2008 by Congress as a response to 14 Americans killed by electrocution in Iraq at US facilities after contractor error,<sup>334</sup> the Task Force Protect Our Warfighters and Electrical Resources (POWER) in Afghanistan already exists to prevent future problems like ones during construction of the US embassy facilities.



## **RECOVERY**

American families work very hard to earn the money they pay in taxes. This year it took families until April 24 to earn enough money to pay their tax bill for the year.<sup>335</sup> Americans do not work hard and pay thousands in taxes to have their money go to the construction of a building that will shock and possibly kill its inhabitants. When any agency spends almost \$800 million to construct buildings, it should come with the assurance that those buildings will be safe and usable for their intended purpose, especially when Congress has already created a task force specifically to prevent harmful contractor-error electrical incidents. While the contractor is primarily responsible for this fumble, the fact that State and the task force did not take the necessary steps to prevent it makes them responsible as well.

While State made numerous changes over the last few years to the original contracts, at no point did the Department waive any expectation that the buildings would be safe. In fact, State had an obligation to frequently inspect the buildings during construction and especially before anyone moved in to ensure safety. State should move all inhabitants out of the buildings until a reputable outside inspector can certify them as safe. State should also conduct an immediate review to determine which contractors were at fault and ensure the offending contractors not only reimburse taxpayers for the cost of repairs but are also precluded from future federal contracts.

# THE DEFENSE PALACE

*The Air Force contracted to construct a new Ministry of Defense office building for the Afghan government, a project that took five years and more than \$100 million more than originally agreed to*

Here is a painful story of delay, construction overruns, waste, and mismanagement on a monumental scale. As part of the US reconstruction efforts in Afghanistan, the Air Force awarded a \$48.7 million contract in 2009 to build a new headquarters for the Afghan Ministry of Defense in Kabul.<sup>336</sup> Construction was scheduled to be completed in October 2010 to serve as office space for the Ministry's senior leadership and as the command and control center for the Afghan Army.<sup>337</sup> Seven years later American taxpayers have gifted the Afghan Ministry of Defense an office building worthy of a king.

After making 14 changes to the contract before construction began, what is now known as the Air Force Civil Engineer Support Agency, which was managing the contract on behalf of the US, increased the contract award from \$48.7 million to \$107.3 million.<sup>338</sup> Construction was then delayed for one year by the Afghan Army, and the US Air Force changed the completion schedule based on this delay.<sup>339</sup> In early January 2013, the schedule called for the project to be more than 96 percent complete, but the contractor had managed to finish less than 80 percent of the work.<sup>340</sup> In November 2013 the contractor requested an extra \$24.7 million to complete the new building, but the Air Force ordered the work halted in December due to a lack of funding.<sup>341</sup>

Instead of reevaluating the work or selecting a different contractor, in July 2014 the Air Force awarded a new contract to the same company for \$47.4 million—\$23 million higher than was requested just seven months before—to resume and complete construction by July 2015.<sup>342</sup> Though the building was eventually completed and turned over to the Afghan Ministry of Defense in 2015, it was completed five years behind schedule and cost \$106 million more than the initial contract announcement.<sup>343</sup>

Unfortunately several inspections from the Special Inspector General for Afghanistan (SIGAR) found the building, which was constructed in an area prone to major earthquakes, was not constructed according to contract requirements to ensure it can withstand an earthquake with minimal damage.<sup>344</sup> As a result, if a large earthquake were to hit

the area, the likelihood of structural damage and injury to people in the building is higher than it should be.<sup>345</sup> SIGAR's inspection in early 2016 discovered that the Afghan military had yet to fully occupy the building, even though it had been in their possession for more than six months.



## **RECOVERY**

It is appropriate for the US to assist the Afghan military with obtaining a suitable headquarters so they are better able to take responsibility for securing their own country. The Air Force often evaluates their own work as “on-time and on-schedule.” Looking at this project, they failed to meet either objective. While the initial one-year delay was outside the contractor's control, it is unacceptable that the Air Force allowed the contractor to add four additional years to the project. Also, instead of deducting the contractor's pay based on the delay, the Air Force rewarded them with an extra \$106 million and a second contract. Contractors should be paid based on the quality and timeliness of their work. Those who under-perform or fail to perform should not continue to receive full payment, and, as in the case of this contractor, they should not be given additional federal contracts when they have failed to complete the agreed-upon work in a prior contract.

# DELTA, DELTA, DELTA, CAN I HELP YA, HELP YA, HELP YA?

*For the last 16 years, the federal government has funded numerous duplicative and unnecessary projects of local interest in the Mississippi Delta region*

The Delta Regional Authority was created in 2000 by Congress to make “strategic investments of federal appropriations into the physical and human infrastructure” in the eight states comprising the Mississippi Delta region.<sup>346</sup> With a budget of \$25 million in FY16,<sup>347</sup> though only \$14.9 million<sup>348</sup> was requested, the Authority has spent more than \$138 million in federal funds since its creation.<sup>349</sup> While the Authority is intended to make necessary investments at the local level, the spending is often beyond federal responsibilities.

In FY15 the Authority gave \$180,000 to put a new roof on an automotive supplier's building,<sup>350</sup> \$177,720 combined with additional private and state money to buy new equipment for a shoe manufacturer,<sup>351</sup> \$118,402 to provide a new parking lot for a work uniform manufacturer,<sup>352</sup> \$500,000 to convert a residential road into an industrial street,<sup>353</sup> and \$247,530 to build an airport hangar for a flight school.<sup>354</sup>

Though SBA is the federal government's department to focus on advancing small businesses, the Authority spent more than \$300,000 to operate a small business development program.<sup>355</sup> While DOL has primary responsibility for the job market, the Authority operates multiple programs for job training and development.<sup>356</sup> Whereas NEA and NIH offer countless grants for the development and preservation of the arts, the Authority also invested in a program for “branding and marketing existing events in the Delta region related to music and heritage.”<sup>357</sup>



## **RECOVERY**

Investments that benefit only the local community should be financed at the local or state level. Taxpayers on the other side of the country should not be asked to foot the bill for local spending projects or for programs that directly duplicate actions taken by other federal departments. Congress should reevaluate whether the Delta Authority remains necessary. If so, the Authority should work with Congress to ensure it funds projects that are not duplicates of work done by other federal agencies and that are truly in the national interest.



# WE ALREADY KNOW THAT...

*Though many outside groups and federal agencies like CBO have estimated Obamacare's impact on the labor market, NSF funded a \$500,000 study to tell us what we already know*

In 2010 Democrats in Congress passed the Patient Protection and Affordable Care Act (PPACA), commonly called Obamacare, which enacted widespread and unprecedented changes to health care in the United States.<sup>358</sup> This legislation mandated almost everything change in American healthcare delivery.<sup>359</sup> The press, various interest groups, and the public as a whole have thoroughly documented the impact of the new law.

Since the law's introduction, CBO has conducted regular estimates of the impact the legislation has and will have on various aspects of American life, one of which is the labor market.<sup>360</sup> In December 2015 CBO estimated that the economy would have 2 million fewer jobs by 2025 due to Obamacare.<sup>361</sup> CBO also estimates that wages and hours worked will be lower, with the changes more apparent as the law ages and more people adjust to it.<sup>362</sup>

Last year NSF started a three-year study on the impact of the PPACA on the U.S. labor market.<sup>363</sup> Specifically, the study, which has already cost taxpayers \$426,020, looks at whether employers will decide to offer insurance for their employees' spouses and whether employers utilize new technology to eliminate paid staff and save money.<sup>364</sup>



## **RECOVERY**

Before it passed, and certainly since then, analysts knew the PPACA would have a noticeable and long-lasting impact on the labor market. To prove it, CBO and countless outside groups have conducted near-continuous studies and research on the legislation and the changes it has caused. With all of the existing studies, hard-working American families who already feel the harmful effects of the PPACA should not also be expected to spend almost half a million dollars to conduct duplicative research. Before approving a grant, NSF should ensure the proposed research does not already exist in other parts of the government or the private sector. If it does, there is no reason to spend more money.

# [NOT QUITE] SOBER AS A JUDGE

*In a failure to properly discipline employees, SSA continued to employ a judge who continually showed up to work intoxicated and assaulted employees*



The level of professionalism expected of the officials presiding over our courts is befittingly high, especially given the gravity of their decisions and the extent to which they affect the lives of those before the courts. We expect the highest moral conduct from judges who hear cases from individuals seeking assistance from Social Security—except for one such official who fell woefully short of that expectation.

Dating back to at least 2011, SSA received reports that an Administrative Law Judge (ALJ) assaulted multiple female staffers, even disabling one of them.<sup>365</sup> In some cases office employees witnessed the incidents in the office, while others took place in private.<sup>366</sup> It is also alleged that many of the incidents occurred while the ALJ was intoxicated.<sup>367</sup> While all of this was going on, this particular ALJ also reviewed disability decisions.<sup>368</sup> Instead of immediately terminating or suspending the ALJ after

the first complaint, he was allowed to continue in his role until he was arrested for assaulting a security guard and placed on administrative leave.<sup>369</sup> The decisions that he made between the first allegation and his change in leave status must all now be reevaluated.

In his recent appeal of the termination before the Merit Systems Protection Board, the now-former ALJ did not even attempt to deny he consumed alcohol routinely while on duty and that he sexually assaulted multiple female coworkers over a long period of time.<sup>370</sup> Instead, he argued that his penchant for adjudicating under the influence was known well enough to supervisors to qualify as a “past practice.”<sup>371</sup> In other words, it would be unfair to discipline him for actions that were, by management’s inaction, implied to be acceptable behavior.<sup>372</sup>

## **RECOVERY**

It is imperative that federal managers exert proper oversight over employee conduct and performance. The American people should not have to worry about the blood-alcohol content of the official who decides whether or not they qualify for benefits. Our public servants in federal offices should not have to work in an environment in which a supervisor is intoxicated and assaults employees. When employee behavior constitutes such an outrageous violation of the public trust, managers should be empowered to take—and be responsible for—timely and effective disciplinary action.

# GOVERNMENT-FUNDED RESEARCH FOR A BILLION-DOLLAR INDUSTRY

*Last year NSF provided funding for research it admitted would primarily benefit large, multi-billion dollar corporations*

Every day, Google handles more than 3 billion searches.<sup>373</sup> More than 1.1 billion people will check their Facebook accounts and upload over 300 million photos,<sup>374</sup> and almost 5 billion videos will be played on YouTube.<sup>375</sup> In one minute people will “like” more than 1.7 million photos on Instagram, send 347,222 tweets, and watch a collective 77,160 hours of video on Netflix.<sup>376</sup> People worldwide use the Internet more and more each day and in more and more ways than ever before. As a result, companies large and small continuously look for ways to improve their ability to store data. The big companies use datacenters, or warehouses for data, and they will soon have government assistance available from NSF to use them.

In 2015 NSF gave \$500,000 to Massachusetts Institute of Technology (MIT) to conduct research on a new method to design a datacenter’s computer network.<sup>377</sup> For a company designing a new network for its datacenter, the new method, Flexplane, is believed to provide a faster network that is also more flexible to better meet the needs of that individual company.<sup>378</sup> In other words this new method would enable companies to better customize the network of their datacenters and better adapt them to future uses.

In posting this grant, MIT and NSF acknowledged “this research will directly benefit datacenters operated by companies like Facebook, Google, Microsoft, Amazon, and many other enterprises.”<sup>379</sup> In 2015 Facebook’s revenue topped \$17.93 billion.<sup>380</sup> Google’s revenue was \$74.5 billion.<sup>381</sup> Microsoft earned \$93.6 billion,<sup>382</sup> and Amazon delivered \$107 billion in revenue.<sup>383</sup> Apple, which has had more in the bank than the US government at times, set a world record by earning \$234 billion in 2015.<sup>384</sup>

Over the last several years, these companies invested their money to design and build new datacenters around the country. Earlier this year, Microsoft announced it would build a new center in Iowa at a cost between \$1.5 and \$2.5 billion.<sup>385</sup> Google is currently constructing a \$600 million center in Dallas,<sup>386</sup> and Facebook broke ground in July on a \$500 million datacenter in Ft. Worth.<sup>387</sup> It was announced earlier this year that Apple is currently building three new datacenters in the US and Europe at a total cost of \$3.9 billion.<sup>388</sup>

## RECOVERY

The federal government, which owes an incredible \$19.5 trillion in debt, should not finance research to assist companies that set world records for revenue. These companies earned more than half a trillion dollars in 2015. They obviously know what they are doing and do not need government assistance. It is right for the government to support technological innovation. After all, it was government-funded research that brought us Google, GPS, and, with the well-known assistance of Vice President Al Gore, the Internet.<sup>389</sup> But these advancements were made after government assistance served an uncharted territory.

The federal government has no place investing any money in research that can be funded by a private industry making billions each year. American families may want to spend their hard-earned money to buy a new iPhone, but they should not also have their tax dollars go to support massive companies. NSF should limit its funding to research that can help new fields and new technologies that the private sector is not already well-equipped to fund.



# DOJ'S SLUSH FUND

*Instead of collecting fines and penalties from defendants, DOJ will utilize settlements to require donations to favor third-party interest groups*

Over the last few years, DOJ has utilized settlements with defendants, particularly defendant corporations, to compel payments to third-party groups without permission from Congress.<sup>390</sup> Here is how this works: DOJ prosecutes a person or company, generally larger companies. Then when that company reaches a settlement with the government that includes fines or payments, DOJ induces the company to pay at least part of the fine to an outside group instead of to the government.<sup>391</sup> As an example, after a banking settlement in 2011, DOJ directed \$30 million to left-leaning non-profit groups like the National Community Reinvestment Coalition and NeighborWorks America.<sup>392</sup>

According to DOJ policy, the payments are normally intended for a group that was either affected by the action leading to prosecution or to repair the harm done.<sup>393</sup> The problem here is that it is not DOJ's role to determine how to spend money. Financial settlements with the government should be paid to Treasury and then appropriated through the regular process. The House Judiciary and Financial Services Committees discovered the settlements can be paid—and likely are paid—“to favored activist groups” that would not otherwise receive federal money as DOJ leadership would like.<sup>394</sup> In fact, there is concern that DOJ utilizes the settlements to supplement a decrease in federal funding when Congress has purposefully and specifically chosen not to fund a project or issue.<sup>395</sup> For instance, though Congress decided to reduce funding for HUD's housing counseling program from \$88 to \$45 million, DOJ has utilized settlements to bring in an additional \$30 million to restore funding to nearly its previous level.<sup>396</sup>

In fact, there is evidence that a group working toward “revolutionary social change” and that operates a school “described as a school for professional radicals” met with DOJ to request that the settlement language leading to donations to outside groups be made a mandatory part of all future settlements.<sup>397</sup> Just two months later, DOJ released settlements with both Citigroup and Bank of America that included mandatory donations to outside groups.<sup>398</sup>

## **RECOVERY**

While a football coach may allow the quarterback some leeway to change plays at the line of scrimmage, it is the coach's prerogative to determine the overall game plan. Similarly, Congress cannot allow DOJ to utilize settlements to funnel money to favored activists and groups without congressional appropriations. Rep. Bob Goodlatte introduced the Stop Settlement Slush Funds Act in April 2016. This bill, which passed the House and awaits consideration in the Senate, would prohibit DOJ from entering into settlement agreements that require donations to third-party groups.<sup>399</sup> DOJ would still be allowed to utilize settlements to compensate a party injured by the defendant, but that money would go directly to the injured person, not to an outside activist group.<sup>400</sup> In 2015 Sens. Warren and Lankford introduced the Truth in Settlements Act, a bill that would require federal agencies to make public basic information about settlements reached, including the dollar amount, so that American taxpayers and Congress can better monitor the activities of federal agencies.<sup>401</sup>

# DRUG ADDICTS NEED TO CHILL OUT

*NIH provided more than \$10 million for a series of studies to learn that stress plays a role in illegal drug use*

Stress is an unfortunate but common aspect of daily life for many Americans. Our jobs, finances, families, and many other factors can cause stress levels to increase and stay elevated for long periods of time. Unfortunately it seems that the number of people feeling stress has also increased. In 2015, 24 percent of Americans stated they were “highly stressed,” an increase of 6 percent from 2014.<sup>402</sup> Using a 10-point scale, the average American stress level rose from 4.9 in 2014 to 5.1 last year.<sup>403</sup> We all know that stress and how we handle it can greatly impact our health. CDC suggests a healthier diet, plenty of sleep, and taking a break are ways to successfully deal with stress.<sup>404</sup> CDC noted that drug and alcohol use can also impact how people deal with stress.<sup>405</sup>

Since 2007 NIH has provided \$10.7 million—with almost \$5 million in the last three years—on a grant to learn more about the connection between illegal drug use and stress levels.<sup>406</sup> The studies provided a small electronic device to those who admit to using illegal drugs, cocaine or opioids, to log their stress levels and drug use throughout the day over a period of several months.<sup>407</sup> The devices also tracked the participant’s locations to determine whether location impacted his or her drug use.<sup>408</sup> One of the studies revealed that participants who used cocaine did so after their stress levels “increased in severity.”<sup>409</sup> Another of the studies showed that drug users tended to feel less stress when they were in

neighborhoods with drug activity.<sup>410</sup> In other words they felt more comfortable around other people who also used drugs and there was less risk of getting caught.

## **RECOVERY**

Whether caused by stress or any other factor, drug abuse destroys lives, families, and communities, and its impact can last for generations. Congress recently passed the Comprehensive Addictive Recovery Act to help address the devastating opioid epidemic in our country.<sup>411</sup> However, tracking the location of known drug users, asking them their feelings, and “deliver[ing] an automated intervention if necessary,”<sup>412</sup> does not seem to provide the kind of results American families should expect at the high price of \$10 million. \$10 million would make a significant difference in most drug rehab centers, in drug interdiction efforts in the Gulf of Mexico or on the Pacific coast, or in drug research. This is yet another federal endeavor to duplicate existing efforts in the private sector and academia. The funding could have been used to actually help treat participants’ drug issues, teach them how to cope with stress, and help them find opportunities to work and provide for themselves. NIH should carefully consider grant opportunities to ensure they will bring a real and tangible result to the public.

# THE DEFINITION OF INSANITY: DOING THE SAME THING OVER AND OVER AGAIN...

*The federal government currently operates more than 100 separate mental health programs*

The National Alliance on Mental Illness reports that 43.8 million American adults will face mental illness this year.<sup>413</sup> Ten million of those Americans will suffer a mental illness so serious that it “interferes with or limits one or more major life activities.”<sup>414</sup> Half of all Americans who face a substance abuse issue are also affected by a mental illness.<sup>415</sup> A recent survey published by the Association for Psychological Science found that of those with a mental illness, fewer than 60 percent receive treatment.<sup>416</sup> With so many Americans impacted by mental illness and so few receiving regular treatment, there is an obvious need to address this widespread problem.

Currently, eight federal departments, ranging from DOD, to HHS, to HUD, operate 112 federal programs aimed at assisting with or treating mental illnesses.<sup>417</sup> While many of these programs are diverse, aimed at research, treat the incarcerated, support our nation’s veterans, or help children, there are 30 programs from four of the departments with the specific purpose of “targeting individuals with serious mental illness.”<sup>418</sup> The agencies have a combined budget of more than \$5 billion and were identified by GAO as having “the same primary program purpose.”<sup>419</sup>

The Substance Abuse and Mental Health Services Administration, which theoretically should be the lead federal agency for mental health and substance abuse issues,

was created in 1992 with a mandate from Congress to coordinate programs dealing with mental health.<sup>420</sup> While the agency’s recent strategic plan referenced the need for coordination, GAO reports the work “has been largely absent.”<sup>421</sup> GAO specifically stated that agency leadership, which GAO noted is essential to ensuring coordination happens, has been “lacking.”<sup>422</sup>

## **RECOVERY**

The federal government should not spend billions of dollars to operate 112 separate, uncoordinated mental health programs across multiple federal agencies. SAMHSA was created by Congress to be the lead agency for mental health issues, and it should fulfill that role. Perhaps the other seven federal departments with mental health programs can assist SAMHSA, but they should not operate their own, separate programs. This lack of coordination inhibits the federal government’s ability to properly serve those with mental illnesses and irresponsibly spends federal tax dollars. Congress passed the Comprehensive Addiction and Recovery Act in July 2016. The Act is aimed at bolstering and better coordinating portions of our mental health system as they relate to the ongoing opioid prescription drug crisis, which largely contributes too many mental health challenges our nation continues to face. Congress also considered and debated a broader package of mental reform legislation.

# EAT THE ART

*NEA gave a \$100,000 grant to support a non-profit agricultural organization unrelated to NEA's jurisdiction*



In the spring of 2016, NEA announced a \$100,000 grant for the Desert Botanical Garden in Phoenix.<sup>423</sup> The grant will assist the Botanical Garden to “transform 20 acres of land into a community-based food hub and cultural gathering place.” While there will be a performance stage and some murals added, the Botanical Garden is not primarily focused on art. Its mission is “to advance excellence in education, research, exhibition, and conservation of desert plants.”<sup>424</sup>

NEA funded the Botanical Garden in support of the Space of Opportunity program in south Phoenix.<sup>425</sup> The program also focuses on ensuring all those in south Phoenix have “affordable access to healthy food.”<sup>426</sup> The organization also has no identifiable connection to the mission of the NEA.

## **RECOVERY**

With so many competing priorities in the federal budget, taxpayers likely want more than a desert garden for their \$100,000 check. The federal government can assist states and non-profit organizations as they work to ensure hungry families have access to meals. However, the National Endowment for the Arts was created by Congress to support *the arts*.<sup>427</sup> Congress has separately created the Department of Agriculture to support food production in the United States,<sup>428</sup> and that includes funding for community gardens.<sup>429</sup> It is not NEA's role to provide such large funding to projects that are primarily focused on an activity within the purview of another federal department. While the Desert Botanical Garden will surely benefit from \$100,000, it is hard to justify to the American taxpayer the reason their hard-earned money is spent by NEA to support an agricultural organization.

