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A September Action Guide for Congress in 2017

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Abstract

September 2017 brings legislative deadlines requiring congressional action. When Congress returns from August recess, lawmakers will have only 12 legislative days to complete action on several high-stakes issues. Congress will confront the expiration of discretionary appropriations and the constraints of the Budget Control Act for fiscal year 2018, the debt limit, the expiration of the authorization for the Children's Health Insurance Program, the Federal Aviation Administration, and the National Flood Insurance Program. This year, with the political alignment in Congress and the executive branch, lawmakers have no excuse for failing taxpayers at fiscal discipline. Congress should cut spending, control the debt, and reform federal programs that are up for reauthorization to improve outcomes for their beneficiaries, grow the economy, and prioritize the use of federal resources.

In 2017, the month of September brings a plethora of legislative deadlines requiring congressional action. When Congress returns from August recess, lawmakers will have only 12 legislative days to complete action on several high-stakes issues. Congress will confront the expiration of discretionary appropriations and the constraints of the Budget Control Act (BCA) for fiscal year (FY) 2018, the debt limit, the expiration of the authorization for the Children's Health Insurance Program, the expiration of the Federal Aviation Administration's legal authority, and the expiration of the National Flood Insurance Program.

Congress should exercise prudence when considering each of these matters. This year, with the political alignment in Congress

Key Points

- Congress has until September 30, 2017, to appropriate funding for federal discretionary programs, including for national defense and most domestic programs. When Congress returns from August recess, lawmakers will have only 12 legislative days to complete action on several high-stakes issues.
- Congress should exercise prudence when considering each issue. Congress should reject any attempt to increase overall discretionary funding levels. In 2017, lawmakers have no excuse for failing taxpayers at fiscal responsibility.
- Eleventh-hour deals based on the threat of a government shutdown or other ultimatum provide lawmakers with the political cover to make bad decisions that perpetuate the status quo. Members of Congress have all the tools at their disposal to address September deadlines with sound policy choices.
- Congress should cut spending, control the debt, and reform federal programs that are up for reauthorization.

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and the executive branch, lawmakers have no excuse for failing taxpayers at fiscal discipline. Congress should cut spending, control the debt, and reform federal programs that are up for reauthorization to improve outcomes for their beneficiaries, grow the economy, and prioritize the use of federal resources.

This *Backgrounder* provides information on each issue, and recommendations to guide Congress this September.

Stick to Legal Spending Limits for FY 2018 Appropriations and Extend the Budget Control Act

Congress has until September 30 to appropriate funding for federal discretionary programs, including for national defense and most domestic government agencies and programs. Congress should reject any attempt to increase overall discretionary funding levels. Instead, lawmakers should prioritize national defense funding within the BCA spending limit for FY 2018, and offset any defense funding increase with cuts to domestic programs.

Although the congressional budget process calls for 12 individual appropriations bills, an omnibus appropriations act or continuing resolution is more likely, given the condensed schedule this September. A major problem with such massive funding deals moving in Congress at the 11th hour, before funding is scheduled to lapse, is that these deals are prone to maintaining the status quo of too much funding, for the wrong purposes, including corporate welfare programs, and functions that should be delegated to states, localities, and the private sector.

A discretionary funding lapse would result in a partial government shutdown beginning on October 1. Such a "shutdown" would be neither catastrophic nor unprecedented. It would merely pare down government services to those deemed most essential for "the safety of human life or the protection of property."[1] Key federal functions would continue uninterrupted, such as national security (including the conduct of foreign relations essential to the national security or the safety of life and property), border and coastal protection and surveillance, law enforcement and criminal investigations, and many other essential functions.

Another issue arises with the return of the BCA caps in 2018 and beyond. Under current law, the federal government faces a nominal spending cut of $5 billion in 2018, the result of President Obama's and then–Speaker of the House John Boehner's 2015 deal to lift the BCA caps.[2] If the past is any indication of what to expect in the future, lawmakers will be reluctant to implement real spending cuts and will instead look to pass another Obama–Boehner-style budget deal. This deal suspended the debt limit, busted the BCA spending caps, and reallocated $150 billion in Social Security's Old Age and Survivors Insurance funds to the Social Security Disability Insurance program, without reforming this failing program. In other words, it was a sour deal.[3]

With a new Administration, the budget and appropriations process got off to a late start. On May 23, President Donald Trump released his full FY 2018 budget proposal. The President's proposal calls for the elimination of the firewall between defense and non-defense spending. This firewall roughly splits the overall discretionary funding allocation between defense and non-defense. This parity is arbitrary and a political construct from the Obama era. Congress and President Trump already departed from this construct in the May 2017 funding bill. Lawmakers should continue making progress in prioritizing defense needs over domestic pet projects.