# THE WAR ON COAL MINERS

*Instead of deciding whether a new coal-mining policy is necessary before shutting down the industry, the Obama Administration simply blocks all new coal-mining leases*

In June 2016, the Big 12 Conference announced it was changing policy and putting in place a championship game for football starting with the 2017 season.<sup>430</sup> It made this decision after lengthy discussions and debate. While considering this rule change, the conference allowed football games to continue, and the 2016 football conference champion will be determined under the old rules. The change was relatively seamless because the conference recognized that even though it changed the rules, operations can and should continue. Unfortunately our government does not think the same way.

On January 15, 2016, Interior announced it would review the federal coal-mining program and halt all new coal-mining leases on federal lands.<sup>431</sup> Although current lease holders may continue to mine coal on federal lands, no new federal permits will be granted.<sup>432</sup> This unprecedented move to cripple American coal development will cost Americans their jobs and harm our nation's energy security.

The President's seemingly endless list of climate regulations, including the costly Clean Power Plan designed to restructure our nation's electricity grid, already unfairly targets the coal industry, which employs approximately 400,000 Americans.<sup>433</sup> By suddenly halting all future coal leases on federal lands, Interior blatantly ignores the consequences for the hundreds of thousands of workers and consumers who rely on coal for work and to power their homes.



## **RECOVERY**

Hard-working Americans want affordable energy, good paying jobs, and a federal government that does not pick winners and losers in the energy market. As Interior presently reviews the federal coal-mining program during this unanticipated halt, it should consider the countless businesses, workers, and families who rely on coal. It should immediately lift the moratorium on new coal leases, and instead of continuing its unrelenting war on coal, DOI should work with all energy industry players to develop an all-of-the-above energy strategy for federal lands.



# GLACIER IDENTITY ISSUES

*NSF invested more than \$412,000 in research on a paper arguing that glaciers are best studied using feminist theories*



Over the last few years, Americans have engaged in many conversations on gender roles and issues, from the bathroom<sup>434</sup> to the battlefield.<sup>435</sup> Now the federal government appears to want the American public to believe there is a connection between feminism and the study of glaciers.<sup>436</sup>

Ending in September 2015, NSF spent the last several years funding a \$412,930 study that resulted in a paper entitled “Glaciers, Gender, and Science: A Feminist Glaciology Framework for Global Environmental Change Research.” The authors believe “the feminist glaciology framework generates robust analysis of gender, power, and epistemologies in dynamic social-ecological systems, thereby leading to a more *just and equitable science and human-ice interactions* [emphasis added].”<sup>437</sup>

In other words, the authors argue that scientists should use feminist theories and a feminist point-of-view to study glaciers and the relationship between glaciers and humans. The authors also argue “the feminist lens is crucial given the historical marginalization of women, the importance of gender in glacier-related knowledges, and the ways in which systems of colonialism, imperialism, and patriarchy co-constituted gendered science.”<sup>438</sup>

## **RECOVERY**

American families have the responsibility to discuss gender roles and the respect each individual deserves. Gender should never determine a person’s worth, abilities, or opportunities. However, why should federal taxpayers spend \$412,930 to fund research for a paper arguing glaciers should be studied and seen from a feminist point of view? This type of research may be of interest to some, but it is impossible to justify to Americans who, on average, would have to work more than nine years to earn that amount of money.<sup>439</sup>

NSF is entrusted with more than \$7 billion taxpayer dollars each year.<sup>440</sup> The funding should be invested in research and development with a tangible benefit for the American people. With increased congressional oversight, the Foundation should provide greater control over its grants and conduct a review process to ensure research matches the purpose of the grant and continues to show a real benefit to the American people.

# LET'S TALK SECURITY

## *Even after the massive OPM data breach last year, federal agencies have not yet taken necessary precautions to safeguard their networks and computer systems*

Over the last several years, a great deal of national attention has been placed on cyber security. Government and non-government computers house the personal data of hundreds of millions of people including sensitive national security information and businesses' proprietary information. Foreign governments, along with various criminal groups and hackers, constantly attempt to take advantage of vulnerabilities to illegally access US classified or private information. The US government has rightly dedicated considerable attention, effort, and money to strengthen cyber security. However, this critical task cannot be accomplished when agencies and contractors fail to take even the most basic steps toward building up their own cyber defenses.

Highlighted in last year's *Federal Fumbles*, OPM announced last summer that its computer systems were hacked and the personal information of more than 22 million federal employees was potentially stolen and at risk.<sup>441</sup> The breach occurred despite numerous warnings over several years to OPM management.<sup>442</sup> Unfortunately OPM is not the only federal agency with cyber security and computer-related issues. NASA and IRS are two more recent examples of agencies unable to meet the challenges of our 21st-century digital era.

In 2014 NASA's IG found that even though the agency was in the middle of a \$2.5 billion, four-year contract to update its computer systems, it had failed to adequately prepare and the contractors had failed "to meet important contract objectives."<sup>443</sup> The IG found the issues caused a "significant risk to NASA's IT security."<sup>444</sup> The IG was also concerned that sensitive government data was stored on contractors' computers and that when NASA employees finished using those computers, NASA could not guarantee the secure removal of the data.<sup>445</sup>

An investigation by Federal News Radio into the NASA IT issues found that instead of addressing the problems found by the IG over the last two years, things have only gotten worse.<sup>446</sup> The investigation reported the contractor is "uncooperative at best and negligent at worst" and that NASA "is in serious risk of a major cyber-attack and no one seems to care."<sup>447</sup> In fact, the investigation revealed NASA's internal

documents confirmed there are hundreds of thousands—or possibly even millions—of out-of-date network security patches at every NASA office in the country.<sup>448</sup> On top of this, an outside cyber security firm "found as many as 10,000 pings coming directly from NASA's network to known malware hosts, some lasting weeks, if not months."<sup>449</sup> Despite all of its shortcomings, NASA paid the contractors "some \$35 million above and beyond the terms, conditions and fees of the original contract" and decided to exercise its first three-year option to extend their contracts to 2018.<sup>450</sup>

Like NASA and OPM, IRS also faces cyber security issues. In May 2015 IRS informed the public that the "Get Transcript" program on its website had been hacked<sup>451</sup> and that the personal tax forms of 720,000 taxpayers were compromised.<sup>452</sup> This is an example of why GAO stated IRS has not shown "effectiveness in protecting the confidentiality, integrity, and availability of financial and sensitive taxpayer data."<sup>453</sup> Specifically, GAO found the agency does not adequately monitor and control who can access its network systems, does not encrypt sensitive user authentication data, and does not update security programs in a timely manner.<sup>454</sup> As a result, GAO found IRS systems are "vulnerable" and there is a "significant deficiency in internal control over financial reporting in its information security."<sup>455</sup>

## **RECOVERY**

Last December Congress put in place legislation to encourage greater communication and collaboration about cyber attacks to help prevent future attacks.<sup>456</sup> The bill also included elements to beef up federal agency cyber defenses and demanded better cyber hygiene practices.<sup>457</sup> The bill was a great step forward to protect industry and the public by taking a unified approach to fighting cyber attacks. However, the onus remains on federal agencies and departments to take strong steps to protect their own networks and prevent the loss of any sensitive and personal data. Any agencies and departments that do not have the necessary tools to do this should come to Congress for assistance. Agencies like OPM, NASA, and IRS have a responsibility to ensure they make efficient and responsible efforts to protect their computer systems.

# WHEN PLANES FLY

*Since 2008, DEA and DOD have invested almost \$100 million to purchase and modify an airplane that may never fly*

In March 2016 DOJ's IG released a report showing that over the last eight years, DEA and DOD spent a total of \$76.5 million to purchase and modify an aircraft, an ATR 500, which has never flown.<sup>458</sup> DEA purchased the plane in 2008 to assist in counter-narcotics work in Afghanistan.<sup>459</sup> Even though DOD funded the modification and the construction of a hanger in Kabul, the plane is still not operable and is left sitting on jacks in the Kabul hanger.<sup>460</sup>

The IG found that while DEA initially intended the plane to be operational, it has obviously missed that target and every other project timeline goal set when the plane was first purchased.<sup>461</sup> The IG found that DEA did not fulfill federal standards to purchase an appropriate plane at the best price. The IG also found that DOD contracted for \$1.9 million to construct a second hanger that will likely never be used.<sup>462</sup> Additionally, the IG found that DEA did not enter into a proper memorandum of understanding when it transferred the plane to DOD for modification, so it has not been able to ensure DOD makes all of the expected modifications.<sup>463</sup> Indeed, DEA and DOD acknowledged to the IG that DOD will not install a \$3 million camera system and that DEA will have to contract for its installation at a later time.<sup>464</sup>

## RECOVERY

The IG reports the plane is currently valued at around \$6 million,<sup>465</sup> which means that since its purchase for \$8.6 million and undergoing tens of millions in modifications, the federal government has invested 12 times the plane's value in an aircraft that may never be used for its intended purpose.<sup>466</sup> At this point the DEA and DOD should cease putting money into this lemon and move on. The IG points out that over the last several years, DEA has been unable to meet its operational demands in Afghanistan and has instead relied on assistance from the State Department, which flew for the DEA 1,223 missions from 2011 to 2015.<sup>467</sup>

Drug issues in Afghanistan are only getting worse, with drug trafficking increasing and the number of drug addicts doubling since 2012.<sup>468</sup> But our resolve to help the people of Afghanistan end their drug cultivation, trafficking, and use cannot be fortified by unlimited amounts of money for planes that may never fly. DEA and DOD should ensure in the future that projects exceeding projected costs and projected timelines do not continue to get worse. No American family would invest more than 15 times the worth of a car to not be able to drive it. The federal government should not do that either.



# GOING IN THE RED FOR A GREEN FUND

*The Administration gave \$500 million and pledged a total of \$3 billion to the Green Climate Fund without direction or oversight*

In the early 1990s, the UN formed the Framework Convention on Climate Change to create a worldwide climate change policy.<sup>469</sup> It was this convention that led to the 1997 Kyoto Protocol<sup>470</sup> and the 2015 climate agreement in Paris.<sup>471</sup> It has also led to the creation of the Green Climate Fund in 2011.<sup>472</sup> The Fund, which receives money from UN Member nations, is designed to “make an ambitious contribution to the united global response to climate change.”<sup>473</sup> Its focus is to find ways for developing nations to “limit or reduce greenhouse gas emissions.”<sup>474</sup>

In 2014 the Obama Administration committed \$3 billion over four years to support the Fund and in March of this year transferred the first payment of \$500 million<sup>475</sup> out of the account Congress designated for infectious diseases (during the height of the Zika crisis).<sup>476</sup> The Administration also requested \$250 million for the Fund in its FY17 budget request to Congress.<sup>477</sup> This is part of a UN and Obama Administration goal of raising and spending \$100 billion per year worldwide on climate-change issues.<sup>478</sup> As of fall 2016, while \$10.3 billion was pledged to the fund, only \$801.7 million was actually given.<sup>479</sup> After the \$500 million payment from the US, the Fund increased staffing by 150 percent and set the goal of spending \$2.5 billion by the end of 2016.<sup>480</sup>

In pledging \$3 billion, the Obama Administration lauded the work of the Fund and stated it “will promote smart, sustainable, long-term economic growth and preserve stability and security in fragile regions of strategic importance to the United States.”<sup>481</sup> Absent in this announcement, or any subsequent announcement or posting

online, are specifics of how the US intends to ensure the funding is utilized to its maximum potential. While the Fund has set its own goals for each of the eight projects undertaken to date,<sup>482</sup> there is no evidence of metrics or other methods of US oversight of how the funding is even used.

## **RECOVERY**

American taxpayers who paid for this \$500 million deposit and will have to pay for any of the remaining \$3 billion have the right to know how that money is spent and deserve the assurance that their government is providing rigorous oversight to ensure the funds are properly utilized. Even looking past the fact that the Administration failed to send any climate change agreement to the US Senate for approval, as is required for treaties by the Constitution, and that it did not seek congressional approval before sending the \$500 million down payment, the fact that the Administration gave the money without setting reasonable public standards for its use is highly inappropriate and a violation of the public’s trust. In a letter to the President in November 2015,<sup>483</sup> the US Senate Environment and Public Works Committee stated that before any additional funds are given to the Green Climate Fund, the Administration should send climate agreements to the Senate for approval. If any additional tax dollars go to the Fund, the Administration should first set clear, firm, and transparent expectations for how that money will be used and how the US will provide oversight to ensure the money is properly spent.

# WASTE BY ANY OTHER NAME WOULD STILL SMELL AS SOUR

NEA provided \$90,000 in grants to help spark a debate on gender identity and roles in American society



When it comes to enjoying William Shakespeare, it is hard to have too much of a good thing—unless that good thing involves federal reinterpretations. In two grants totaling \$90,000, NEA funded an all-male cast production of *The Taming of the Shrew*<sup>484</sup> and an all-female cast production of *As You Like It*<sup>485</sup> each of which ran for about one month.<sup>486 487</sup>

The production of *The Taming the Shrew* was intended to examine “the contemporary issues of gender, sexuality, and ethnicity using Shakespeare’s classic text.”<sup>488</sup> *As You Like It* was designed to influence “understandings of love, gender roles, nature, and politics.”<sup>489</sup>

Families should sit down at the dinner table to discuss the issues these productions seek to bring to light. Parents need to have these conversations with their children. But the government should not drive or fund these conversations, nor should it determine the content of the discussion.

## RECOVERY

It is perfectly acceptable for elected officials to encourage families and individuals to consider and talk about the issues. NEA should not operate as a political-messaging apparatus for the federal government. Here again, the GRANT Act will help shed light on the grants and set standards for awarding federal grants.

# CHECK OUT THIS FUMBLE

## *NEH and NEA funded a Library Documentary that the private sector has shown a strong willingness to fund*

According to the American Library Association, there are at least 119,487 public and school libraries throughout the country.<sup>490</sup> In 1731 Benjamin Franklin famously founded the Library Company of Philadelphia, the first in the colonies to allow free borrowing of books with the payment of a subscription fee.<sup>491</sup> The Library Company of Burlington in New Jersey was created in 1758 with the grant of a royal Charter from King George III and still functions under that charter today.<sup>492</sup> Then there is the beautiful and functional Library of Congress. Founded in 1800, it holds more than 162 million items in 470 different languages, with 12,000 new items added each day; it is the largest library in the world.<sup>493</sup> Libraries are an important aspect of American history, culture, and life.

However, NEH recently decided that libraries are not thoroughly researched and funded a \$500,000 documentary “on the history of the public library in the United States.”<sup>494</sup> This project, more than three years in the making, will lead to a documentary focused on San Francisco’s Main Library, its visitors, why they visit, and the librarians who serve them.<sup>495</sup> The filmmakers hope to show the impact libraries can have on people from all walks of life and “what would happen to democracy if libraries became extinct.”<sup>496</sup>

In addition to the NEH grant, the project received \$45,000 in 2013 and \$7,000 in 2012 from California’s state humanities agency<sup>497</sup> and \$25,000 from NEA in 2015.<sup>498</sup> The Bill & Melinda Gates Foundation and more than 50 other private donors and foundations,<sup>499</sup> including a Kickstarter fundraiser that raised almost \$80,000,<sup>500</sup> also provided significant funding to the project.



## **RECOVERY**

Libraries provide every community with opportunities for education, conversations, and countless other resources. They make an undeniable impact on our nation’s development. School and public libraries work incredibly hard to expand the minds of young people and contribute to their education. But it is unfair to ask young people, as their school funds are cut and the national debt increases, to pay for a documentary the private sector is more than willing to fund. NEH and NEA should ensure grants are provided only to projects of national interest that cannot be funded through the private sector. Federal grants should focus on distinctly federal projects of national significance. American families work very hard to earn the money they pay in taxes, and it should be used in the most efficient and effective manner possible.

# WHO'S COVERING YOU?

*Due to ineffective control measures, the almost 7 million people who transition from Medicaid to an exchange this year will face either a lapse in coverage or have duplicative coverage*

Under the Patient Protection and Affordable Care Act (PPACA), most Americans are now legally required to have health insurance.<sup>501</sup> For many working Americans, this likely means their employer continues to provide them with health insurance plans for which the employer pays a percentage of the premium. Other Americans now purchase their insurance through the federal or state exchanges. Low-income Americans will receive medical insurance coverage through Medicaid.<sup>502</sup> Issues like rising premiums, decreased providers in the exchanges, and healthcare professionals dropping patients have been well documented, but the transition from Medicaid to federal or state exchanges creates a whole new set of difficulties.

An estimated 6.9 million people—or 7 percent of participants in one of the programs—will rotate between Medicaid and the exchange each year.<sup>503</sup> The rotation is due to their income either increasing or decreasing, which results in a change of qualification. Those who receive care through Medicaid are required to self-report if their income goes up, though if they fail to do so, it could be up to a year before Medicaid finds out.<sup>504</sup> A person is allowed to sign up for Medicaid whenever he or she qualifies at any time of the year.<sup>505</sup> Conversely, a person signing up for coverage through an exchange is generally limited to one specific period of the year. Since his or her subsidy is based on income, a participant in the exchanges must also self-report any change in income, though there is no mechanism to ensure that actually happens.<sup>506</sup>

In 2015 GAO released a study showing that CMS does not have a mechanism to ensure that when a person's eligibility changes from Medicaid or the exchange, he or she only receives coverage from one source.<sup>507</sup> CMS also lacks the ability to ensure a person transitioning from one coverage to the other does not face a lapse between when one coverage ends and the other starts.<sup>508</sup> This is especially true if coverage lapses in the middle of a

month, as coverage from the new source may not start until the start of the next month.<sup>509</sup>

In the GAO study, one state alone was found to have 3,500 individuals with duplicative coverages during a six-month span in 2014.<sup>510</sup> GAO reports these individuals had duplicative coverage because they either failed to terminate their coverage through the exchange or they did cancel the exchange but did so at the start of a month and coverage could not end until the end of the month.<sup>511</sup>

As GAO points out, when an individual receives duplicative coverage, “the federal government could be paying twice – that is, subsidizing exchange coverage and reimbursing states for Medicaid spending for the same individual.”<sup>512</sup> With the PPACA expected to cost the federal government \$1.34 trillion over the next 10 years<sup>513</sup> and with Medicaid spending topping \$495 billion per year,<sup>514</sup> any duplicative and unnecessary spending must be eliminated.

## **RECOVERY**

This is just one of many examples of waste and inefficiency in Obamacare. Absent a repeal and replacement, the onus is on CMS to ensure that it does not provide coverage for a person already receiving care through an exchange. It must also ensure that a person transitioning from one type of coverage to the other is able to do so seamlessly. One method is to better partner with states and the IRS to ensure that when a Medicaid enrollee's income goes beyond what is allowed for participation, CMS can quickly assist the enrollee to gain coverage through the exchange. States were required to begin sharing more information with IRS in 2016. However, IRS was not able to commit to actually check the income levels of all enrollees to ensure they transitioned to the proper coverage at the right time and did not receive duplicative services.<sup>515</sup>

# AS EASY AS 1, 2, 3

*For 22 years the Johnson O'Malley (JOM) program has failed to conduct an acceptable count of Indian students attending public schools to ensure access to a supplementary education program*

The US has a long and complex relationship with the sovereign Tribal nations within our borders.<sup>516</sup> Through that relationship the US federal government has certain obligations, called trust responsibilities, to Tribes and American Indians. Since 1934, one way the federal government has worked to fulfill those responsibilities has been through the Johnson O'Malley Program.<sup>517</sup> The program provides a small amount of extra funding (usually less than \$125 per student) for Indian students attending public schools to cover any unique expenses.<sup>518</sup>

The funding is typically allotted by contract to either the Tribal government or, if the public school is outside the boundaries of a Tribe, directly to the school.<sup>519</sup> According to federal law, funding is distributed based on the number of students attending that school or schools within the boundaries of that Tribe.<sup>520</sup> The Tribe and school may then utilize the money to enhance the Indian student's education in a variety of ways. Cultural lessons, school supplies, supplemental tutoring, medical needs, and more can be covered by the JOM program.<sup>521</sup>

Even though funding is distributed based on the number of students currently attending a public school, the JOM program has not updated its count of students since

1994.<sup>522</sup> At the time there were 278,000 JOM-eligible Indian students attending public schools throughout the US.<sup>523</sup> Today, that number is estimated to have increased to between 800,000 and 1 million Indian students.<sup>524</sup> So while Congress has continued to fund the program, authorizing more than \$350 million since 1995, the JOM program has failed to ensure all eligible Indian students receive the intended benefit.<sup>525</sup>

## **RECOVERY**

This should be an extremely easy problem to fix: just count students. During the yearly budget process, JOM has been instructed by Congress to update its count.<sup>526</sup> For one reason or another, JOM has been unable to successfully complete a count and put in place updated numbers. In April 2016 Sens. Heitkamp, Lankford, and Daines introduced S.2842, the JOM Supplemental Indian Education Program Modernization Act which would require JOM to have an updated student count in place within one year.<sup>527</sup> When enacted, this legislation will ensure all Indian students eligible for JOM are counted and able to participate in the program.



# THE CURIOUS CASE OF THE MISSING \$30 BILLION

*Over the last 5 years, USDA made more than \$30 billion in improper payments from 18 high-risk programs*

Most families keep a close watch on their budgets. They know how much comes out each month for bills, how much comes in from paychecks, and generally know their bank account balances at any given time. Most would notice if a balance was off by even a few dollars and would be able to track down the exact cause. Our government, on the other hand, has trouble keeping track of Americans' money. In FY15 the federal government erroneously spent \$137 billion<sup>528</sup> and since 2004 has mispent more than \$1 trillion in taxpayer dollars.<sup>529</sup> Some in the federal government celebrate that those astronomical amounts represent only 4.39 percent of total spending. American families paying thousands in federal taxes each year on a tight budget probably do not agree.<sup>530</sup>

In 2002 Congress recognized that federal agencies and departments misspent taxpayer dollars and passed the Improper Payments Information Act.<sup>531</sup> The simple and common-sense legislation requires all agencies to continuously review all spending programs, estimate the total amount of improper payments, and then report the information to Congress and OMB with steps planned to remedy the problem.<sup>532</sup>

Over the last five years, USDA struggled more than most federal departments<sup>533</sup> to meet the requirements of the Improper Payments Information Act, and in FY15 USDA disclosed a total of \$6.3 billion in improper payments from 18 out of 300 department programs, or an improper payment rate of 5.7 percent.<sup>534</sup> USDA's IG reported earlier this year that for these 18 programs, the Department failed to comply fully with half (3 of 6) of the Act's requirements.<sup>535</sup>

While the IG noted that USDA has made progress over the five years of non-compliance, some of the 18 programs still lag behind. For instance, the School Breakfast Program within USDA's Food and Nutrition Service had an improper payment rate of 22.95 percent, and the Farm



Security and Rural Investment Act Programs at USDA missed their target improper payment amount by 12.14 percent.<sup>536</sup>

## **RECOVERY**

As the IG noted, USDA made progress to comply with the reporting and planning requirements of the Improper Payments Information Act.<sup>537</sup> However, USDA has still improperly spent over \$30 billion in federal tax dollars over the last 5 years, and the annual amount has gone from \$5.4 billion in FY11<sup>538</sup> to \$6.3 billion in FY15.<sup>539</sup> USDA must develop clear standards for all of its programs in order to stop making improper payments. If legislative changes are necessary, the Department should work with Congress to ensure the changes are enacted quickly. If USDA needs to perform internal reorganizations to ensure programs operate at least efficiently enough to stop misspending \$6 billion a year, the changes should happen immediately. Few American families could afford to lose 5.7 percent of their annual income. Many would go bankrupt. Americans are careful with the money they earn and federal departments should be just as careful when they spend taxpayers' money.

# PAID BRITS WATCHING AMERICAN VOLUNTEERS

*The US Embassy in London offered \$75,000 to bring 10 people to the US to show them how Americans volunteer and give back to their communities*

Merriam-Webster's dictionary defines *volunteer* as "a person who does work without getting paid to do it."<sup>540</sup> US citizens take that mission to heart. More than 60 percent of Americans engage in some form of volunteering, and in 2015 we gave more than 7.9 billion hours of volunteer service back to our communities.<sup>541</sup> Americans give their time, energy, and resources because we know it is the right thing to do and because we know it makes our communities and our country a better place.

Recognizing the importance of volunteering, we should encourage people in other countries to also engage in important community service opportunities. But that does not mean we should spend \$75,000 to bring people to the United States so they can see how we volunteer. Unfortunately the US Embassy in London did just that.<sup>542</sup>



Intending to give 10 business and community leaders "an introduction to volunteerism and social action in the United States," the Embassy spent \$75,000 to sponsor a 10-day visit to the US for various meetings.<sup>543</sup> The trip began in Washington, D.C. for meetings with congressional staff and various national volunteer organizations. Then they traveled to locations throughout the country for meetings in rural and urban areas to discuss different approaches to volunteering, with an emphasis on encouraging young people to volunteer.<sup>544</sup>

## **RECOVERY**

As Americans we have an obligation to give back to our communities and country through volunteering, and we should all encourage each other to do more. But with \$19.5 trillion in debt, there are better ways to spend our limited resources than bringing people from other countries to the US to show them how to volunteer—especially in a wealthy country like the UK! If this is a truly necessary endeavor, the embassy could have set up video or teleconferences to hold the same meetings without the cost of airfare or hotels. The same goals could have been met and hard-working American taxpayers would have saved \$75,000.

# SHOULD YOU DRIVE YOUR CHEVY TO THE LEVEE?

*In 2014 Congress required FEMA and the Army Corps to inventory US levees, design voluntary levee safety programs, and provide certain reports to the public*

Few Americans will ever forget the devastating and heartbreaking footage of New Orleans after Hurricane Katrina in 2005. Approximately 80 percent of the city flooded after the levees failed to keep back the overwhelming amount of water, and 70 percent of the city's homes were damaged, if not completely destroyed.<sup>545</sup> In the years after the storm, Congress enacted multiple pieces of legislation to help limit and prevent that level of devastation from ever happening again.

The Water Resources Reform and Development Act of 2014<sup>546</sup> placed primary responsibility for the cataloguing and then the development of safety programs for the more than 85,000 miles of federally owned or maintained levees with both USACE and FEMA.<sup>547</sup> The two agencies are required by law to develop reports to Congress, restart a committee for levee safety, and create a levee safety initiative.<sup>548</sup> According to a recent GAO report, very little work has been done to date, and the agencies have not even developed a plan to complete the work required by the legislation.<sup>549</sup>

In fact, of the 13 requirements in the Act, GAO reports progress in only one, and none are complete.<sup>550</sup> For ex-

ample, though voluntary national levee safety guidelines were supposed to be released by June 2015, they have not begun,<sup>551</sup> nor has a biennial report to Congress on the current state of US levees been written, even though it was to be first submitted by June 2015.<sup>552</sup> For the project currently in progress, the inventory of US levees, the Corps spent \$5 million in FY16, with a request for an additional \$5 million in FY17 without an estimated completion date.<sup>553</sup>

## **RECOVERY**

When Congress enacts legislation for the safety of American families, federal agencies and departments have an obligation to get the work done in a timely manner, especially when Congress sets specific deadlines. Just as important, in the eleventh year after Hurricane Katrina, families in New Orleans and communities throughout the country with similar levees deserve the assurance that their levees are better now than they were in 2005. Congress should work with the Corps and FEMA to ensure both agencies have the tools and motivation necessary to get the job done.



# A TOUGH JOB MARKET FOR HUMANITY

*NEH has started offering grants to schools to ensure their coursework properly prepares students to enter the job market, something schools already do*

In the fall 2015 semester, around 20 million students attended colleges and universities throughout the US, an increase of 4.9 million students since 2000.<sup>554</sup> Of the 2.7 million college degrees issued in the fall of 2015, an estimated 179,000 were doctorates.<sup>555</sup> Though 2015 data is not yet complete, humanities comprised six percent of all doctorate degrees given in the US in 2014.<sup>556</sup> While humanities graduates should be prepared to work in a wide range of fields, research suggests that the majority of them have only been prepared to work in academia,<sup>557</sup> an issue the federal government has decided to spend our money trying to fix.

NEH operates the Next Generation Humanities PhD Planning<sup>558</sup> and the Next Generation Humanities PhD Implementation<sup>559</sup> grant programs to help colleges and universities redesign their coursework to prepare students for more than one career path after graduation. Specifically, the Planning program brings “together various im-

portant constituencies to discuss and strategize, and then produce plans that will transform scholarly preparation in the humanities at the doctoral level.”<sup>560</sup>

The Implementation program funds schools that seek to make changes to their programs, such as alterations to curricula and the ways dissertations are conducted.<sup>561</sup> NEH announced these programs in July 2016, paying out an initial \$1.65 million in grants to schools throughout the country.<sup>562</sup>

## **RECOVERY**

If schools have not adequately prepared their students for a successful career, it is a major failure on the part of the school and the student. The onus is on schools to constantly reevaluate their course options to ensure students receive a quality education to best prepare them for life in the real world. It should not take two \$1 million federal grants to prod schools to do what they should already do. It is not the proper role of the federal government to socially engineer which degrees the current economy demands; markets, social and cultural need, and our institutions of higher learning will determine that organically. Instead, federal funding to colleges and universities should come with the expectation that schools actually prepare their students. It is ironic that the federal government recently shut down or punished some for-profit colleges because they increased student debt without demonstrating that they prepared students for a successful career, while at the same time giving federal tax dollars to help humanities programs redesign their classes so their graduates could find a job after graduation.



# NO SWIMMING ALLOWED

## *USDA proposes rule to prohibit swimming with dolphins*

In places like Hawaii and Florida, vacationing families do it all the time. They get on a boat, ride out into the ocean, and then jump in to swim around with the dolphins for a few minutes. It is a simple but fun tourist opportunity that gives families a lifetime of great memories. As a result, the industry has grown for years. In Hawaii alone there are more than 200 dolphin-related tourist businesses.<sup>563</sup>

In 1995 USDA's Animal and Plant Health Inspection Service announced a swim-with-the-dolphins rule under authority granted by the Animal Welfare Act of 1966 to restrict businesses who offer tourists opportunities to swim with dolphins.<sup>564</sup> After the rule was finalized, the affected companies successfully argued to USDA that the regulations were poorly written, broad, overly burdensome, and unnecessary.<sup>565</sup> USDA accepted the arguments and in 1999 announced it would no longer enforce the rule.<sup>566</sup> But in February 2016, USDA announced it would bring back the regulations with an amendment.<sup>567</sup>

Unfortunately USDA seems to have fumbled the ball with the amended regulation by not specifying what changed this year to necessitate reinstating the rule. If USDA was willing to agree the regulations were unnecessary enough to suspend them in 1999, why bring them back now? And perhaps more importantly why is the US Department of *Agriculture* attempting to regulate family vacations by restricting citizens' abilities to swim with dolphins in the ocean?



## **RECOVERY**

On the football field, the quarterback calls the plays and controls the ball; the receiver catches the ball; and the offensive line protects the quarterback. Just as it is not the receiver's job to call the plays, it is not the USDA's job to regulate people swimming with dolphins. USDA has broad responsibilities in rural America which should keep them busy with plenty of work. USDA should ensure that when regulations are issued or reissued, the public, and especially those who will be affected by the rules, are given the opportunity to have their voices heard and their concerns considered by the agency. Just because USDA does not like someone swimming with dolphins does not give it authority to invent a new regulation to ban it.

# A 13-YEAR HR NIGHTMARE

## *DHS began to update agency IT programs for its HR department in 2003 with little progress after 13 years and \$180 million*

HR staffs in any company or government agency have a tough job enforcing lengthy federal regulations and ensuring the company hires the best people. But at DHS, this job is even tougher.

In response to the terror attacks of September 11, 2001, Congress created DHS by combining 22 agencies throughout the federal government into one department.<sup>568</sup> The consolidation of 22 different agencies into DHS also yielded 22 different HR methods with 22 different computer systems that supported them.<sup>569</sup> To its credit the new Department quickly learned that 22 different computer systems operating 22 different HR systems would not work and began the Human Resources Information Technology Initiative in 2003 to “consolidate, integrate, and modernize the department’s IT infrastructure that supports human resources.”<sup>570</sup>

A recent GAO report shows that there was very little progress during the first seven years of the initiative<sup>571</sup> because of “limited coordination with and commitment from DHS’s components.”<sup>572</sup> In 2010 DHS issued an internal directive to prohibit any additional spending on HR technology systems without permission from the department’s Chief of Staff or Chief Information Officer.<sup>573</sup> The directive was intended to help bring greater purchasing coordination and to remind agencies that the diversity in the current systems was ineffective.<sup>574</sup> To follow-up on the directive memo, DHS began a department-wide review in 2011 to update the initiative. The review uncovered that DHS had 422 different HR computer systems and programs, “many of which were single-use solutions developed to respond to a small need.”<sup>575</sup> Out of this review, DHS identified 15 areas for improvement and developed 77 projects to accomplish the areas.<sup>576</sup> To identify how to complete these improvements, DHS planned to complete 14 of the 15 areas and 68 of the 77 projects by June 2015, with the remaining tasks set for completion by the end of 2015.<sup>577</sup>

GAO reports that since the start of the review in 2011, DHS has made “very limited progress in addressing the 15” areas of improvement and the 77 projects.<sup>578</sup> As of the end of 2015, DHS had only implemented one of the 15 areas and completed only 2 of the associated projects.<sup>579</sup> In fact, 9 of the 15 areas showed no progress whatsoever by the end of 2015.<sup>580</sup> GAO identified two main reasons for this lack of progress: 1) DHS focused solely on one of the 15 areas to the detriment of the others, and 2) there was a major lack of oversight from the initiative’s executive steering committee.<sup>581</sup>

## **RECOVERY**

While GAO reports DHS has not fully recorded the funds expended over the course of the initiative, it calculates that Congress has appropriated at least \$180 million for it since 2005.<sup>582</sup> While the creation of the department and consolidation efforts was a herculean task, it is unacceptable to spend so much with so little to show for it. As DHS enters into a new administration, it should conduct a full-level review of the Human Resources Information Technology initiative to determine why so little progress has been made and what roadblocks prevent rapid completion. Fourteen years after formation, it is ridiculous that DHS does not even have a full listing of its employees in one place.<sup>583</sup>

During a Congressional hearing in September 2016, the Chief Human Capital Officer for DHS stated the Department has reviewed the suggestions from GAO, eliminated unneeded programs, and identified 9 areas of focus going forward.<sup>584</sup> It is important for Congress to continue providing oversight and pressure to DHS to ensure the Department completes this update as quickly and efficiently as possible. No business could take 13 years to update its HR systems, and American taxpayers should not be required to continue paying for DHS to work on this problem at its current glacial pace.

# EPIC FAILURE

*NSF invested almost \$200,000 in a study to find out how people respond to failure*

Failure is a part of life. At one point or another, we have all failed at something—a test in school, job interview, relationship, or something else. How a person responds to that failure is a test of character and resolve. Giants in their respective fields like Albert Einstein, Walt Disney, Oprah Winfrey, Thomas Edison, and Sidney Poitier all failed when they first tried to do what they would later become famous for doing.<sup>585</sup> They found success through hard work, determination, and persistence.

This life lesson repeats itself so often that most people understand it. However, to make sure we really understand the phrase “if at first you don’t succeed, try, try again,” NSF provided almost \$200,000 for a four-year study entitled “Persistence after failure: understanding

neural and behavioral responses to negative outcomes.”<sup>586</sup> This lengthy title boils down to a simple topic: how do people respond to failure?

The author of the study put it a different way: “this research examines how acute stress may influence decisions to persist or give up on a goal by altering neural responses to failure.”<sup>587</sup> Using scans of the brain, the author was able to establish that different parts of the brain respond when a person recalls good and bad memories.<sup>588</sup> Specifically the author found “that recalling positive experiences from the past increases one’s positive emotion and engages reward-related neural circuitry.”<sup>589</sup> In other words, count your blessings or sing Julie Andrews’ “My Favorite Things.”



## **RECOVERY**

It is scientifically valuable to know more about how the brain works. But the federal government’s investment into this endeavor should be limited to areas in which private investment is not available and the funds go directly to a clear medical benefit. Knowing that people will be unhappy after a failure or will respond happily to a pleasant memory is nice, but federal spending in this area is not justifiable, given our current fiscal situation as a nation. NSF should be more judicious with its funding opportunities to ensure they constitute national priorities.

# TREAT ALL REFUGEES THE SAME

*At a potential cost of \$2 billion over the last twenty years, Cuban nationals claiming to be refugees have accessed federal benefits even though they are not refugees*

The US has had a troubled and sometimes dangerous relationship with the island nation of Cuba since the Castro regime took power in 1959.<sup>590</sup> Formal ties were severed in 1961 and severely deteriorated in October 1962 when Fidel Castro allowed the Soviet Union to place nuclear weapons on the island, only 90 miles from the Florida shoreline.<sup>591</sup> Over the years non-governmental organizations and similar groups have confirmed severe human rights violations by the Castro government.<sup>592</sup> These violations include restricted rights of speech and press, limited rights to travel, and the threat of arrest for any perceived political violation.<sup>593</sup> That persecution continues today.

For much of the last 50 years the US has kept in place stringent sanctions against Cuba.<sup>594</sup> At the same time, the US has offered a very generous refugee program for Cubans who escape the island and settle here.<sup>595</sup> Unfortunately that program has been widely abused, possibly to the tune of over \$2 billion over the last twenty years.<sup>596</sup>

Any Cuban coming to the US is automatically treated as a political refugee and is eligible for benefits beyond those available for ordinary refugees.<sup>597</sup> A Cuban refugee

is eligible for federal financial assistance, such as welfare and health benefits,<sup>598</sup> even though there is no guarantee that the specific person is actually a refugee from persecution or will remain in the US.<sup>599</sup> Since late 2014 when President Obama announced the loosening of travel and other restrictions on the Cuban government, the number of Cuban refugees entering the US has increased significantly.<sup>600</sup>

## **RECOVERY**

In January 2016 Sen. Marco Rubio of Florida introduced The Cuban Immigrant Work Opportunity Act.<sup>601</sup> The bill would eliminate the loopholes that allow Cuban immigrants to automatically access benefits for political refugees. The US should never close its doors to individuals who seek to escape political, religious, or any other type of persecution. However, just as families would likely want to ensure a person looking for help actually needs it before rendering aid, the US should ensure only those who are actually refugees receive assistance intended for refugees.



# BREAKING NEWS:

## KIDS LEARN WITH TECHNOLOGY

*Duplicating research from the private sector and the Department of Education, NSF provided almost \$250,000 to find the best way to use technology to educate children*

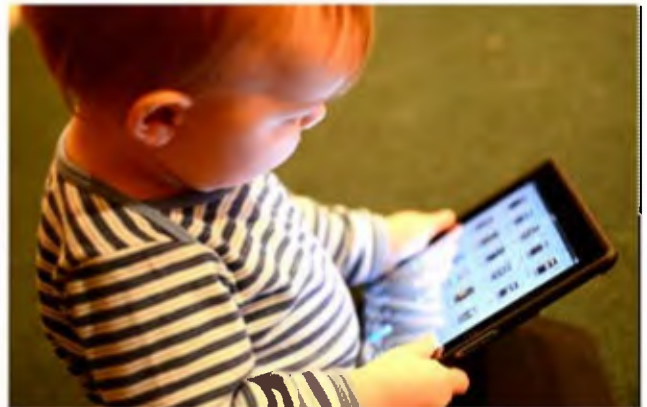
Most adults remember childhood evenings and weekends spent outside riding bikes, playing sports, and having fun with friends. This was before cell phones, the Internet, or cable television. Today children have the Internet at their fingertips through cell phones, computers, tablets, and countless other technological means that were science fiction generations ago.

Technological advances brought reasonable questions and in-depth research on how to best use technology to educate our children. A simple Google search for “children using technology to learn” brings more than 190 million results with commentary and data from think tanks, education advocacy groups, news sites, and others.<sup>602</sup> Some, like the National Association for the Education of Young Children, use research to argue that there is a clear benefit from technology for childhood education, when the technology is “used intentionally and appropriately.”<sup>603</sup>

The American Academy of Pediatrics (AAP) released suggestions late last year that parents place some firm limits on their child’s technology use, reminding parents that the best way for a child to learn is through direct conversation. But the suggestions recognized the potential benefit to the child’s development that being online can provide, especially if technology is used with the child’s family.<sup>604</sup> Specifically, AAP suggests technology that requires interaction is better for childhood learning than a passive video that only requires the child to watch.<sup>605</sup>

The Department of Education has also considered and supports the notion of children using technology to learn. Then-Secretary of Education Arne Duncan stated “technology should be leveraged to provide access to more resources than are available in classrooms and connections to a wider set of educators.”<sup>606</sup> In fact, part of the \$4.4 billion allocated for ED’s School Improvement Programs is dedicated to help schools improve Internet connectivity so technology can be more widely used in schools.<sup>607</sup>

In 2017 NSF will wrap up a multi-year, \$225,583 grant that studies what many outside groups have already done: determine the level of technology appropriate for young children.<sup>608</sup> The grantees focus on the appropriate balance between learning from technology, interactive or passive media, and traditional, interactive classroom-style learning.<sup>609</sup> To accomplish this the grantee shows children how to put together a puzzle either in a video or in person, and then requires the children to use the opposite method to put the puzzle together.<sup>610</sup>



### **RECOVERY**

As technology advances, education experts rightly work to determine the best balance between letting children utilize the technology and ensuring they receive the highest quality education possible. For that reason groups from the Dept. of Ed., to the AAP, to the National Association for the Education of Young Children, and many others have invested considerable time and research to develop the best resource possible for those in charge of technology use: the child’s parents. With all of the currently available research in and out of government, NSF can find much better ways to spend a quarter of a million dollars. This money should be used for innovative research, not duplication. It is not beneficial for children to have more national debt put on their shoulders so NSF can fund research that already exists.

# \$3 MILLION FEDERAL SOAP OPERA

*Since 2008 NIH has awarded \$3 million in grant funding for the development of a 12-episode soap opera to encourage smarter decisions to prevent HIV/AIDS*

In the US there are currently more than 1.2 million people who have HIV.<sup>611</sup> Of those, 13 percent, or 156,300, are undiagnosed.<sup>612</sup> Thanks to medical advances and broader understanding of its transmission, new diagnoses have trended downward significantly over the last couple of years.<sup>613</sup> Each year the federal government spends tens of billions, \$33 billion in FY16, on HIV/AIDS work in the United States and abroad.<sup>614</sup> This includes funding for treatment, medical research, and prevention methods.<sup>615</sup> It also includes a soap opera.<sup>616</sup>

Since 2008<sup>617</sup> NIH has provided more than \$3.1 million (\$1.1 million in 2015-2016) through two grants to the research, development, and testing of a “12-episode soap opera video series” titled *Love, Sex, and Choices*.<sup>618</sup> The soap opera, intended for women and viewable on cell phones, is intended to encourage smarter decisions and protection.<sup>619</sup> It follows the lives of four women dealing with relationship issues and the consequences of some poor decisions on either their part or the part of a signifi-

cant other.<sup>620</sup> Discussing the effectiveness of the program, the grant recipient acknowledged that the difference in smarter decisions among viewers of the show and those who just received a text message about HIV was not “statistically significant.”<sup>621</sup>

## **RECOVERY**

With a reduction in new diagnoses and frequent new medical advancements, we are hopefully nearing the day that HIV/AIDS is a thing of the past. Until that day comes, however, we should do all we can to encourage smart decisions to decrease the spread of HIV/AIDS. But \$3 million in federal spending to create a soap opera is not the best way to accomplish that. NIH should utilize funding for HIV/AIDS for research, preventative medicine, or direct efforts to inform the public, not create expensive soap operas that may or may not have any lasting impact.

# HOW DO YOU DEFINE “EMERGENCY”?

*Though intended for emergency operations only, Congress has allowed monies designated for Overseas Contingency Operations to be utilized for non-combat-related activities and projects far from combat zones*

On top of funds appropriated for regular operation, Congress provides DOD and State funding for Overseas Contingency Operations (OCO).<sup>622</sup> Congress first used an emergency designation for war-fighting activities in FY04.<sup>623</sup> The initial pot of money was intended to act as a “bridge” fund to cover ongoing war costs in the initial months of the fiscal year. However, much like opening a can of Pringles, once Congress popped the budget caps once, it never stopped. Six years later in 2011, Congress began to designate the emergency pot of money as OCO.<sup>624</sup> Most of the funding is indeed targeted to ensure our troops on the front lines are safe and have the equipment they need, but like most government accounts, a lack of accountability can lead to errant spending priorities.

The funding is intended for unexpected events, emergency situations that occur outside the normal budget process.<sup>625</sup> For example DOD’s normal budget provides funds for the daily operation and training of our nation’s military, along with expenditures like buying new airplanes or building a new submarine. It does not fund war-fighting operations like those in Iraq and Afghanistan;<sup>626</sup> those funds come from OCO.<sup>627</sup> OCO funding within State makes up more than 10 percent of its total annual spending, or about \$9.6 billion in FY16.<sup>628</sup> While the funding should be utilized for *emergency* situations in places like Syria, Iraq, and Afghanistan, a great deal of it is not.

Some of the money—notably \$747 million in FY16 for the Bureau of Overseas Buildings Operations that provides “secure, safe, and functional facilities” for State employees abroad<sup>629</sup>—fills an important need but is not *emergency* spending. Other spending—like \$37 million<sup>630</sup>

for USAID’s Office of Transition Initiatives<sup>631</sup>—funds programs that operate in areas far from Iraq, Afghanistan, or places where our military is engaged in conflict. There is also some spending, including plans for \$66 million in FY17 to encourage “economic integration, growth, and competitiveness” in Europe, which is difficult to justify as either an emergency or even an important federal spending priority.

## **RECOVERY**

Emergency spending in general has become a way for Congress to avoid making the hard decisions that come with responsible budgeting. Rather than cut wasteful or low-priority budgetary items, lawmakers have chosen the easy path of simply adding supplemental emergency appropriations every time the media is abuzz about the day’s news story. Just this past year, Congress held debates on additional emergency spending on a Zika response, veteran legislation, war needs, foreign aid, and others. Most of the programs should be funded, but the funds should come from regular appropriations. Congress must be able to choose priorities within a \$4 trillion budget to address true emergencies.

OCO is a way to fund current military and diplomatic operations in a time of dynamic and ever-changing conflicts. It should not be a slush fund for items Congress decided not to include in the normal appropriations process. While DOD should be responsible and not utilize OCO funds for non-combat-related expenses, language should be included in each congressional appropriations bill to ensure funds are only used for that purpose.

# ACCIDENTAL CRIMINALS

*Under federal criminal law, it may not be necessary for individuals to knowingly commit a crime that could result in thousands in fines and a lengthy prison sentence*

In criminal law prosecutors must generally establish two elements: first, did the defendant commit an action that was illegal (or was their failure to act illegal), called *actus reus*,<sup>632</sup> and second, did the criminal intend to commit the illegal act, called *mens rea*.<sup>633</sup> The *actus reus* must always be proven, but the *mens rea*, that the defendant intended to act, is not always required under American law.<sup>634</sup>

Right now there are about 5,000 federal crimes—with about 500 new ones added each decade and countless federal regulations added all the time—for which a person could be convicted and fined and/or put in prison.<sup>635</sup> Many of the laws and regulations are so obscure that a person could break the law or regulation without even knowing or intending to do so. But because that knowledge and intent is not always required, it sometimes does not matter.

For instance, recently a young girl thought she was doing the right thing by saving a woodpecker from her family cat. Instead, her parents were fined for a violation of the Migratory Bird Act “because it is a crime to take or transport a woodpecker.”<sup>636</sup> In another recent case, a man and his friend were snowmobiling in New Mexico when a blizzard hit. In extremely dangerous conditions, they were forced to leave their snowmobiles and hike for two days to reach safety. After asking NPS for help to locate their snowmobiles, it was discovered that during the storm they strayed into a protected wilderness area, which is against the law. The man was then charged and found guilty of a violation with a maximum sentence of six months in prison and a \$5,000 fine. While the judge only fined him \$75, he now has a criminal record due to an unintentional mishap during a blizzard.<sup>637</sup>

These are just a few examples of people who had no intent to break the law and who would not break it if they knew the law. A crime in which the person is guilty merely because he or she committed the act, whether it was in-



tentional or not, is called “strict liability.”<sup>638</sup> There are some instances where strict liability is necessary, such as statutory rape or traffic offenses like speeding or DUI. But reform is necessary to ensure there is flexibility for common sense. A parent should not face criminal prosecution because his or her daughter saved a bird from a cat.

## RECOVERY

American families should not have to regularly read and carry with them the US Code to ensure every step they take is in conformity with federal law and regulation. Unless specified by Congress, police, prosecutors, and judges should be able to take into consideration the intent and knowledge of the person before moving forward with charges and a possible conviction. That is why Sen. Orin Hatch (UT) and Rep. Bob Goodlatte (VA) introduced legislation to set a federal minimum *mens rea* requirement for crimes that do not already have that component and were not intentionally left without such a component.<sup>639</sup> The bill is a good start to ensure more common sense is utilized in federal courts and hard-working American families do not have to live in fear that an unintentional act will lead to a lifetime criminal record.

# TOO MUCH IS NEVER ENOUGH

## *DOJ authorized \$70 million—twice the amount necessary—to construct Tribal prisons in Arizona*

The motto “if you build it, they will come” may work well in baseball and business, but it should not be the mission statement for our nation’s prison system. Unfortunately DOJ seems to have adopted that motto for the provision of grants to construct new prisons.

A September 2015 audit by DOJ’s IG discovered that DOJ—with oversight from the BIA—approved grants for the construction of Tribal prison facilities in Arizona that were “at least 250% larger than needed, at an excess cost of \$32,034,623.”<sup>640</sup> Specifically, DOJ funded a 132-bed prison in Tuba City at a cost of \$38.6 million and an 80-bed facility and police station for \$31.7 million in Kayenta.<sup>641</sup> Originally the Tuba City facility was planned to cost \$18.2 million and have 48 beds, and the Kayenta facility was slated to cost \$20 million and house 32 prisoners.<sup>642</sup> Prior to construction, neither facility was anticipated to have a need anywhere near the expected capacity.<sup>643</sup> In fact, since construction completed, the facility in Kayenta has averaged no more than 11 inmates per month<sup>644</sup> and 16 in Tuba City.<sup>645</sup>

DOJ’s fumble goes beyond mispending on a one-time grant; this has budgetary ramifications for every year the facilities are open. The operation and maintenance of the Tribal facilities are funded each year—at least in part—by BIA.<sup>646</sup> The larger the facility, the higher the cost to operate and maintain. The IG reports that BIA is only able to

fund 25 of the needed 63 employee positions at the new facility in Tuba City and only 20 of the 51 employee positions at the new facility in Kayenta.<sup>647</sup> This means that BIA can provide less than half of the needed employees and neither facility is likely to be able to become fully operational.<sup>648</sup>

## **RECOVERY**

The federal government’s responsibilities to Tribes range from health care, to education, to economic development, to criminal justice matters. With failing hospitals and schools throughout Indian Country, this extra \$32 million spent on these facilities could have made a major difference in the lives of many American Indians. The money could have been used to feed families, build a new school, or provide additional assistance to Indians looking for a brighter future. Instead the money went to two unnecessarily large prison facilities that may never be fully operational. BIA and DOJ should never have permitted the grants in the first place, but now that they have, it is their responsibility to limit the burden on both the Tribe and the American taxpayer. Looking to future grants, passage of the GRANT Act would set the necessary accountability and transparency requirements to help prevent future overpayment of grants.<sup>649</sup>

# WHILE RURAL HOSPITALS IN AMERICA CLOSE...

*USAID has invested or committed to invest over \$1 billion in projects for the Palestinian government, some of which are either unusable or the local government cannot maintain*

A 2014 poll found that 80 percent of Americans feel “joyful and generous about buying and receiving gifts.”<sup>650</sup> Another recent poll states the obvious: most people feel happier about spending money for others than they do for themselves.<sup>651</sup> What is unspoken in these polls is that when we give a gift to someone else, we want to know it is something they will use, cherish, and care for. The same should be true when our country gives something (usually money) to another country. Unfortunately, that is not how it always works.

A recent report from USAID's IG shows that as of early 2015, the agency had obligated \$762.5 million in various construction programs and disbursed more than \$600 million for 437 projects in Gaza and the West Bank dating back to 2008.<sup>652</sup> Current and completed projects range from roads and bridges to health clinics to wastewater treatment.<sup>653</sup> The challenge, of course, is that once we complete a project, it is up to the host government to maintain and operate it going forward.

The IG report found that some of the roads completed by USAID were in disrepair because the Palestinian government either would not or could not obligate the necessary maintenance funds.<sup>654</sup> In 2012 USAID provided \$1.4 million to complete the Al Rahma Water Reservoir.<sup>655</sup> Shortly after completion, one-third of the water pumps malfunctioned and as of summer 2015 still were not repaired. USAID completed an \$820,000 diagnostic center for a hospital in 2013 that could not open because there was no available diagnostic equipment.<sup>656</sup> The IG also reported that two community development projects—additions to a school and a health clinic—were funded and built by USAID but were either not used or underutilized for various reasons.<sup>657</sup>

The long-term issue here, as the IG pointed out, is that USAID did not conduct proper planning to take into account the “unique challenges of working in Gaza.”<sup>658</sup> According to the IG, USAID does not have in place and utilize proper oversight of projects, both before and after completion, to ensure they can be utilized for their specific purpose.<sup>659</sup> In other words USAID failed to take into account the situation on the ground when it paid for roads, schools, and hospitals. USAID also failed to ensure that what it built could be easily maintained and thus used by the Palestinian people.

## **RECOVERY**

As Americans we are able to assist people in need at home and around the world. But when we spend money somewhere, especially when we commit to spending more than \$1 billion, it is reasonable to expect the money to be spent wisely. This is especially true in an area like Gaza, where basic needs like food, water, and health are hard to meet. It is also important to remember that when our country invests in another country, our name is forever tied to that project. When we build a road or a hospital, people will always know it was made possible by the US. So if that project is poorly planned and turns out to be unusable or unmaintainable, people in those countries will always associate that failure with the US. It does not build better international relationships or bring any benefit to other countries to spend thousands and even millions of dollars on buildings or infrastructure no one can use. USAID should put more focus on project planning to ensure facilities can be maintained or staffed appropriately before throwing money out the door.

# NOT SMART ON CRIME

## *DOJ has not properly utilized its Smart on Crime initiative for alternative punishments of low-level, non-violent crimes*

In 2013 DOJ announced an initiative called Smart on Crime to help decrease the number of non-violent offenders placed in federal prisons.<sup>660</sup> The goal of the initiative is to encourage federal prosecutors to consider a punishment other than prison through either a pretrial or a court-based diversion program.<sup>661</sup> Following completion of a substance abuse or mental health course or some other requirement, followed by a period of time without repeat behavior, the prosecutor can either not file charges or drop charges, if they have already been filed.

Pre-trial and court-based diversion programs ensure the potential defendant faces a consequence for their illegal action and receives assistance to hopefully ensure they do not engage in the behavior again. Unfortunately, DOJ's IG found the department does not utilize the beneficial options where it should.<sup>662</sup> Studying select case files from 2012 to 2014, the IG found only 1,520 of 7,106 eligible defendants participated and successfully completed the program.<sup>663</sup> Put another way, 79 percent of those who could have taken advantage of the Smart on Crime initiative were not able to do so, likely because the prosecuting attorney's office did not participate in the initiative.

About half of all US Attorney's Offices had between zero and five people complete the diversion requirements.<sup>664</sup> The IG also found DOJ has not evaluated how US Attorneys utilize the Smart on Crime initiative or calculated the changes in cost of utilizing the program instead of incarceration.<sup>665</sup> While DOJ has not fully studied the recidivism rate or number of people who committed a crime after participating in the initiative, the IG calculated it to be 23 percent in the Central District of Illinois, whereas the national recidivism rate "has been estimated as high as



41%.”<sup>666</sup> Finally, in that same district, the Smart on Crime initiative is estimated to save between \$157,577 and \$197,261 per defendant.<sup>667</sup>

## **RECOVERY**

The IG's report suggests that pre-trial and courts using diversion programs can save money, cut down on our incarceration rates, and more quickly return non-violent offenders to work and support their families. There must always be a consequence for breaking the law, and some crimes absolutely must come with a prison sentence. But American families do not benefit, financially or otherwise, from low-level, non-violent offenders locked in prison for years. Congress should enact serious criminal justice and sentencing reform to ensure we lock up those who should be locked up and have alternatives to incarceration for those who qualify. In conjunction with that, DOJ should work with Congress to properly utilize and oversee the Smart on Crime initiative throughout all US Attorney offices and federal courts.

# FOREIGN TAX CREDITS FOR EVERYONE!

*A recent audit found the IRS failed to properly review individual tax filings claiming Foreign Tax Credits and improperly allowed more than \$100 million in credits over two years*

Last year's *Federal Fumbles* discussed how the broken US corporate tax code—with the highest rate in the developed world—substantially hurts American companies' ability to compete internationally.<sup>668</sup> Currently the US uses a worldwide tax system in which US corporations are taxed by the US whether their profits were earned at home or abroad, meaning profits earned in another country are taxed by both that country and the US. *Federal Fumbles* called for a switch to a territorial corporate tax code, which encourages American business to expand into foreign markets but bring their profits back to the US.

The tax system for individual filers is also quirky in its global taxation structure. The US and Eritrea are the only two countries in the world that tax individuals based on citizenship rather than residency.<sup>669</sup> This means that American citizens working abroad must pay both the foreign countries' taxes and US taxes above a certain wage of salary exclusion. US citizens who face double taxation abroad are allowed to utilize the Foreign Tax Credit (FTC) when filing their US taxes to offset their overseas tax liability.<sup>670</sup> For tax year 2013, the most current year with information available, American taxpayers claimed FTCs totaling more than \$16.7 billion on 7.4 million individual returns.<sup>671</sup> This means taxpayers paid more than \$16.7 billion in foreign taxes and then claimed that money as a credit on their US taxes. That is not how it is supposed to work.

In a 2015 audit, Treasury's IG found that the IRS "does not have sufficient controls and processes in place to

identify erroneous FTC claims."<sup>672</sup> From 2010 to 2012, the IG found the IRS gave \$94.9 million in FTC from 65,499 improperly filed tax returns, allowed almost \$5.8 million in FTC to be claimed as both a deduction and a credit, and almost \$40 million in FTCs to be approved when the filed supporting documentation "did not support the FTCs claimed."<sup>673</sup> The IG also found that IRS accepted tax returns totaling \$249.9 million that did not include the required Form 1116, which must be filed by US citizens claiming more than \$300 in FTCs.<sup>674</sup>

## **RECOVERY**

The complexity of the US worldwide tax code makes it difficult, if not impossible, for the IRS to ensure taxes are accurately and adequately filed each year. American individuals and companies should not be forced to jump through numerous hoops at home just to earn money abroad. The US should not punish individuals and companies who make and use money abroad by taxing them at the US rate and also requiring them to utilize the broken FTC system to recoup some of the money lost to double taxation. Congress should adopt a fairer tax system that only taxes revenues earned in the US. But until that day, IRS should refine its system to ensure FTCs are only allowed in proper situations. Hundreds of millions of dollars should not be allowed in FTCs without proper documentation, and FTCs should not be approved in situations disallowed by law.



# REGULATING PETER BECAUSE OF PAUL

*EPA plans to place excessive and costly regulations on an industry that is not even the primary producer of the emissions EPA wants to regulate*

According to EPA, methane is “the second most prevalent greenhouse gas emitted in the United States from human activities.”<sup>675</sup> EPA Administrator Gina McCarthy has called these emissions “pollution that immediately harms public health.”<sup>676</sup> Though the Administration blames oil and gas production,<sup>677</sup> studies show it is not even the primary producer of methane emissions and the main increase around the globe does not even come from the US.<sup>678</sup> Additionally, methane is the commodity that gas companies capture and sell, so it is in their best interest to prevent any emission of methane so they can sell it. Those facts have not stopped the Obama Administration from wanting to put in place new costly and burdensome regulations on oil and gas producers.

On March 10, 2016, President Obama announced plans for EPA to reduce methane emissions from our nation’s oil and gas producers.<sup>679</sup> The new plan will target methane emissions from existing oil and natural gas producing wells.<sup>680</sup> It will be added on top of EPA’s currently proposed regulations to curb methane emissions from new oil and natural gas wells.<sup>681</sup>

EPA’s proposed rule for new wells is estimated to have already cost the energy industry a staggering \$400 million, while the costs of the new proposal for existing wells will likely be substantially higher.<sup>682</sup> Because of the ag-

gressive climate-change goals established at the Paris Climate Conference in December 2015, President Obama ordered EPA to issue an Information Collection Request on March 10, 2016, to require companies operating existing wells to provide information that EPA will use to craft its newest methane rule.<sup>683</sup>

## **RECOVERY**

In addition to boosting economic growth and creating countless jobs, America’s oil and gas producers have played the pivotal role in reducing our dependence on foreign energy and enhancing our nation’s energy security.<sup>684</sup> However, since oil and gas prices began to plummet in 2014, energy companies have closed more than 1,000 rigs and slashed more than 250,000 good-paying jobs, many of them in the US.<sup>685</sup> EPA’s proposed and upcoming rules, which will establish enormous new burdens and costs, will also lead to job losses and more families losing needed income. With studies showing that oil and gas producers are not even the main producers of methane emissions, EPA should work with industry to develop methane guidelines and slowly phase in any new rules so that they will not devastate so many hard-working American families.

# FAILURE TO LAUNCH

*ATF spent more than \$500,000 for 6 unmanned aerial vehicles that were ultimately unsuitable for ATF's purposes*

The use of unmanned aerial vehicles (UAVs), or drones, by both the public and the government has skyrocketed over the last decade.<sup>686</sup> From military applications to the delivery of mail, there is or soon will be a drone for every occasion.<sup>687</sup> With an estimated 1 million drones sold during the last Christmas season, more and more American families take the time to learn about the various types of unmanned aerial systems, their operation, and the many ways they can be used.<sup>688</sup> Unfortunately, some federal agencies do not research as well as American families.

ATF recently spent about \$600,000 to purchase six drones for various uses but could not actually put them to use. The reason? According to a 2015 report from the DOJ's IG, ATF "encountered a series of technological limitations...and concluded that the [drones] were unsuitable to support operations."<sup>689</sup> In other words ATF failed to do basic research into the functionality and types of drones before wasting tax dollars for unsuitable drones.

Unfortunately ATF did not redeem itself after the \$600,000 failure. After realizing the drones were unsuitable, ATF canceled all plans to utilize drones and disposed of the six purchased. Strangely, the IG report shows that another ATF unit subsequently spent \$15,000 to purchase five new drones. This ATF flew one drone in one flight, then grounded all five drones pending coordination with the ATF unit actually responsible for unmanned vehicles.

## **RECOVERY**

This is analogous to a delay-of-game penalty: embarrassing and with proper management, should never happen. For the average American family, a \$600,000 (or even \$15,000) spending mistake would lead to financial ruin. It is entirely reasonable to evaluate legitimate law enforcement uses for UAVs, but far greater care and planning should be utilized before the federal checkbook is opened.



# WHAT IS GOING ON HERE?

*For the last nine years, USCBP has maintained a Special Operations Group without performance metrics or oversight of the full cost of the group*

Just like stats can give a picture of a team or player's strengths and weaknesses, programs in the federal government should have regular evaluation and transparent information. For instance, in January 2016 the DHS IG released a report that Customs and Border Protection was funding and operating its Special Operations Group without any metrics in place to gauge success or records of the group's total cost.<sup>690</sup> The group was formed in 2007 to "provide a centralized chain of command for its specialty teams and improve [CBP]'s ability to react to actionable intelligence, terrorist-related incidents, national disasters," and similar missions.<sup>691</sup>

The IG estimates that while the Special Operations Group was budgeted \$8.4 million in FY14, its full cost was more than \$33 million,<sup>692</sup> and that is not even a complete estimate.<sup>693</sup> At the same time, the IG reported that CBP has failed to put in place formal metrics to show the success (or failures) of the group in accordance with congressionally mandated standards.<sup>694</sup> The Special Operations Group may prove to be vital and very efficient, but we cannot know the cost and the effectiveness because CBP has not determined how to evaluate it.

## **RECOVERY**

Unfortunately this is emblematic of a much larger problem found throughout the federal government. Agencies must formally set performance metrics that will enable them, Congress, and the American people to judge the success and impact of each federal program, agency, and department. As such, in January 2015 Sen. Lankford and a bipartisan group of 11 other Senators, introduced the Taxpayers Right-to-Know Act.<sup>695</sup> The bill would require all federal departments and agencies to list in one place all of their programs and expenditures, the metrics used to judge performance, and a description of the program.<sup>696</sup> TPRTKA would allow the American public and Congress to monitor duplication and the federal government's quality of work to ensure that federal dollars are spent wisely.



# WHAT YOU REALLY NEED IS A REGULATION

*USAID created a \$24 million, multi-year program to fund the creation of energy regulations in other countries*

Since January 2009 the Obama Administration has put in place about 400 regulations impacting energy and the environment.<sup>697</sup> These regulations have cost consumers almost half a trillion dollars and created just under 40 million hours of paperwork for companies.<sup>698</sup> This year's *Federal Fumbles* addresses on page 46 the effect these regulations have had on coal production, but the impact is not limited to just one type of energy. Ranging from the ozone rule, to mercury standards, to fuel standards, to ethanol these rules have had a costly impact on American businesses and, more important, on American families and consumers. Now the Administration wants to export to the world the same regulations that slow down our economy, perhaps to level the playing field.

Earlier this year USAID announced a \$24 million, multi-year plan to partner with an outside organization for a new Energy Regulatory Partnership Program<sup>699</sup> to build up the abilities of other countries to develop energy regulations.<sup>700</sup> USAID believes there is a need for other countries to develop their own "strong regulatory authority" that focuses on "mandating increased renewable energy supplies."<sup>701</sup>

In 2009 USAID entered into an Enhancing Sustainable Utility Regulation Cooperative Agreement with the National Association of Regulatory Utility Commissioners to develop an exchange program for energy regulators in the US and in developing countries.<sup>702</sup> Though the agreement ended in 2012, the grant is a continuation of its goals to establish US-style regulations in other countries.<sup>703</sup> The grant will pay to send US regulators to those countries, provide technical assistance training, and create long-term partnerships.<sup>704</sup>



## **RECOVERY**

The \$24 million grant is equal to the average combined salaries of 538 Americans.<sup>705</sup> Assisting other nations with ideas on energy efficiency, power distribution, and local payment structures are all reasonable goals. But when third world countries are trying to feed their people, start basic commerce, and get power to the most remote places on earth, a long list of new regulations is the last thing those nations need. When reliable electricity can reach a remote location, people can create jobs, get better healthcare, and increase their life expectancy. American priorities should help people rise out of poverty, not expand the regulatory state.

# TAKE MY ADVICE

*Agencies needlessly spend billions each year by failing to implement common-sense reforms suggested by GAO or IGs*



If a CPA suggests that a business owner make changes to his or her business that would save money, that business owner would almost certainly take that advice. A prudent business owner would use those savings to expand his or her business, hire additional employees, or even give back to the community. Unfortunately, the federal government does not operate the same way.

Each year GAO and agency IGs issue thousands of recommendations to federal agencies and departments to improve their operations, eliminate waste and fraud, and save taxpayer money.<sup>706</sup> In 2015 agencies successfully implemented 79 percent of GAO recommendations, which saved American taxpayers a record \$74.7 billion.<sup>707</sup> However, agencies still leave thousands of recommendations and the potential for billions in savings on the table each year.<sup>708</sup> Moreover, not all IG recommendations are available to the public, so there are likely even more recommended changes and savings that we cannot see.<sup>709</sup>

## **RECOVERY**

To learn more from GAO and the IG community, on December 10, 2015, the Senate Regulatory Affairs and Federal Management Subcommittee held a hearing focused on the importance of agencies successfully implementing their recommendations.<sup>710</sup> The result of the hearing was the Inspector General Recommendation Transparency Act of 2016.<sup>711</sup> This legislation would require IGs to make their unimplemented recommendations publicly available and allow American businesses and families to see which savings federal agencies leave on the table. The federal government serves the American people, and our families and small businesses deserve a government that efficiently and effectively utilizes our tax dollars. If cost-saving organizations like GAO and IGs provide agencies with detailed recommendations to reduce waste, they should be implemented or publicly explained.

# IT'S ONLY THE LAW

*In 2015 alone, federal agencies ignored the law and failed to report to Congress more than 1,000 new major rules and regulations, each costing more than \$100 million to the economy*

Enacted in 1996, the Congressional Review Act (CRA) requires federal agencies to submit to Congress and GAO a copy of each rule and a statement identifying whether the rule is major, which means it has more than \$100 million in economic impacts.<sup>712</sup> Congress enacted these reporting requirements to make the federal rulemaking process more transparent to the American people and enhance congressional oversight of the federal regulatory state. Despite the statutory reporting requirement, agencies often ignore the CRA and fail to submit all of their rules, including potentially costly major rules, to Congress.<sup>713</sup> That means the agencies create hundreds of economically significant rules with very little, if any, oversight from Congress, OMB's Office of Information and Regulatory Affairs, or the American people.

A 2014 *Washington Post* report found that since 2012, the Obama Administration failed to fulfill CRA statutory requirements by not reporting more than 1,800 regulations to Congress.<sup>714</sup> Reporting for the Administrative Conference of the United States in 2014, Curtis W. Copeland, a former Congressional Research Service staffer, stated that agencies failed to report 43 major rules to Congress just that year.<sup>715</sup> Since major rules have economic impacts greater than \$100 million, the Executive Branch's failure to submit 43 major rules to Congress could easily result in hundreds of millions of dollars in costs. Additionally, on March 24, 2016, the American Action Forum reported that agencies have still not fulfilled their legal CRA reporting requirements and that more than 1,000 rules were not reported to Congress in 2015.<sup>716</sup>



## **RECOVERY**

Congress did not recommend or suggest that agencies report their regulations to Congress and GAO; Congress required it by law.<sup>717</sup> The Office of Information and Regulatory Affairs—a part of OMB—should immediately and fully obey the law by directing all agencies to fulfill CRA reporting requirements. American businesses do not have the option to pick and choose the laws and regulations they will follow. If a small business owner ignores a federal regulation, he or she faces civil and criminal charges that could shut down the business. Federal agencies should not expect businesses' complete compliance with their regulations and then ignore the rules placed on them by Congress. America is still a nation of the people, by the people, and for the people. It is time agencies remember that fact and follow the law. The simple legislation brings additional oversight and accountability to the CFPB by requiring it to seek appropriations from Congress through the normal budget process, instead of receiving funding from the Federal Reserve.

# THE FOREIGN FILM FESTIVAL

*The State Department formed a film-making exchange program to bring foreign filmmakers to the US to learn how US filmmakers work*

The American film industry earns more than \$11 billion per year in just movie ticket sales,<sup>718</sup> and Hollywood as a whole earns more than half-trillion dollars each year.<sup>719</sup> Those figures do not even take into account revenue from endorsements, merchandising, and foreign ticket sales. While Hollywood movie companies do not always get it right, they generally know how to remain consistently successful, which is why it makes sense for aspiring filmmakers to want to learn more about how Hollywood works. But is it the responsibility of the US government to make that happen? The State Department thinks so.

Last year State announced a \$1 million funding opportunity for a non-profit group to partner with the US in the creation of the "MediaMakers Studio."<sup>720</sup> The program is intended to bring 12-18 "film and video professionals from approximately four to six countries with mentors in the US entertainment industry."<sup>721</sup> In other words, State is spending \$1 million to bring a dozen filmmakers from other countries to the US to educate them. After the training session has been completed, some of the mentors will later travel to selected countries "for continued creative consultation and engagement."<sup>722</sup>

In January 2016 State announced a partnership with the non-profit group Film Independent of Los Angeles to conduct the program, now titled Global Media Makers.<sup>723</sup> Fourteen film makers from Turkey, Lebanon, Morocco, Egypt, and Jordan participated in the five-week program with more than 10 US film and television makers.<sup>724</sup>

## **RECOVERY**

It is not the US government's responsibility to build up the film industry in other countries. If Hollywood wants to use some of their half-trillion in revenue each year to support the program, they are more than free to do so. But when 1 in 3 American families cannot handle the strain of a \$2,000 emergency expense,<sup>725</sup> spending \$1 million of their money to support a foreign industry with no obvious benefit to the US makes no sense. As we enter into a new administration, State must better focus its attention and resources on efforts that truly benefit the American public.



# WHAT DOES IT COST TO DISCOVER AMERICANS DON'T LIKE RUSSIAN AGGRESSION?

*Over the last few years, NSF funded a \$132,000 program to determine the American public's response to Russian aggression in Ukraine and other parts of the world*

Russia's most recent aggressive behavior in Europe and other parts of the world has caused an overwhelming percentage of Americans to view the country unfavorably.<sup>726</sup> After the widely watched invasion of Ukraine and interventions in Syria and other Middle Eastern countries, Gallup polls showed 76 percent of Americans had an unfavorable opinion of Russia in 2015.<sup>727</sup> Though that number fell to just 70 percent in early 2016, it is safe to say that most Americans are at least concerned about the aggressive nature of the Russian government and distrustful of its intentions.

Though Gallup has given this information to us for free, the NSF has duplicated that research with a three-year, \$132,000 study (to be completed in fall 2016), entitled "Russia, Ukraine, and the Dynamics of Public Attitudes Towards U.S. and Global Security."<sup>728</sup> The study is essentially designed to find out how the American public reacted to Russia's invasion of Ukraine and aggression in other parts of the world. To do this, the funding was used to conduct "four large, representative national panel surveys of the American public" over the course of a year.<sup>729</sup> The grantees hoped to determine which factors impact "public attitudes regarding the Ukraine crisis, ensuing events, and US foreign policy more generally."<sup>730</sup>



## **RECOVERY**

Americans are right to be worried about increased Russian aggression, and there is already publicly available data to support that statement. Rather than spend hard-earned taxpayer dollars restating the results, that money could be used for national and cyber security to protect the safety of American families, possibly to defend against Russian hacking<sup>731</sup> or in support of our allies being threatened by Russian troops. American families should have peace of mind that their government is doing all it can to keep them safe, not spending money to learn how they feel. As NSF approves future grant requests, it should ensure funds are only given to those engaged in work that will provide a tangible benefit to the American public and deal with topics that do not have publicly available data from the private sector.



# HIGH-PRICED HEALTH CARE FOR CONVICTED MURDERERS

*BOP contracts outside medical care for its prisoners sometimes at a 385 percent higher cost than other federal departments*

There are currently around 193,000 people in federal prisons across the country.<sup>732</sup> While that number is down from a record high of more than 219,000 in 2013,<sup>733</sup> BOP's budget has grown to \$7.48 billion in 2016.<sup>734</sup> While prisons have the expected overhead costs of employee salaries, food and uniforms for the prisoners, and maintenance of the facilities, a major rising expense is the cost to provide outside medical care to the prisoners.

Earlier this year, DOJ's IG found that BOP's budget increased 11 percent from FY10 to FY14, and during that same time, the cost to provide outside healthcare rose from \$263 million to \$327 million, an increase of 24 percent.<sup>735</sup> The IG found that the primary reason for the drastic increase is that BOP does not contract with outside providers at a preset rate.<sup>736</sup> In fact, BOP is the only federal agency "that pays for medical care that is not covered under a statute or regulation under which the government sets the agency's reimbursement rates."<sup>737</sup> BOP accepts and selects from medical contracts that charge a higher rate than would be charged to other agencies, most of which use Medicare rates to set reimbursement rates.<sup>738</sup>

The IG audited the medical expenses at 69 out of the 97 BOP locations and found that each one not only operated with a different medical care contract, but they all paid much higher than the Medicare rate.<sup>739</sup> The reimbursement rates ranged from 115 percent to 385 percent of the Medicare rate.<sup>740</sup> Additionally, the 69 institutions spent \$241 million for outside care in FY14, but had they capped their medical fees at the Medicare rate, they would have saved \$143 million in taxpayer money.<sup>741</sup>

## **RECOVERY**

There is an inherently higher cost to treat prisoners' medical needs, but BOP could create a preset rate limit to mitigate the problem. Congress should also develop legislation requiring BOP to utilize a preset rate when negotiating medical care prices. Individuals in federal custody should certainly receive appropriate medical care.

# YOUR PAIN (FOR THE THEORY OF) THEIR GAIN

*Our government will occasionally calculate the financial cost of regulations to Americans and then claim the impact is offset by benefits to people in other countries*

Often when a federal agency considers a regulation, it attempts to determine the regulation's impacts—frequently costs and benefits—on the American economy and small businesses.<sup>742</sup> However, some cost-benefit analysis tools used by the federal government leave open the opportunity to skew the math, which can lead to regulations whose costs are borne primarily by American businesses and benefits enjoyed by foreign countries.

Mentioned in last year's *Federal Fumbles*, the social cost of carbon (SCC) is a math-skewing estimation model of the social and economic damages caused by a one-ton increase in global carbon emissions in a particular year.<sup>743</sup> Agencies use SCC when they want to issue a rule to reduce global climate change damages by reducing domestic carbon emissions.<sup>744</sup> However, in violation of guidance from OMB, the SCC is based on the estimated *global* benefits and *domestic* costs of reduced carbon emissions—in other words, the costs of any SCC-based regulation are placed solely on American businesses and consumers, while the rest of the world enjoys the theoretical benefits.<sup>745</sup> This allows an agency to justify a huge actual cost on the American economy because they theorize benefits for the whole world.

In just the past few years, the model for the cost of carbon has increased by as much as 50 percent, not because of increased carbon or climate change, but because of a revision in the theoretical model. If the model can change by 50 percent in a year, how can anyone know what the costs and regulations might be in a few years?

## **RECOVERY**

When developing new regulations, our government should be open and honest with American families about the true costs and benefits on those who will actually be impacted by the regulation. American families will bear the cost of the SCC regulations, which will be in the billions of dollars each year. Agencies that use the SCC estimate know well their regulations will raise prices on Americans who use energy, American consumer goods, and American manufacturing. If the impact is to America, the benefit should also be to America. Agencies are not allowed to create a rule that will have a huge impact in one state, but benefit another one, without clear justification. The SCC and all other factors used to calculate the impact of regulations should be designed to only consider the American impact and the American benefits.

# HALF A BILLION DOLLAR FOREVER STAMP

## *USPS loses money every year by not charging magazine and periodical companies the actual cost of delivery*

In 1775 Benjamin Franklin was appointed the first Postmaster General, beginning the long and complicated story of federally funded and operated postal service.<sup>746</sup> A federal responsibility stemming from Article 1, Section 8 of the Constitution,<sup>747</sup> USPS, as we know it today, was formed in 1971.<sup>748</sup> Though USPS safely delivered 154 billion items of mail in FY15, it also ran a net loss of \$5.1 billion—its ninth-straight year in the red.<sup>749</sup> There are many avenues for postal reform, but one major loss for USPS each year is the roughly half-billion dollar loss from charging less for the mailing of magazines and periodicals than it actually costs to deliver.<sup>750</sup>

Last year, USPS lost \$512 million—and has lost \$5 billion since 2007—because it undercharges companies to send magazines and periodicals,<sup>751</sup> charging sometimes 25 percent less than the actual cost.<sup>752</sup> Unfortunately this is not a new development. The Post Office Act of 1792 required the delivery fee for newspapers to be lower than regular mail.<sup>753</sup> Two years later, the disparity was expand-

ed to include magazines.<sup>754</sup> Even in 1801 the cost of mailing these items exceeded the revenue collected, and Congress was forced to spend tax dollars to make up the difference.<sup>755</sup> Though Congress enacted widespread reforms in 1970, USPS was required to continue providing discounts for magazine and periodical mailings.<sup>756</sup>

Though USPS is required to collect the “attributable cost” of delivery—the cost to sort and deliver the magazines—it is not able to fully collect from magazine and periodical companies what is called the “institutional cost,” or the revenue needed to help pay employee salaries and other day-to-day costs.<sup>757</sup> To help offset the costs, USPS offers discounts to the magazine companies who help pre-sort items, arranging them by zip code or in some other way.<sup>758</sup> The discounts decrease the amount paid from companies to USPS and lower the cost of sorting and delivering for USPS, but they often exceed the actual cost of the work USPS is spared.<sup>759</sup>



## **RECOVERY**

As Congress considers methods to reform USPS, and as USPS reviews and updates its rates for all mail, special discounts for magazine and periodicals should be eliminated. The continuation of discounted rates for magazines and periodicals is equivalent to Congress and USPS playing favorites and supporting one type of news and magazines over others. More important, the preferential treatment places a massive burden on American taxpayers who will be expected to bail out the USPS. Magazine and periodical companies should not be given special treatment by USPS and should pay the actual cost of mailing their products.

# BORDER? WHAT BORDER?

*Though both share responsibility to prevent weapons trafficking along our southern border, ATF and ICE do not regularly communicate or work together to prevent drug cartel violence*

Most Americans remember the stories in the media from 2009 and 2010 about ATF's gun running program, known as Fast and Furious. Under the program, ATF sold more than 2,000 guns, including AK-47s,<sup>760</sup> to straw purchasers who were illegally buying the guns for known criminals.<sup>761</sup> ATF hoped to then track the guns to various leaders of drug cartels when they used guns during a crimes.<sup>762</sup> The guns not only made their way to the cartels, but they were also used in countless crimes along the way, including the tragic December 2010 murder of Border Patrol Agent Brian Terry by illegal immigrants on the Arizona side of the US-Mexican border.<sup>763</sup> In response to congressional inquiries about the operation, DOJ first provided inaccurate information that it later had to correct, then refused to share how this inaccurate information was provided to Congress or the process leading up to receipt of the correct information.<sup>764</sup>

The Fast and Furious tragedy reminds us that there is a serious epidemic of violence on the US-Mexico border, perpetrated by drug cartels and those related to the drug trade. Sadly, many of the weapons used in this violence come from the US,<sup>765</sup> which means there is an obvious responsibility on the part of the federal government to work to intercept these weapons before they can be used to injure or kill. ATF and ICE have split that job, an effort GAO reported in 2009 was rife with duplication and disputes over jurisdiction.<sup>766</sup>

After the 2009 GAO review, the two agencies entered into an updated memorandum of understanding, or MOU, to encourage cooperation.<sup>767</sup> Earlier this year, GAO conducted a follow-up analysis to determine the success of the MOU.<sup>768</sup> The review found that although

six years has passed since the MOU, the agencies still do not regularly communicate or "ensure that appropriate coordination is taking place."<sup>769</sup>

In fact, although the combined agencies have spent more than \$140 million<sup>770</sup> to work along the border, GAO reports "persistent challenges" in cooperation.<sup>771</sup> Additionally, GAO found that the government does not "adequately measure progress" to assess efforts of halting weapon trafficking across the border.<sup>772</sup> As a result, while the number of weapons seized can be tracked, there is no method to estimate the total number of weapons trafficked.<sup>773</sup>

## **RECOVERY**

With the death of Border Patrol Agent Brian Terry in 2010, the American public received a chilling wake-up call to how badly the US government manages and monitors gun trafficking on our southern border. This epidemic requires all relevant federal agencies to work together on a daily basis to stem the tide of illegal weapons trafficking. However, over the last six years, little progress has been made to unify federal efforts. For the safety of those protecting our border and the countless American families living along the border, ATF and ICE must work together, or ATF should be closed and their law enforcement responsibilities divided between ICE, FBI, and DEA. The two agencies should determine whether the 2009 MOU is still operable and work with Congress to ensure all necessary tools are available for a unified approach to secure our southern border.

# A JOURNEY JAIL

*NEH spent \$250,000 for a traveling classroom on prison life*

Currently 1 in 28 children have a parent in prison, and 10 million children have had a parent incarcerated at some point in their lives.<sup>774</sup> Between 15 percent and 20 percent of children entering the child welfare system have a parent who is in prison.<sup>775</sup> Families and communities throughout the nation are torn apart and forever impacted by the ever-increasing number of parents who have made poor decisions. Our nation should certainly have a conversation about who is sent to prison and why he or she is sent there. But this dialogue should begin at the family dinner table and spread through communities. That conversation should not occur at the expense of the American taxpayer.

Earlier this year, NEH announced a \$250,000 grant to the New School's Humanities Action Lab for a project entitled "States of Incarceration: A National Dialogue of Local Histories."<sup>776</sup> This exhibit, which will travel to 20 cities over the next 3 years, "focuses on the past, present, and future of incarceration."<sup>777</sup> Groups of students and local citizens throughout the country engaged in community conversations on the impact of prisons and incarceration to develop this project.

## **RECOVERY**

Elected officials should do more to encourage conversations in families and communities throughout the nation on how to both cut down on the number of people breaking laws and the number of people incarcerated in our nation's prisons. The Presidency comes with a massive bully pulpit. President Obama should have utilized his leadership position in our nation, not the tax dollars of hard-working American families, to suggest solutions for families working through our criminal justice system.



# HOW DO YOU HIRE A CONTRACTOR?

*A recent IG audit of just three Air Force contracts at one base revealed contractors are likely paid tens of millions more than they earned for work they did not do*

Our federal government uses private contractors for various projects that the government is unwilling or unable to do or that may be cheaper than doing the job with government labor. With more than \$400 billion in federal contracts each year,<sup>778</sup> it is important for the government to ensure it gets the best value for a reasonable price to ensure tax dollars are well spent. Unfortunately that does not always happen.

In February of this year, DOD's IG conducted an audit of three US Air Force contracts at just one installation in Georgia to find out whether they were properly negotiated and whether the Air Force got a good deal.<sup>779</sup> The contracts, valued at more than \$590 million, provide depot maintenance work for the Air Force's F-15, C-5, C-130, and C-17 aircrafts.<sup>780</sup>

The IG found that the Air Force did not properly negotiate the contracts and had not even entered into the correct type of contract. As a result, the Air Force entered into agreements that cost taxpayers between \$9.6 million and \$24.9 million more than should have been spent on these three contracts alone.<sup>781</sup> Specifically, the IG found that the contract with Boeing to maintain the C-17 was at least \$7.5 million higher than it should have been, the contract with Northrop Grumman to service the AN/APN-241 Low Power Color Radar was \$1.4 million higher than needed, and the contract with Honeywell for the Digital Mapping System and Advanced Display Core Processor was

\$562,119 higher than necessary due to miscalculating the amount of work these companies would actually have to perform.<sup>782</sup> Alternatively, if DOD had entered into a contract that took into consideration the benefits these companies would receive from the usage of military labor and facilities, the contracts would have been \$24.9 million lower.<sup>783</sup> The IG also found that DOD guidance on entering into these types of contracts lacked proper direction on how to accurately calculate the total amount owed to a contractor for a service.<sup>784</sup> As a result, the contractors were paid, and will continue to be paid through at least 2019, more than they have earned and for work they may not do.<sup>785</sup>

## **RECOVERY**

Just like homeowners would not hire a contractor without ensuring they get the required service for the best cost and effectiveness, DOD should ensure all contracts are properly calculated and do not pay out more than the contractor has earned. Our military service members need the best possible fighting tools and equipment necessary to do their jobs. But DOD also has an obligation to American taxpayers to use funds wisely and efficiently. DOD and Air Force should ensure that all future contracts only cover actual work and that the contracts are calculated properly so contractors receive proper compensation for work.

# DUPLICATIVE FRAUD AT THE IRS

## *IRS operates nine separate, overlapping, uncoordinated tax fraud prevention programs*

The federal government collected a record-breaking \$3,248,723,000,000 (that is \$3.2 trillion) in taxes from hard-working American families and businesses in FY15.<sup>786</sup> In just the first half of 2016, IRS collections topped \$1.48 trillion, setting a new pace that should exceed last year's income.<sup>787</sup> Though the collection numbers are very large and much higher than the federal government should need to accomplish its constitutionally limited functions in a year, they do not include all taxes legally owed.

Several hundred billion dollars in federal tax revenue is never even collected each year.<sup>788</sup> This so-called "tax gap" occurs for a multitude of reasons, but according to GAO, part of the cause is a lack of proper program management and communication at IRS,<sup>789</sup> which currently utilizes nine different programs for people to report instances of tax fraud.<sup>790</sup> The largest in terms of money recovered, the whistleblower program, received more than 12,000 reports of tax fraud last year. Over the last decade, the program has helped recoup more than \$3 billion in lost collections.<sup>791</sup> Another program, the information referral program, received 87,000 tips and recovered \$209 million over the last few years from people underreporting, not filing, and not withholding their taxes.<sup>792</sup>

A major problem with these nine separate, overlapping programs is that they do not communicate well with each other. GAO reports that the multitude of referral options along with the lengthy processing time discourages people from coming forward with fraud reports. Those who do come forward have a very difficult time determining the proper method and program through which they can report.<sup>793</sup>

The IRS has faced several well-publicized problems over the last few years. In 2013, it was revealed that applications from over 400 organizations, generally those aligned with the Tea Party movement, seeking legal 501(C)(4) non-profit status were targeted unnecessarily for review and forced to reveal private information not relevant to the processing of the application.<sup>794</sup> The situation was made worse when the IRS revealed that some emails from the employee at the center of the controversy had been deleted, making a full investigation into the matter difficult, if not impossible.<sup>795</sup> Another of IRS's problems, the paying out of billions in improper tax refunds when identity thieves steal American citizen's identification, was highlighted in last year's *Federal Fumbles*.<sup>796</sup>

## **RECOVERY**

Until Congress develops a simpler tax code to reduce tax fraud and cheating, the IRS has the responsibility to ensure the current system is properly enforced and that funds are ultimately recovered from those who cheat on their taxes. There may be bureaucratic logic for nine different programs to report tax fraud, but to the average American willing to report it, fraud is just fraud. The public should only have to deal with one program when reporting fraud, and even if IRS then needs to distinguish different types of fraud within different offices, there should be greater coordination at a leadership level about how the programs communicate with each other. IRS certainly faces challenges and problems, but this one should be fairly easy to fix. The agency should report to Congress quickly on how to simplify the tax fraud-reporting program and ensure effective and efficient collections from those who misfile their taxes.

# WHICH CAME FIRST: THE CHICKEN OR THE SALMONELLA?

*After the massive 2010 egg recall, federal food inspectors failed to implement effective inspection and communication processes to help prevent future mishaps*

In 2010 Americans witnessed the largest recall of eggs in our history when HHS and FDA ordered the recall of more than a half-billion eggs due to a salmonella contamination that caused 2,000 people to get sick.<sup>797</sup> A 2012 USDA IG report found that USDA food safety inspectors from both the Animal Plant Health Inspection Service (APHIS) and Agricultural Marketing Service (AMS), had visited the farm responsible for the salmonella outbreak and noted “that the company’s egg-laying barns had tested positive for [salmonella] over 4 months before the recall was issued.”<sup>798</sup>

So what went wrong? USDA inspectors, who are only responsible for eggs processed into egg products, did not communicate these life-threatening health and sanitation lapses to FDA inspectors, who oversee eggs still in their shells and their introduction into the marketplace.<sup>799</sup> Had the USDA and FDA coordinated their efforts, our government could have prevented the salmonella outbreak or, at the very least, significantly minimized its impact. If nothing else, the entire event should have served as a learning experience for the departments and a wake-up call to ensure proper communication processes are in place for any future event. Unfortunately, that did not happen. On June 8, 2016, the HHS IG sent FDA an urgent early alert outlining how FDA’s food recall program still does not have “an efficient and effective food recall initiation process” to “ensure the safety of the Nation’s food supply.”<sup>800</sup>



## **RECOVERY**

American families should be able to trust that all USDA-certified foods sold at grocery stores are safe for their families to eat. However, due to a conflicting federal food safety regulatory system involving USDA and FDA, the federal agencies still do not coordinate their food and safety inspection efforts, putting Americans at risk.<sup>801</sup>

CDC found that each year, more than 3,000 Americans die from foodborne illnesses.<sup>802</sup> To reduce potential harm to the American people and the American economy, the federal food safety regulatory system needs to implement a more effective and efficient plan of action and an inter-agency communication process. If federal inspectors observe food safety issues at a particular site, they should immediately alert the responsible agency regardless of jurisdiction. Bureaucratic hurdles must be broken down so agencies can coordinate efforts before key safety issues fall through the cracks.



# ONLY DROPPING TWO NEWBORNS IS PRETTY GOOD, RIGHT?

*For decades IHS has failed to fulfill its responsibilities to Indian Country and has provided substandard care to American Indians*

The Indian Health Service (IHS) operates within HHS<sup>803</sup> and ensures American Indians living on and off reservations (or former reservations) have access to quality health care.<sup>804</sup> As with other government-run healthcare endeavors,<sup>805</sup> IHS has more than its share of problems.<sup>806</sup> Unfortunately those problems have a very harmful impact on American Indians throughout the country.<sup>807</sup>

In December 2010 the Senate Indian Affairs Committee released a report detailing IHS failures in what the agency now calls the Great Plains area.<sup>808</sup> The report detailed major problems, such as closed or limited hospitals, mismanagement of funding, and not meeting required standards of operation.<sup>809</sup> The report also showed that employees who displayed poor performance or even misconduct were not terminated; they were merely transferred to another area.<sup>810</sup>

There has been little improvement over the last six years. Some facilities are still under threat of closure due to unmet operating standards,<sup>811</sup> and others—like the Rosebud Hospital in South Dakota—are regularly placed on “diversion” status for long periods of time because of failure to meet staffing or operation standards.<sup>812</sup> The facilities that are open still cannot guarantee quality care for their patients. For instance, in one facility a pregnant mother gave birth to a premature baby alone in the bathroom; a patient with a severe head injury was sent home before a doctor even analyzed test results that showed

the patient would need immediate care at another facility, and a young man tragically died of cardiac arrest shortly after being discharged without receiving a proper medical screening despite his complaints of several health issues.<sup>813</sup>

## **RECOVERY**

This dangerous and unconscionable treatment at the hands of federal employees is absolutely unacceptable. Earlier this year, Sens. Thune and Barrasso introduced the Indian Health Service Accountability Act.<sup>814</sup> The bill will provide IHS the tools necessary to terminate employees who contribute to negligent behavior, bring much needed assistance from other parts of HHS, and direct IHS to better communicate with Congress in the future on any other needs to ensure the best quality of care at IHS facilities.<sup>815</sup> Thankfully much of IHS leadership recognizes the issues the agency faces and wants to make things better.<sup>816</sup> Unfortunately there are some—including the senior official who joked to the Senate Indian Affairs Committee staff that only dropping two newborn children on the floor in 8 years is “pretty good,”—who apparently do not recognize the issues.<sup>817</sup> The legislation gives IHS leadership the essential authority to clean house and improve the services provided to American Indians. The bill guarantees that Congress can utilize its oversight authority to ensure the reforms are carried through.



# GOT CHRISTMAS TREES?

*The federal government seeks to boost Christmas tree sales by taxing them*



There has been much debate throughout the country on the so-called “War on Christmas”—efforts by some to remove specific mentions of Christ or religion from this religious holiday in order to not offend non-believers.<sup>818</sup> In the midst of the ongoing debate, it may or may not surprise many Americans that their federal government both encourages the purchase of Christmas trees and taxes them.

The Christmas Tree Promotion Board, a part of USDA’s Agricultural Marketing Service, is a program created under the 2014 Farm Bill.<sup>819</sup> The goal of the Board is to create a marketing campaign similar to the famous “Got

Milk” campaign and “is designed to strengthen the Christmas tree industry’s position in the marketplace.”<sup>820</sup>

Those who grow, harvest, or import more than a certain number of Christmas trees in a year were required to pay a tax per tree starting in the 2015 season.<sup>821</sup> Going forward, the tax is due on February 15 for the preceding year’s sales.<sup>822</sup> On March 1, 2016, the Board published a proposed rule to issue late payment and interest charges on past-due “assessments” for the government’s services “promoting” the growers’ product.<sup>823</sup>

## **RECOVERY**

In our era of ever-growing federal debt and sluggish economic growth, we must ask whether it is appropriate for the federal government to establish an agency to promote Christmas trees and then tax tree growers. The federal government should limit its interference in the marketplace, and by charging Christmas tree growers fees, the Board is doing just the opposite. If Congress and USDA really want to support the Christmas tree industry, they should remove the unnecessary federal intervention and taxation. Families seeking to celebrate Christmas will continue to buy the 25 to 30 million Christmas trees sold each year<sup>824</sup> without the federal government telling them they should.

# THE BRITISH ARE COMING! THE BRITISH ARE COMING!

*The US Embassy in London offered a free trip to America for a lucky British journalist and \$160,000 in grants to produce election games*

For the past year, every American who tuned in to a news network or program received minute-by-minute coverage of the 2016 presidential campaign. Interest in this election cycle did not stop at our borders. News stations around the world covered many of the same stories we watched here at home.<sup>825</sup> With the worldwide implications of the election, it makes sense that our embassies abroad would engage with their host nations' citizenry, who may be unfamiliar with our electoral system, to explain how it works. However, it does not make sense for American taxpayers to pay for this US civics lesson for the benefit of countries that have been long-term allies and should be very familiar with how our government works.

Earlier this year, the US Embassy in London announced two grant opportunities totaling \$160,000 to do just that. The first grant was to create a game where participants build their own presidential campaign<sup>826</sup> and to pay the expense of sending a foreign journalist on a tour of the US to cover the election.<sup>827</sup>



With a funding opportunity of \$70,000, applicants were encouraged to develop "a program to guide British students to a deeper understanding of U.S. Presidential Elections and the American voter."<sup>828</sup> Students participating in the program spent September and October planning and implementing a mock presidential campaign and held their own mock election concurrently with ours.<sup>829</sup>

Our London embassy also offered a \$90,000 funding opportunity to send a UK journalist to the US to cover our election.<sup>830</sup> Participants were allowed to develop their own schedule and locations they wished to visit here in the US during the months of September and October.<sup>831</sup> The embassy's goal was to "support accurate coverage of the US Presidential election to key communities across the United Kingdom" and to "promote a more accurate and positive image of the United States."<sup>832</sup> Apparently our embassy thinks we need to pay British journalists for better coverage of the US.

## **RECOVERY**

The mission of our embassies and representatives abroad is to build goodwill and better understanding. Yet when there is easy access to countless news sites with a global presence, it is hard to justify spending \$160,000 to help the people of our closest ally understand our elections. There is a tangible benefit to investing in other countries' greater understanding of, and connection with, our way of life. But those efforts should be focused on countries where we need to develop deeper relationships. The Middle East, Eastern Europe, and South America all have countries where these efforts can and should be much more fruitful. With more than 200 years of friendship (with the minor exception of that issue in 1812), the British people have surely figured out our political process by now.

# DISABILITY KICKBACKS

*SSA took years to remove an ALJ it knew or should have known was engaged in multiple counts of corruption and bribery*



For disabled Americans who are too young to receive Social Security retirement benefits, SSA's disability programs can be essential to pay the bills and keep food on the family dinner table.<sup>833</sup> During the recession of the last decade, beneficiaries of SSA's Supplemental Security Income or Disability Insurance have increased to almost 19 million recipients who receive more than \$200 billion in taxpayer-funded aid.<sup>834</sup> With that many applicants, it is natural that some unqualified individuals would seek aid, be turned down, and then appeal the decision. SSA has a multi-layered appeals process that includes the use of Administrative Law Judges (ALJs).<sup>835</sup> There are currently almost 2,000 ALJs,<sup>836</sup> and Congress recently gave SSA the funds to hire even more.<sup>837</sup> Unfortunately SSA also needs to create a quicker review and termination process for ALJs who abuse their authority or break the law.

In one example, earlier this year DOJ indicted an attorney, a doctor, and a retired ALJ on charges of defrauding SSA out of \$600 million over the course of eight years.<sup>838</sup> The attorney, who advertised himself as "Mr. Social Security," falsified records and bribed doctors to sign off on documentation that his clients were disabled.<sup>839</sup> Then if the claims were denied, the ALJ would assign the case to himself, approve it, and collect a pay-off from the attorney.<sup>840</sup>

The problem is that SSA knew or should have known that this ALJ was failing to do his job. While odds are that an

ALJ will end up approving benefits in an appeal, this particular ALJ was known to approve almost all the appeals he reviewed.<sup>841</sup> In fact, in FY10 he approved 1,280 out of 1,284.<sup>842</sup> As if this alone was not a red flag, SSA was also notified by the ALJ's peers and other staff that he approved a high number of cases, focusing on cases from a particular attorney and taking cases from other judges.<sup>843</sup> In fact, several years before the ALJ's retirement, two staffers in his office filed complaints with SSA that were not only ignored but that forced the staffers to file whistleblower protection lawsuits after their supervisors began harassing them for filing the complaint.<sup>844</sup>

## **RECOVERY**

SSA management should fulfill its responsibility: to perform continuous review of outlier judges' decisions, provide retraining and feedback until said decisions are compliant with the law, and initiate removal proceedings if judges are unable or unwilling to comply. In addition, attorney representatives with case-filing patterns that suggest fraud should be reviewed and sanctioned and/or reported to authorities if found to be fraudulent. Americans who are legitimately disabled and seek federal assistance should be able to have full confidence in the process. They should not have to worry about whether their ALJ is intoxicated, overworked, or being bribed by an attorney.

# REORGANIZING THE DECK CHAIRS

*After the Deepwater Horizon explosion, Interior developed a bureau to oversee marine oil and gas exploration, which then spent the next five years reorganizing itself instead of doing its job*

The April 2010 Deepwater Horizon explosion in the Gulf of Mexico was our country's largest marine oil spill. The spill yielded major reorganization of DOI's oversight offices for offshore oil and gas production.<sup>845</sup> With an initial reorganization plan released in May 2010, DOI announced in October 2011 the creation of the Bureau of Safety and Environmental Enforcement to lead efforts to bring "regulatory standardization and enhancement."<sup>846</sup> The Bureau's mission is to investigate violations of and enforce compliance with the rules that could have prevented the Deepwater Horizon explosion.<sup>847</sup>

A GAO report from early 2016 states that while the Bureau underwent its own reorganization in 2013, over the last five years of its existence, it has "made limited progress" in developing the tools necessary to complete its mission.<sup>848</sup> In fact, the Bureau still utilizes policies and procedures that were created before the Deepwater Horizon explosion and has not developed a comprehensive list of its responsibilities or procedures<sup>849</sup> despite spending \$2.5 million<sup>850</sup> hiring consultants in 2012 and 2013 to provide advice on the Bureau's oversight capabilities.<sup>851</sup>

GAO states the Bureau's continuing and incomplete reorganization effort "risks weakening the Bureau's"

ability to fulfill its oversight responsibilities.<sup>852</sup> Additionally, the Bureau's incomplete development of oversight policies means that its own employees and the public do not know how the Bureau's enforcement authority, specifically warnings and fines, might be used.<sup>853</sup>

## **RECOVERY**

DOI has a responsibility to work with the industry to help ensure that another multi-billion dollar accident like the Deepwater Horizon explosion, which claimed the lives of 11 people does not happen again. The creation of the Bureau was a step in that direction, but DOI has failed to ensure it is equipped to do its job in an efficient and cost-effective way. While there may be just cause for the Bureau to undergo several years of multiple reorganizations, there comes a time when it must actually focus on its job. No private company would create a subsidiary and then spend millions over several years constantly reorganizing it. DOI should stop wasting tax dollars on this unending reorganization, determine the best way for this organization to work, and ensure it is doing the job the American public is paying it to do.

# PICKING BIRDS OVER WEEDS

*BLM announced a \$750,000 funding opportunity to assess the impact of fire-prevention efforts in a single Idaho county*

Congress delegated the responsibility to protect our nation's parks and wildlife to FWS. One of FWS's jobs, maintaining the endangered species list, regularly gains widespread attention.<sup>854</sup> Over the last few years, FWS has conducted a study to determine whether or not the sage grouse, a large chicken-like bird, should be placed on the endangered species list.<sup>855</sup> Late last year, after finding that the sage grouse population grew and "does not face the risk of extinction now or in the foreseeable future," FWS determined the grouse does not need federal protection.<sup>856</sup> With that in mind, it would make sense for the federal government to utilize funds for the conservation and preservation of habitats for animals actually endangered.

Instead a different agency within Interior, BLM, announced a \$750,000 funding opportunity for a five-year study of how the removal of the invasive juniper plant may impact the habitat of the sage grouse in one Idaho county.<sup>857</sup> Apparently over the last few years the spread of juniper plants has increased the wildfire danger, so BLM is working to remove the plants.<sup>858</sup> BLM believes the action will benefit the sage grouse and other species in the area. But BLM would like to conduct a study to be sure.<sup>859</sup> BLM's funding announcement states that the report generated from the study will help maintain the Owyhee Uplands, located throughout the Idaho county, and does not list any benefits to conservation efforts elsewhere.<sup>860</sup>



## **RECOVERY**

All of us can work to protect the beautiful planet and nation God gave us. We can work to leave things better than we found them. But we also have an obligation to limit the amount of debt we leave behind. Common sense dictates that removing a fire hazard and a plant that squeezes out the sage grouse's habitat would be beneficial to the species. BLM is already undertaking juniper removal efforts, meaning that even if the study showed the results were harmful, there would be nothing BLM could do about it. BLM can and should monitor the impact of juniper removal, but there is no need to require federal taxpayers to pay for an outside consultant to provide un-actionable information.

# AND YOU THOUGHT YOUR DOWNLOAD SPEED WAS SLOW...

*DHS has taken 11 years and more than \$3 billion to overhaul how Immigration Services processes applications from foreigners seeking to live in the US, yet the IG says, “little progress has been made”*

Every year tens of millions of foreign citizens apply to come to the US for various reasons: education, work, visiting friends and family, or even to live here on a long-term basis.<sup>861</sup> To help process these applications, US Citizenship and Immigration Services began work in 2005 to revamp its system to be electronically based with higher security and a more cost-effective operation.<sup>862</sup> Eleven years later, this revamp is still underway, behind schedule, and drastically over budget.

DHS initially planned to complete the project by 2014 at a cost of \$2.1 billion, but now DHS anticipates completion by 2019 at a cost of more than \$3 billion.<sup>863</sup> When this modernization project—now called the Transformation Program—is finished, those seeking to enter the US will be able to apply and track the progress of their applications online.<sup>864</sup> The system will be able to help Immigration Services process the applications by scanning for national security issues or cases of fraud. Additionally, it will give the agency the ability to connect with DOJ, State, and other federal departments to cross-check applicants.<sup>865</sup>

GAO reports that much of the delay in the creation of the new program stems from changes USCIS has made over the years to their acquisition strategy, including changes in the design of the software and its approach to contracting.<sup>866</sup> The major aspects of the changes occurred after a 2012 OMB review found the program had utilized “deficient software code and [was] performing at an unacceptably low rate of productivity.”<sup>867</sup>

In March the Senate Homeland Security and Government Affairs Committee held a hearing entitled “The Security of U.S. Visa Programs” that heard testimony on USCIS’s work on the Transformation Program.<sup>868</sup> During the hearing DHS’s IG confirmed GAO’s findings stating that when it audited the program in late 2015 the IG found little progress toward completion.<sup>869</sup> Specifically, the IG found that only 2 of 90 functions necessary for processing a visa application were online and that USCIS employees found “that the system was not user-friendly...and had significant performance problems.”<sup>870</sup>

## **RECOVERY**

In 2014 more than 1 million people obtained lawful permanent residency status in the US, and since USCIS began updating its online application program, more than 10 million have gained legal status.<sup>871</sup> This means more than 10 million people were filtered through a system USCIS recognizes does not work and has spent more than 11 years and an estimated \$3 billion to attempt to fix. Congress should continue to conduct aggressive oversight to push DHS and USCIS to stay on schedule to complete the Transformation Program. It is unacceptable that hard-working American taxpayers paid billions of dollars for an overhaul of our immigration applications process with “little progress”<sup>872</sup> 11 years later.

# TWO HEALTH PLANS BUT NOT FOR THE PRICE OF ONE

*Congress requires DOD to operate a completely duplicative healthcare plan that costs more than \$1 billion a year*

The men and women of our Armed Forces, who wear the cloth of our nation, fight for our freedom, and willingly give their lives to protect our freedom, deserve the best health care possible. Over the last few years, all Americans have seen the heartbreaking and substandard care provided at many of the VA centers across the nation.<sup>873</sup> As Congress, VA, and DOD look to improve healthcare options for our nation's veterans, it is important to identify programs that take money away from viable healthcare options and make it more difficult to obtain quality care.

In the early 1980s, Congress created the US Family Health Plan, which offers care for military beneficiaries. Although updated somewhat in 1997, it has not been updated since.<sup>874</sup> The 1997 changes actually made the program completely duplicative of TRICARE, the primary DOD healthcare program.<sup>875</sup> In fact, the 134,000+ enrollees in the US Family Health Plan are, by Congressional requirement, eligible for TRICARE.<sup>876</sup> This program has six different providers throughout the country. Four are in New England, and all overlap TRICARE's networks. Adding to the issues with the program, GAO notes it is "not integrated with the rest of the Military Health System,"<sup>877</sup> which means recipients are not eligible to obtain care at military hospitals and clinics and DOD cannot easily make reforms to increase efficiency.<sup>878</sup>



## **RECOVERY**

This is a congressional fumble. Since 1997 Congress has required DOD to offer the duplicative program, moving resources that could be used to improve care to the operation of an unnecessary program. DOD and Congress should work together to develop a seamless transition plan to move all Family Health Plan enrollees to TRICARE, for which they are already eligible. Congress should then eliminate the duplicative and costly program and concentrate on efforts to improve healthcare choices for our nation's warfighters.



# ORGANICALLY-GROWN DEBT

## *USDA spent \$2 million to fund organic farming—a \$43 billion industry*

Organic farming has been a growing industry for the last sixty years.<sup>879</sup> At first individual farmers, local farming communities, and states decided the qualifications for food to be labeled “organic.” Due to varying standards of what was and what was not organic, Congress decided in 1990 that a standard was necessary for organic food labeling through the Organic Foods Production Act, and 12 years after the law passed, the USDA promulgated regulations in 2002 to implement those standards.<sup>880</sup> In the 14 years since the standards have been in place, it is clear the American people have an interest in buying organic foods. Families in the US have gone from spending \$1 billion<sup>881</sup> on organic foods in 1990 to more than \$39 billion today.<sup>882</sup>



Despite this significant success for the organic food industry, USDA announced \$18 million in taxpayer funding in December 2015 to “solve critical organic agriculture issues, priorities, or problems.”<sup>883</sup> The funding, which would be paid in grants ranging from \$50,000 to \$2 million, aims at any individual or group that could develop methods to increase the ability of current organic farmers to “grow and market high quality organic” food.<sup>884</sup>

In other words the federal government spent \$18 million from hard-working American taxpaying families to help an industry that has already grown by \$38 billion over the last quarter-century.

## **RECOVERY**

The federal government has a role to play in the safety and security of our food supply. Hard-working American farmers deserve our full support. But with more than \$19 trillion in debt, the federal government has no reason to spend \$18 million to further support a firmly established, successful industry. USDA should limit spending to areas that support the continued safety of the American food supply and not fund already successful alternative food industries.

# HOW DOES THAT RULING MAKE YOU FEEL?

## *NSF funded multiple grants to study fairness in our court system and to determine how rulings make people feel*

Every day state, tribal, and federal courts handle cases that impact the lives of millions of American families, plus foreign citizens. The federal courts alone hear more than 400,000 cases per year.<sup>885</sup> These cases impact every aspect of American life, even affecting those who are not a party to the case. Depending on the individual, the impacts can be either good or bad. With an active judiciary, it is unlikely that a year can go by without a case impacting each American family in some way.

NSF approved two multi-year grants, totaling approximately \$315,000, to attempt to study the judicial process<sup>886</sup> and determine how rulings impact certain affected groups.<sup>887</sup> The first grant, costing taxpayers nearly \$200,000, seeks to determine over the course of two years whether judges are able to remain fair when presiding over a case in which one of the parties does not have an attorney. The grantees will work with the New York Housing Court to train judges on fairness, and then use law students to grade how fair the judges are in actual cases.<sup>888</sup> In these same courts, the grantees will train parties to determine if that impacts complaints of unfairness after a case ends.<sup>889</sup>

The second grant (\$120,703) seeks to survey 1,000 people, half of whom will be impacted by a Supreme

Court decision, the other half of whom could possibly *feel* indirectly impacted by the decision.<sup>890</sup> The survey, which the grantees planned to conduct two months and six months after the ruling, will look for the psychological impacts of the decision.<sup>891</sup> In other words the study will try to see how people directly impacted and possibly indirectly impacted feel about a major judicial decision. The grantees hope to provide an “understanding [of] how other judicial decisions might have similar or different psychological consequences.”<sup>892</sup>

## **RECOVERY**

Alexander Hamilton wrote in the *Federalist Papers* that without an independent and fair judiciary, “reservations of particular rights or privileges would amount to nothing.”<sup>893</sup> He argued the judiciary can and should ensure the Executive and Legislative Branches do not limit the enjoyment of the rights clearly protected by the Constitution.

All Americans should have access and confidence in a neutral and fair court system. It is not reasonable to judge the neutrality and fairness of American courts by only one court: the New York Housing Court. Court decisions should be based on law, not feelings.

# A SATELLITE FOR EVERYONE

*Despite a Joint Chiefs order requiring military procurements of commercial satellites through a centralized DOD Agency, individual military services spend hundreds of millions to enter into their own contracts*

The US launched its first communications satellite into space in 1958. Remaining in orbit for less than a month, it was also the first satellite to transmit audio from space to Earth in the form of a recorded Christmas message from then-President Dwight Eisenhower.<sup>895</sup> Over the next decade, satellite technology advanced rapidly, and by the mid-1960s the US military widely used commercial and some military satellites for communications, surveillance, and other purposes.<sup>896</sup> Currently, DOD spends more than \$1 billion per year to lease commercial satellites for use in conjunction with its own systems.<sup>897</sup>

While DOD does use commercial satellites, GAO reports DOD's procurement methods are "fragmented and inefficient."<sup>898</sup> This is caused by individual combatant commands and the service branches entering into their own commercial satellite usage contracts instead of working at a department level.<sup>899</sup> This is despite a requirement from the Chairman of the Joint Chiefs of Staff that the Defense Information Systems Agency procure all commercial satellite needs for the DOD.<sup>900</sup> GAO reports that in 2012, the most recent year for which information is available, 34 percent of all DOD commercial satellite needs were obtained independent of the Defense Information Systems Agency and cost taxpayers \$290 million because DOD "has not enforced this policy."<sup>901</sup> As of now DOD has still not conducted an internal review of satellite procurement to determine the best way to enforce the policy, so it cannot easily quantify possible savings.



## **RECOVERY**

It is very likely there are pressing needs for DOD and service branches to immediately procure or contract for private satellites instead of using the centralized method. However, DOD has not even conducted a full analysis to determine how much of the 34 percent of the current independent procurements could be conducted through the required agency. DOD has an obligation to ensure funds are utilized properly and efficiently. DOD should report to Congress on how it plans to fully implement the Joint Chiefs' requirement that all DOD commercial satellites need to be obtained in a centralized manner to eliminate unnecessary and/or duplicative spending.

# \$47,400 COIN TOSS

## *TSA spent \$47,400 to create a randomizing app to direct airline passengers to either enter the left or right line at the airport*

At the start of each football game, the referee gathers the team captains at the 50-yard line; they shake hands and then flip a coin to determine who will kick off and who will receive. For generations flipping a coin has been used by the indecisive to more easily make a decision from two options. For those without a coin handy, there are countless phone apps available, or may simply type “flip a coin” into a Google search to see an animated coin randomly land on heads or tails. With all of these free options available, leave it to the federal government to spend more than \$47,000 on a tablet application<sup>902</sup> to do what Google does for free.

Regular travelers are likely very familiar with TSA's pre-check system. It enables known travelers to pass through a simple metal detector instead of removing shoes and belts to go through the full-body scanner.<sup>903</sup> These known travelers have previously provided their fingerprints to TSA and have undergone a full background check before being certified to use the quicker security line.<sup>904</sup>

But over the last few years, TSA has randomly selected non-certified fliers to still use the quicker pre-check line.<sup>905</sup> The process helps cut down on wait times from extra-long lines in the regular security line.<sup>906</sup> To do this on a truly random basis, TSA signed a \$1.4 million contract with IBM to enhance software systems, which included the randomizer app for the iPad.<sup>907</sup> TSA agents use this app by tapping on the screen to get an arrow to randomly point left or right as a non-TSA Pre-Check certified passenger walks up to the security line.<sup>908</sup> The passenger then goes through either the Pre-Check line or the regular security line depending on which direction the arrow points.<sup>909</sup> It should be noted that according to other app developers, similar programs can be created in under ten minutes and converted to multiple operating systems.<sup>910</sup>

There are actually two fumbles here. First, TSA spent more than \$40,000 for a simple iPad app to randomly

point left or right. Second, TSA used this app to randomly send people into the limited security line without knowing who they are or what they may carry. In 2015 TSA's IG conducted an undercover test of agents to see whether they would detect guns and explosives brought through the security line. TSA failed 67 out of 70 times.<sup>911</sup> After this, TSA decided to only let passengers use the Pre-Check line if they were either Pre-Check certified or they had already been examined by TSA canines.<sup>912</sup>

## **RECOVERY**

TSA spent more than \$47,000 on an app it can no longer use because in late 2015 TSA limited the number of people who can utilize the Pre-Check line without being certified. While this likely increases passenger safety, it still leaves the question of why TSA spent thousands of dollars to obtain an app that randomly points left or right. This is symbolic of a larger government problem. Instead of solving the problems that cause extra-long security lines, the government spent thousands of dollars on a tablet app to randomly let unknown passengers use the more limited security process. Only when it was discovered to be unsecure did the federal government change policies and make the application unnecessary.

TSA has an extraordinarily tough job. Foreign and domestic terrorism are realities, and our country is all too familiar with bad actors who want to use our friendly skies for evil purposes. TSA agents deserve thanks from the American public for safely protecting thousands of passengers, pilots, flight attendants, and everyone who contributes to the aviation system daily. But fumbles like this, which never would have happened with a little common sense and planning ahead, do not help endear TSA to the public. Before spending money, TSA should spend more time considering the long-term use of the investment, which devices are already readily available, and whether any potential action truly enhances security at our nation's airports.

# WITH LIBERTY AND JUSTICE (AND THE SAME RULES) FOR ALL...

*There is currently no set standard for federal employee conduct, which means what is prohibited by one agency may be allowed or overlooked by another*

To serve US taxpayers who ultimately pay their salaries, federal employees should be held to the highest professional standards. Last year's *Federal Fumbles* highlighted how employees who violate their agency's rules are often placed on administrative leave for long periods of time instead of being terminated.<sup>913</sup> GAO found that these paid federal vacations cost hard-working American taxpayers more than \$3 billion from 2011 to 2013.<sup>914</sup> To help fix this, *Federal Fumbles* recommended that Congress give greater latitude to agencies that need to discipline and terminate employees who have broken rules and are guilty of misconduct.<sup>915</sup>

Unfortunately not all federal agencies hold their employees to the highest standard, and the same employee rules do not apply to all federal employees. In one example the EPA's IG highlighted in its FY15 EPA Management Challenges report that managers knowingly let employees commit timesheet fraud and that two employees watched pornography regularly on federal computers during work hours.<sup>916</sup> EPA's employee conduct rules did not address these issues, so EPA allowed the unacceptable behaviors to initially go unnoticed and unpun-

ished.<sup>917</sup> This blatant mismanagement and inconsistent application of rules across the federal government violates Americans' trust in their government and wastes taxpayer dollars.

## **RECOVERY**

Recovering the ball on this fumble is pretty straightforward. OMB, with any necessary assistance from Congress, should put in place clear rules governing employee behavior throughout the federal government. Unscrupulous behavior should be equally prohibited and equally treated no matter the federal agency and no matter the federal employee. This uniformity brings clarity to federal managers and gives notice to federal employees of the exact expectations of their behavior while on the clock. Everyday hard-working Americans go to work and do their jobs while not violating their employers' codes of conduct or other workplace policies. In many private-sector jobs, wasted time equals lost money, and clear workplace policies ensure employees are productive. Federal employees should be held to the same standards.

# IMMIGRANT EXERCISE

*Over the last five years, NIH has invested more than \$1.5 million to conduct a study on the different health impacts of exercise and healthy eating on immigrants in Minnesota*

The US is home to an estimated 42 million immigrants,<sup>918</sup> 11 to 12 million of whom are here unlawfully.<sup>919</sup> NIH spent more than \$1.6 million on a five-year program to “improve physical activity and nutrition among immigrant and refugee families in Rochester, Minnesota”,<sup>920</sup> arguing that the group’s “health is critical to the future of this country.”<sup>921</sup>

Starting in 2011, NIH has provided more than \$300,000 per year to put 160 immigrants through one of two “intervention” programs to assist them in maintaining a basic healthiness.<sup>922</sup> Half of the participants began the program immediately, and the other half began one year later in order to assess the differences in health after two years.<sup>923</sup> Half of those who began the program in year one received 13 home visits over the course of the first six months for “family mentoring/educational sessions focused on physical activity and healthy nutrition.”<sup>924</sup> For months 7-12, these same participants received up to 12 phone calls from researchers to check on progress and to repeat some of the lessons taught during

the first six months.<sup>925</sup> This process was repeated for the participants who began the program in year two.<sup>926</sup> In other words the study will determine which group is healthier: the one that spent the full two years exercising and eating healthier or the group that only spent one year exercising and eating healthier.

## **RECOVERY**

America is the greatest nation in the world, and it is hard to believe we need one more incentive to attract new immigrants. It is also difficult to understand why this type of research is either not obvious or open to all Americans. Once again, enactment of the GRANT Act will help bring down the number of low-priority grant approvals like this one, but grant providers like NIH must invest more time to ensure the grants they approve truly advance our nation’s interests.



# LET'S CONTRACT THAT

*Though Congress has asked agencies to decrease the number of no-bid contracts, FAA made limited efforts to move toward competitive contracting*

When looking to buy a new car, most Americans will visit multiple car dealerships, test-drive different makes and models, and decide the type of vehicle they want. After settling on the type of vehicle, most people will visit with multiple dealers to negotiate the best price. In much the same way, when the federal government needs to buy something, it will generally open the door to as many entities as possible to submit a bid to win the contract. This competition can help save taxpayer money while also ensuring the government receives the best product.

To encourage departments to expand opportunities for bid contracts, Congress required in 2009 an annual report of the number of no-bid, or sole-source, contracts.<sup>927</sup> Also since 2009, OMB has required agencies to bring down the total number of no-bid contracts.<sup>928</sup> According to reports, FAA has struggled to bring down the total number of its no-bid contracts.<sup>929</sup> In fact, according to an IG report from earlier this year, between FY08 and FY13, FAA had 65 percent of all of DOT's no-bid contracts. Including FY14 brings FAA's total number of no-bid contracts to 624 at a cost of \$2.2 billion.<sup>930</sup> On top of that, even though Congress requires full reporting of no-bid contracts, FAA's internal errors caused 86 no-bid contracts, at a value of \$166 million, to not be reported to Congress, just between 2012 and 2014.<sup>931</sup>

While FAA did develop a plan to decrease its total number of no-bid contracts starting in 2009, it did not put in place any performance metrics to ensure or show suc-

cess.<sup>932</sup> The IG also reports FAA has an ineffective procurement process that inhibits FAA's ability to plan ahead, especially when the contract involves an outside company's proprietary technology.<sup>933</sup> As a result, the agency becomes stuck in a lengthy no-bid contract because it did not plan ahead and ensure the possibility of competition when contracting a project.<sup>934</sup> Even though FAA has a process in place for no-bid contracts, the IG's audit of 34 random no-bid contracts found that 29, totaling \$962 million, failed to meet these requirements.<sup>935</sup>

## **RECOVERY**

FAA has an obligation to follow the law as well as directives from Congress and OMB to decrease and fully report the number of no-bid contracts entered into each year. More importantly FAA owes it to federal taxpayers to ensure money is spent wisely and effectively. No-bid contracts are occasionally necessary, but they should be used sparingly and only as a last resort. Instead, FAA should use traditional bid contracts to bring competition into the bidding process and help save taxpayer dollars. With additional federal oversight, FAA should also ensure it meets congressional and OMB requirements on no-bid contracts. Just as Americans typically do not make a major purchase without checking to ensure they have the best price, FAA must ensure it gets the best price possible for all of its contracts.

# IRAN IS KNOWN FOR TERRORISM, NUCLEAR WEAPONS, AND NOW ART

## *NEA spent \$35,000 to fund an exhibit to show changes in Iranian art over the last 30 years*

Iran is the largest state sponsor of terrorism in the world. Since the 1979 revolution, Iran has facilitated the death of thousands of people and provided funding and support to terrorists around the world. The recent nuclear deal with President Obama paved a ten-year path to a nuclear weapon and gave Iran billions of dollars in sanctions relief (see page 31). Now NEA has also given Iran their own U.S. taxpayer-funded art exhibit through a \$30,000 grant to fund a three-month exhibit in New York called "Global/Local 1960-2015: Six Artists from Iran."<sup>936</sup>

The exhibit, which "explore[d] how ornamentation pervades the work of artists of different generations, and how they reconciled international modernisms with local traditions," is intended to show how art in Iran has changed from the 1979 revolution to today.<sup>937</sup> The six artists were chosen to display the changes from Western influences before the revolution, the impact of the revolution (and subsequent Iran/Iraq war), and other events.<sup>938</sup>

It is unreasonable to expect American families to foot the bill for Iranian artists at the same time many Iraq war veterans are still recovering from wounds caused by Iranian-built IEDs. Since the exhibit was funded by more than 15 non-federal sources, it would seem that there are plenty of outside sources who could have funded the project.<sup>939</sup>

## **RECOVERY**

Even if this was not an attempt by NEA to make a political statement about Iran, with a national debt over \$19 trillion, there are more important things on which to spend tax dollars than to study the art of another country. The GRANT Act would certainly cause NEA and other grant providers to spend more time considering whether the grants they issue would truly be in the national interest.



# SAFETY FIRST!

*A recent report shows DOD's Defense Logistics Agency failed to ensure that only properly working spare aircraft parts got to our nation's warfighters*

The equipment manager on a football team is responsible for ensuring the team always has the necessary safety equipment ready to go for practices and games. What happens on game day if the manager realizes the sporting goods company sent defective pads? Should the team take the field and simply make do for the rest of the season, or should the manager go back to the company and demand the proper safety equipment? Common sense suggests demanding proper equipment from the company. Well, that is not what the federal government does.

A recent report by DOD's IG shows that on multiple occasions (269 to be exact), the Defense Logistics Agency failed to recognize that contractors provided defective or incorrect spare aircraft parts and failed to seek either a replacement or a refund.<sup>940</sup> The IG estimates that the failure led to the loss of at least \$12.3 million and more important, "negatively impact[ed] warfighter readiness and safety."<sup>941</sup>

Frustratingly, there is an existing four-step process that, if followed completely, would have eliminated many, if not

all, of the errors.<sup>942</sup> Instead the IG found that the "limited execution of these steps hindered [the Agency's] ability to pursue and obtain appropriate restitution and left defective parts unaccounted for in the DOD supply system."<sup>943</sup>

## **RECOVERY**

No football coach would send a team out with defective pads, DOD should not put the safety of our nation's pilots at risk by giving them defective or incorrect spare aircraft parts. That is just common sense. Fixing the problem should be fairly easy for DOD, but in case it does require congressional action, this year Sen. James Lankford authored language in the 2017 National Defense Appropriations Act to direct DOD to create a Weapons System Sustainment Strategy.<sup>944</sup> The strategy will help DOD address this problem through product support, supply chain integration, and asset visibility. Safety comes first on the football field and when it comes to our nation's soldiers, sailors, airmen, and Marines.

# \$IK CUSTOM SNUGGIES!?

*Over the last few years, the University of Washington has misused more than \$2 million in grants from NSF*

Our nation's colleges and universities have long been centers for research and discovery. For generations, outside companies and groups have worked with academia to conduct studies and develop inventions. To encourage this cooperation and increase the quality of research, the federal government has invested countless dollars in the form of grants and direct spending to colleges and universities in all states. Unfortunately sometimes those federal dollars are misused.

A 2016 audit of grants provided by NSF to the University of Washington over the previous few years questioned the use of more than \$2 million,<sup>945</sup> approximately \$1.8 million of which went to inappropriately high salaries for senior personnel. However, there were also several expenditures that have no obvious benefit to research.<sup>946</sup> For instance \$3,920 was spent on various promotional items, including custom Snuggies, canvas bags, and mini optical computer mice.<sup>947</sup> NSF also spent \$1,179 on embroidered Snuggies (separate from the money spent on Snuggies mentioned above) and \$2,149 to rent a museum for a committee lunch meeting.<sup>948</sup> Additionally, \$122,893 was spent on equipment that was not "necessary or reasonable" according to the regulations governing grants.<sup>949</sup> Much of the equipment was purchased toward the end of the grant period, meaning that while it may have had some impact on the research funded, it appears the funds were spent with an eye on *future* research that may or may not be federally funded.<sup>950</sup>

There may be some ancillary benefit for a researcher to have an embroidered Snuggie. After all, they are certainly comfortable. But that does not mean hard-working taxpayers should pay for them. While equipment purchased

at the end of a grant may benefit a future federal grant, that is not how federal grants are supposed to work. It is also highly inappropriate for a university to spend almost \$2 million from tax dollars on inappropriately high salaries for senior employees.



## **RECOVERY**

With a \$19.5 trillion national debt, \$2 million may seem like just a drop in the bucket. But it alone would cover the median household income in the US for 38 families.<sup>951</sup> People entrusted to utilize taxpayer funds should do so with far more care and responsibility. Here again the GRANT Act would provide the necessary oversight and accountability to help rein in wasteful grant expenditures. But at the same time, the onus is on both the grant authorizers and recipients to ensure the funds are utilized properly.

# WHAT HAVE YOU BEEN DRINKING?

## *The Smithsonian announced a 3-year position for a historian to help the Institute document the impact of beer on American history*

American innovation is one of the cornerstones of our long and rich history. Americans have given the world the incandescent bulb, which brought light to millions of homes, the telephone, which has connected families, continents, the first mass-produced automobile, and countless other life-changing inventions. We have freed millions from oppression and sent people to the moon. To memorialize the contributions of Americans and the history of humanity, the Smithsonian operates 19 different museums and galleries in the US and is the world's largest museum complex. To ensure the Smithsonian is able to continue educating future generations about the important aspects of humanity's history, the federal government provides more than \$800 million each year for the Smithsonian's operation.



Making use of the funds earlier this summer, the Smithsonian announced a \$64,540-per-year historian position for their American Brewing History Initiative. The historian will “conduct archival and field research for a new initiative on American brewing history,” and the position is expected to last for three years. The museum’s initiative will focus on home brewing of beer, made illegal by Prohibition but re-legalized by President Jimmy Carter in 1977. The Smithsonian believes that the history of brewing beer is an essential aspect of American history and that extensive study by the Institution can “help the public make sense of the complex history of brewing.”

## **RECOVERY**

It may be that brewing beer has an impact on our nation’s history. But with more than \$19 trillion in debt and the Institution receiving less money from Congress than it requests each year, it is absolutely absurd for the federal government to commit to spending almost \$200,000 (plus other costs like benefits) to employ a beer historian. This is precisely the sort of waste that stirs up strong mistrust among American taxpayers in how Washington spends their hard-earned tax dollars. There are already groups and establishments working to accomplish the same goals laid out by the Smithsonian. The Smithsonian is free to use private donations to partner with other groups to document the impact of beer, and clearly the beer industry has millions of dollars available for advertising that could also be used to support this position. But when Americans are struggling to make ends meet, it is not reasonable to expect them to finance a beer historian’s salary.

# MORE SILENT SHAKESPEARE

*Highlighted in last year's Federal Fumbles, NEA continued to fund silent adaptations of works of the man most famous for his words: William Shakespeare*

Last year, *Federal Fumbles* highlighted that tens of thousands of taxpayer dollars funded productions of some of Shakespeare's greatest works.<sup>963</sup> What made these productions different is that they were all *silent* productions. A review from *The Wall Street Journal* stated that while the productions used "acrobatics, pantomime, and special effects" to put on the show, "flips and twist cannot suffice for nouns and verbs."<sup>964</sup>



Last year's *Federal Fumbles* called on higher standards for federal grants and suggested that a wordless production of the works of a man best known for his words was not up to national standards. So it is disappointing that earlier this year, NEA provided a \$10,000 grant to this same theater to put on another silent Shakespeare production, this time *Twelfth Night*.<sup>965</sup> While "words are very rascals,"<sup>966</sup> they are essential to Shakespeare's work. One reviewer of a previous silent Shakespeare production said it best when he insisted a Shakespeare play without words is like French cooking without butter.<sup>967</sup>

## **RECOVERY**

The theater, which makes a valuable contribution to its community,<sup>968</sup> is certainly free to continue putting on this production but silent Shakespeare should be funded through private means. In the future, passage of the GRANT Act will help enable Congress and the public to ensure federal grants are used in ways that can provide a benefit to everyone and advance our national interests.

# TOUCHDOWNS



When the first edition of *Federal Fumbles: 100 Ways the Government Dropped the Ball* was released on November 30, 2015, each *Fumble* entry also included a *Recovery* to identify how to pick up the *Fumble*. It is not enough just talk about the problems facing our country; we must also identify the solutions and work toward them.

Over the last year, my staff and I used *Federal Fumbles* as a to-do list to focus on making forward progress on each of the solutions. Some are initiatives we pursued within our office, and for others we partnered with Members of Congress from both sides of the aisle. While many of our *Recoveries* are intended as complete solutions, any football fan knows there is more success in picking up several yards at a time than a Hail Mary at the end of the game. Issues with notable progress but no resolution are listed as Forward Progress—because even a step in the right direction can save taxpayer money and alleviate regulatory burdens on local businesses. Every year we will hopefully add more items to the Touchdowns section than Forward Progress, but we will never take our eye off the ball or the end zone. Here are a few of the “Touchdowns” and “Forward Progress.”

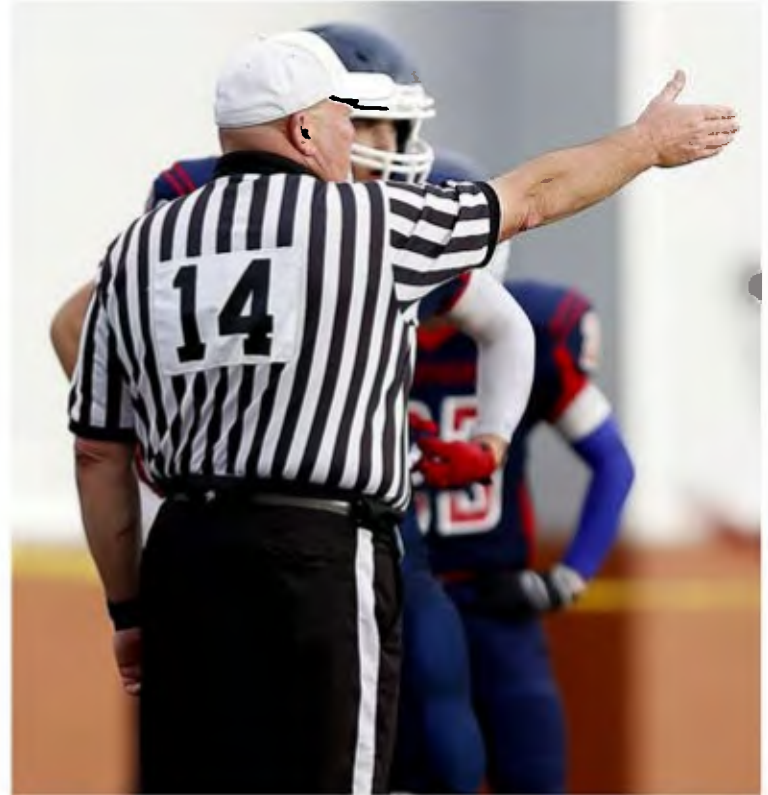
- During 2016 the Taxpayers Right-to-Know Act passed the House and has overwhelming support in the Senate and the White House. During the final weeks of session, it appears the Taxpayers Right-to-Know Act is ready for final passage into law. The bill will enable all taxpayers to easily identify and track how the federal government spends your money and how federal agencies gauge the impact of programs and spending. The bill serves as an important new oversight tool for you and for Congress to oversee spending and duplication within federal agencies.
- The Social Security Administration has an enormous backlog in disability hearings waiting for an Administrative Law Judge hearing. To expedite the backlog, SSA created a new system to hear cases instead of just hiring more ALJs. My office and I confronted SSA with the cost and risk of that scheme, and after threats of a subpoena, the SSA finally turned over their documents and changed the direction of their plans.<sup>969</sup> This will save taxpayers millions of dollars in litigation cost and will speed up the disability process.
- The First Amendment guarantees the right to free exercise of religion,<sup>970</sup> which enables Americans to live their faith publicly on a daily basis without feeling the need to hide their beliefs or exercise their religious rights only in select locations. Until recently the naturalization test taken by individuals seeking US citizenship listed this right as the “freedom of worship” instead of the correct wording, “freedom of religion.” In 2015 I asked DHS Secretary Johnson to change the test to reflect the actual text of the Constitution.<sup>971</sup> In June 2016 DHS announced it would make the change and recognize that all Americans do have the freedom of religion.<sup>972</sup>

# TOUCHDOWNS

- The American Opportunity Tax Credit was highlighted in last year's *Federal Fumbles* as an example of a federal tax credit providing billions in unearned benefits.<sup>973</sup> However, recent reviews found more than two million people had claimed the tax credit even though they were either ineligible or did not provide any supporting documentation to prove their eligibility.<sup>974</sup> The funding bill passed by Congress in December 2015 included language to assist Treasury in cutting down on this abuse and possible fraud.<sup>975</sup> Greater reporting requirements are now in place to ensure only those who earn the tax credit are allowed to file to receive it and to ensure ineligible filers are prevented from receiving the credit for up to ten years.<sup>976</sup>
- Each year the Wind Production Tax Credit accounts for more than \$6 billion in federal tax credits to the wind energy industry.<sup>977</sup> The tax credit was a focus in last year's *Federal Fumbles* because while alternative energy sources should be encouraged, once they are fully developed and functional, federal support should be pulled back. The funding bill passed by Congress last December included a three-year phasedown for the wind energy tax credit.<sup>978</sup> After more than two decades, this "temporary" tax credit will finally disappear two years from now.
- A recent burdensome FDA rule requires grocery stores, restaurants, entertainment venues, and any other location selling food to provide more detailed information on each food item sold.<sup>979</sup> The estimated first-year compliance costs of the rule are more than \$1 billion.<sup>980</sup> While Americans should have information on the food they eat, the overly burdensome nature of the rule warranted its inclusion in last year's *Federal Fumbles*. In last December's government funding bill, Congress prevented implementation of the rule until better information was issued to give business owners clarity to follow the rule.<sup>981</sup> Additionally, the Agriculture, Rural Development, FDA, and Related Agencies appropriations bill for FY17 (S. 2956) includes language preventing implementation until April 2017.<sup>982</sup>
- After years of debate, the ban on exporting crude oil was finally lifted in late 2015, allowing Americans to compete on the world energy market. Since the 1970s, Americans could sell gasoline but not oil in the global marketplace. Now Americans can compete with Russia, Saudi Arabia and Venezuela for energy contracts. Our office was a major part of the debate on energy exports.<sup>983</sup>

# FORWARD PROGRESS

- Last year's edition of *Federal Fumbles*—and again this year—highlighted numerous grants from NEA and NEH, along with several other federal agencies as examples of duplicative or unnecessary federal spending. The leaders of these agencies are generally appointed by the President but require confirmation from the U.S. Senate. This year I placed holds on nominations to the grant-review councils of NEA and NEH. The councils review grant applications and make recommendations to the chair of the respective organization for approval or disapproval. However, the process and metrics the council uses to determine which grants it will recommend be approved and which process the chair of the organization will use to assess the council's recommendation are unknown. Many of the grant issues highlighted by *Federal Fumbles* could likely be eliminated through a clear and concise written and public grants review process from NEA and NEH that ensures all grants approved align with agency mission and responsibilities. I will continue to work with the agencies until there is a clear process for review and accountability for taxpayer dollars.



- Last year *Federal Fumbles* highlighted that more than 25,000 families received federally subsidized housing from HUD, despite not being qualified for the program.<sup>984</sup> More than \$100 million was spent on families, like one in New York with an annual income of \$497,911, who earned far more than the allowable amount for federal assistance.<sup>985</sup> In February 2016 HUD announced plans to begin removing ineligible recipients of federal assistance so support can be focused only on those truly in need.<sup>986</sup> Additionally, S. 2844, the Senate appropriations bill for HUD, requires implementation of an IG report's recommendations to ensure only those who are entitled to federal housing assistance actually receive it.<sup>987</sup>
- One of the Recoveries mentioned throughout the book is the GRANT Act. This important legislation will provide increased transparency and accountability in the federal grant process.<sup>988</sup> The Act will not only help grant seekers but will inform the general public of the individual grant's timeline and decision-making process.<sup>989</sup> Federal grants represent more than \$500 billion in federal tax dollars each year, and the American people are entitled to the transparency this bill will require. The US Senate Homeland Security and Governmental Affairs Committee passed the GRANT Act in May 2016 with bipartisan support, and I look forward to passage by the full Senate soon.<sup>990</sup>
- The American Burying Beetle's (ABB) continued inclusion as an endangered species has been a major hindrance to individuals and companies throughout the country, despite a significant increase in its population count. The ABB listing was included in last year's *Federal Fumbles* due to the \$30,000 in beetle credits required per drilling well in some parts of the country to develop beetle farms that might be occupied by the beetle.<sup>991</sup> Earlier this year FWS began the process to determine whether or not the beetle should remain on the list or, since numbers are on the rise, whether it should be removed entirely.<sup>992</sup>

# FORWARD PROGRESS

- Last year's *Federal Fumbles* highlighted multiple instances of federal agency tendencies to accumulate unneeded property or assets, often placing long-term maintenance and upkeep costs on taxpayers' shoulders. Late last year, Sen. Ron Johnson (WI) and I, along with two other Senators, introduced S. 2375, the Federal Asset Sale and Transfer Act.<sup>993</sup> Once enacted, the bill will assist agencies to eliminate unnecessary and unused property and could save millions (if not more) each year.<sup>994</sup> The bill passed through the Homeland Security and Governmental Affairs Committee and awaits further consideration by the full Senate.<sup>995</sup>
- Along those same lines, earlier this year Sen. Tom Carper (DE) and I, along with four other Senators, introduced S. 2509, the Federal Property Management Reform Act, to require federal agencies to better track the number of properties it owns. Additionally, it will encourage federal agencies to sell unnecessary property by allowing them to retain the proceeds of the sale for other agency uses.<sup>996</sup> The bill was passed by the Homeland Security and Government Oversight Committee in July 2016 and awaits further consideration by the Senate.<sup>997</sup>
- Last year's *Federal Fumbles* shed light on the Regulatory Overtime rule and its potential \$1 billion impact on the US economy.<sup>998</sup> Unfortunately the Administration finalized the rule this summer, and it will take effect on December 1, 2016.<sup>999</sup> To block the bill, the Senate took two actions. First, under the authority given by the Congressional Review Act, Sen. Lamar Alexander (TN) and I, joined by 43 other Senators, introduced a resolution that would block the rule.<sup>1000</sup> Additionally, Sen. Tim Scott and I, with 44 Senate colleagues, introduced S. 2707, the Protecting Workplace Advancement and Opportunity Act, which would also prevent implementation of the rule.<sup>1001</sup> Every non-profit, university, local government, and small business will be severely affected by this arbitrary overtime rule if we cannot get it delayed or rejected.
- The 2015 *Federal Fumbles* illustrated SSA's struggle to adequately review disability claims to ensure the truly disabled receive assistance. Last year *Federal Fumbles* highlighted that the number of reviews currently conducted has decreased over the last decade, which has led to a severe backlog of cases for review.<sup>1002</sup> This year, S. 3040, the appropriations bill for the Departments of Labor, Health and Human Services, and Education, and Related Agencies, included language that requires SSA to regularly reevaluate and revamp the process for continuing disability review.<sup>1003</sup> The bill's language will help eliminate that backlog and ensure SSA only provides assistance to truly disabled individuals.<sup>1004</sup>
- In January Sen. Jon Tester (MT) introduced S. 2450, the Administrative Leave Act, of which I am a cosponsor.<sup>1005</sup> The bill addresses an issue raised in last year's *Federal Fumbles* concerning the massive amount of administrative leave used by federal agencies, often used in place of discipline or termination of bad employees.<sup>1006</sup> The federal government has spent more than \$3 billion on federal paid vacations—some of which lasted for more than a month—from 2011 to 2013.<sup>1007</sup> Sen. Tester's bill will restrict agency use of administrative leave and require uniform federal standards for administrative leave.<sup>1008</sup> The bill passed Committee in the summer of 2016 and was also included as an amendment to the DHS Accountability Act of 2016, which also passed Committee this year.<sup>1009</sup> I look forward to full-Senate consideration of the bill.
- *Federal Fumbles* continues to focus on issues surrounding slow and underperforming federal contractors. Delays and inefficiencies can cost American taxpayers millions each year and slow necessary federal projects. This year's Financial Services and General Government Appropriations Bill (S. 3067) included language to prevent federal agencies from paying any incentive or bonus pay to federal contractors who do not meet the performance requirements of their contract.<sup>1010</sup> The appropriations bill for the Department of Homeland Security, S. 3001, includes similar language.<sup>1011</sup>



# FORWARD PROGRESS

- A major problem discussed in the previous edition of *Federal Fumbles* is the continued presence of outdated guidance from federal agencies who do not review the guidance and regulations they currently have on the books.<sup>1012</sup> In one example, GAO identified that 85 percent of just one office's guidance documents were outdated and unnecessary. This year's Financial Services and General Government appropriations bill, S. 3067, includes language reinforcing OMB requirements that agencies must regularly examine the guidance they have in place to ensure it is current and relevant.<sup>1013</sup>
- FCC's Lifeline program, which provides a federal subsidy for low-income families to have access to telephone service, was highlighted in last year's *Federal Fumbles* for widespread waste, fraud, and abuse. Oklahoma and other states with Tribal land have unfortunately perpetuated the problem because FCC rules have allowed most of the state's participants to receive the normal subsidy plus an additional subsidy intended only for American Indians. In an Appropriations Subcommittee hearing earlier this year, I pressed FCC Chairman Tom Wheeler to do more to cut down on all waste, fraud, and abuse in the Lifeline program.<sup>1014</sup> He agreed to come back to Congress to develop a way to do just that.
- Unfunded mandates—unfunded yet costly federal rules that must be obeyed—are a major federal burden on the private sector, states, cities, and Tribes. Last year's *Federal Fumbles* discussed the Unfunded Mandates Information and Transparency Act by Sen. Deb Fischer (NE) in the Senate and Rep. Virginia Foxx in the House.<sup>1015</sup> The legislation will help cut down on billions of dollars the private and public sectors pay each year to meet federal requirements.<sup>1016</sup> Earlier this year I chaired a subcommittee hearing on the bill to learn more about the benefits it will provide by cutting down on costs, improving communication between federal agencies putting out requirements and those who will implement them, and seeking further analysis to improve the process.<sup>1017</sup> Rep. Foxx's bill passed the House and awaits passage by the Senate.<sup>1018</sup>
- The Essential Air Service program, which receives more than \$263 million in federal funding, was highlighted in last year's *Federal Fumbles* as an example of a program that has outlasted its usefulness and should be eliminated.<sup>1019</sup> Created in 1978 to help expand access to air travel at smaller airports, it was not intended to last beyond 1988.<sup>1020</sup> Instead it continues to receive federal funding despite studies illustrating that the subsidized flights are often sparsely utilized at a cost of more than \$500 per passenger.<sup>1021</sup> In April 2016 I introduced S. 2798, the Free Market Flights Act, along with Rep. Steve Russell (OK) in the House, to eliminate the unnecessary program and save federal taxpayers millions each year.
- *Federal Fumbles* discussed last year the issues FPS has had with properly managing the size of its vehicle fleet.<sup>1022</sup> An IG report found that FPS spent an extra \$2.5 million to purchase unnecessary and often excessive vehicles.<sup>1023</sup> This year's appropriations bill for DHS (S. 3001), which oversees FPS, included language requiring FPS to immediately implement IG recommendations to eliminate unnecessary and costly fleet practices and more responsibly spend taxpayer money.<sup>1024</sup>
- Highlighted throughout *Federal Fumbles* is the burden of agency-created rules and regulations. Because the rules and regulations are often issued as an interpretation or reinterpretation of a law passed by Congress, courts give broad leeway to agencies to develop rules in accordance with how the agencies, not the courts, interpret the law. As a result, courts do not adequately analyze whether agency rules truly conform to the law. To put the responsibility back on the courts, Sen. Chuck Grassley (IA), several other Senators, and I joined Reps. John Ratcliffe (TX) and Bob Goodlatte (VA) in the House to introduce the Separation of Powers Restoration Act.<sup>1025</sup> The bill, which already passed the House, ensures appropriate review and oversight by the courts on agency-promulgated rules and regulations.<sup>1026</sup>

# FORWARD PROGRESS

- Last year *Federal Fumbles* revealed that DOJ currently operates two different programs offering grant funding for bulletproof vests for police officers.<sup>1027</sup> While this is obviously an important effort, it would be more cost effective for DOJ to only utilize one program to provide the vests. This year's appropriations bill for DOJ, S. 2837, includes language requiring the Attorney General to analyze DOJ grant programs, determine whether there is indeed overlap, and then recommend to Congress how to eliminate the duplication.<sup>1028</sup> Additionally, DOJ is instructed to better coordinate grants prior to future awards.<sup>1029</sup>
- Last year President Obama and EPA announced new rules that will have the effect of shutting down power plants throughout the country and will cost consumers and industry more than \$8 billion.<sup>1030</sup> This Clean Power Plan puts in place strict emission rules that many states will only be able to meet if they shut down essential power plants. As a result, after enforcement of the rule begins, consumers can expect to see the cost of electricity increase dramatically.<sup>1031</sup> In February 2016 the Supreme Court blocked enforcement of the rule pending a review after challenges from more than 25 states.<sup>1032</sup> This summer the appropriations bill for the Department of Interior, Environment, and Related Agencies (S. 3068) included language blocking enforcement of the rule as well.<sup>1033</sup>
- Each year GAO puts out a high-risk list of agencies with inefficient spending, duplication, or other areas of concern. As shown in last year's *Federal Fumbles*, DOE's contracting management, specifically with the National Nuclear Security Administration (NNSA), has been on GAO's list for 25 years,<sup>1034</sup> primarily due to inefficient program operations that have cost American taxpayers billions more than they should.<sup>1035</sup> To help fix the problems within NNSA, this year's Energy and Water appropriations bill (S. 2804) includes language asking NNSA to conduct a review of all projects greater than \$750 million to ensure they operate efficiently and effectively.<sup>1036</sup>
- *Federal Fumbles* continues to identify projects from USAID, including a \$7.7 million unused industrial park in Afghanistan or \$335 million for an unused power plant in Afghanistan, on which federal tax dollars were spent with little to show for it. To help ensure federal dollars are used appropriately and efficiently, this year's State and Foreign Operations appropriations bill (S. 3117) includes language asking USAID to expand use of results-based assistance for foreign aid programs. The language will help cut down on large expenditures for projects that may have little to no utility or impact.<sup>1037</sup>
- Earlier this year the Administration announced a \$1.7 billion payment to Iran to compensate for a \$400 million account frozen by the US government since 1979. The \$1.7 billion also provides \$1.3 billion in interest.<sup>1038</sup> The payment was announced in conjunction with the nuclear agreement between the US and Iran in 2015 but coincided with the release of several US citizens held prisoner by the Iranian government.<sup>1039</sup> This year's State and Foreign Operations appropriations bill (S. 3117) included language to require the Administration to report to Congress how the funds were transferred, where the funds came from, the types of currency used for the transfer, and other information.<sup>1040</sup> Additionally, in July 2016 Sen. Fischer and I introduced the Judgment Fund Transparency and Terrorism Financing Prevention Act to provide taxpayers with more information on instances where their money is used to settle lawsuits against the US and to prevent any future president from transferring money to a state sponsor of terrorism such as Iran.<sup>1041</sup>
- DOD and VA both offer medication to the men and women who either wear or have worn the uniform of our nation.<sup>1043</sup> Each year they spend billions to procure the necessary medicine to fill the prescriptions of millions of veterans. However, as seen in *Federal Fumbles* last year, the lack of coordinated purchases between DOD and VA leads to millions of misspent dollars annually. In fact, one year of savings could be more than \$100 million.<sup>1044</sup> This year the Military Construction, Veterans Affairs and Related Agencies appropriations bill (S. 2806) included a provision requiring DOD and VA to take steps toward a unified purchasing drug plan that will save millions of taxpayer dollars.<sup>1045</sup>

# FORWARD PROGRESS

- Last year, *Federal Fumbles* discussed the Renewable Fuel Standard program that is administered by the EPA and noted how the program fails to meet its twin goals of decreasing dependence on foreign oil and encouraging environmental protection.<sup>1046</sup> Work remains to provide a legislative solution that ensures refiners are not required to put more biofuels into the gasoline supply than are safe for automobile engines and ensure that biofuels do not increase pollutants such as ozone.<sup>1047</sup> Despite this very long path ahead, some small progress has been made. After several industry lawsuits, EPA was under court order to comply with existing statute and to finalize mandated volumes for each year by November 30 of the previous year—a deadline it had missed for many years, leading to uncertainty and higher prices for consumers at the pump.<sup>1048</sup> As of fall 2016 EPA appears poised to finalize the 2017 volumes by the statutory November 30 deadline, which is a small step toward allowing industry to plan for the future and prevent price spikes brought about by uncertainty in the program.<sup>1049</sup> However, multiple GAO reports released as recently as November 2016 determined that advanced biofuels targets and greenhouse gas emission reduction targets set by statute are unattainable. In fact, in an apparent acknowledgment of this reality, EPA appears to be once again using its waiver authority to decrease the quantity of biofuels required to be blended into the gasoline supply in 2017.<sup>1050</sup>

# ENDNOTES

- <sup>1</sup> "Policy Basics: Where Do Our Federal Tax Dollars Go?" Center on Budget and Policy Priorities. 4 Mar. 2016. <<http://www.cbpp.org/research/federal-budget/policy-basics-where-do-our-federal-tax-dollars-go>>.
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