The President's plan raises defense spending by $54 billion, with those increases fully offset by corresponding cuts to domestic programs. In total, President Trump's plan calls for discretionary funding at the FY 2018 cap level of $1.065 billion.[4] This is the right approach.

In July, the House Budget Committee released its FY 2018 budget proposal. Like the President's budget, the Budget Committee's proposal calls for a sharp increase in defense spending of $72 billion compared

1. Hans von Spakovsky, "What Happens During a Government 'Shutdown'?" Heritage Foundation *Issue Brief* No. 4049, September 18, 2015, http://www.heritage.org/courts/report/what-happens-during-government-shutdown.
2. Paul L. Winfree et al., "Analysis of the Bipartisan Budget Act of 2015," Heritage Foundation *Issue Brief* No. 4477, October 28, 2015, http://www.heritage.org/budget-and-spending/report/analysis-the-bipartisan-budget-act-2015
3. Ibid.
4. Office of Management and Budget, *Budget of the U.S. Government Fiscal Year 2018: A New Foundation for Greatness*, May 23, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf (accessed August 24, 2017).

to current law, but cuts non-defense spending by only $5 billion. In total, the proposal calls for discretionary spending to be $1.132 trillion in 2018—$67 billion higher than the current BCA cap.[5]

Lawmakers should not maintain the status quo of funding crony and parochial domestic programs for political gain. In the event that lawmakers bust the BCA caps for an overall increase in discretionary funding levels, at a minimum this increase should be fully offset with reductions to mandatory spending programs. Mandatory spending reform can pay dividends for many years to come.

The House Appropriations Committee passed 12 appropriations bills prior to the August recess, assuming the Budget Committee levels in those bills. The full House of Representatives passed a four-bill funding package, focused on national security, which has since moved on to the Senate.[6] The House is expected to take up the remaining eight bills upon return from recess. According to a newly issued report from the Congressional Budget Office (CBO), if all 12 bills were enacted in their current form, the defense category would be $72 billion above the 2018 cap, and subject to the automatic enforcement mechanisms of the BCA.[7]

The Senate continues to lag behind the House, with no budget resolution released and only six bills having been marked up by the Appropriations Committee prior to recess. It is unknown if or when the Senate Budget Committee will release a budget and what its topline discretionary spending figure may be.[8] In July, Senate appropriators released guidance for the appropriations process and announced that they would mark up bills at the FY 2017 BCA cap level of $1.07 trillion—$5 billion higher than the 2018 allowance.[9]

It remains unclear how Congress will proceed on 2018 appropriations. Any of the plans released so far would violate the BCA, requiring an amendment to that law for the plans to take effect. Lawmakers have shown little appetite for cutting spending, which is what they would be forced to do in order to live within the confines of the BCA in 2018.

Several lawmakers have already voiced interest in taking up another Bipartisan Budget Act that would lift the BCA caps through at least 2019. It is also possible for Congress to consider modifying the budget caps through 2021; the year after which the BCA's discretionary caps expire. If this is the approach that Congress decides to take, it must ensure that budget offsets take effect immediately and produce legitimate savings, instead of relying on far-off savings and accounting gimmicks, as has been prevalent in past budget deals.[10]

The BCA has been an effective mechanism for controlling the growth of discretionary spending, and for motivating Congress to make changes to mandatory programs, if only to increase discretionary spending. A better approach than increasing the caps in 2018 or beyond would be to commit to keeping within the BCA caps through 2021, and extending them far beyond their current expiration date. In order to ensure that necessary defense needs can be met, Congress should remove the firewall dividing defense and non-defense spending, adopting one overall discretionary spending cap instead. An overall limit enables Congress to properly prioritize between domestic and defense needs.[11]

5. U.S. House of Representatives Committee on the Budget, "Concurrent Resolution on the Budget-Fiscal Year 2018," Report of the Committee on the Budget, U.S. House of Representatives, July 21, 2017, https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt240/pdf/CRPT-115hrpt240.pdf, (accessed August 21, 2017).
6. Jennifer Shutt, "On Appropriations, It's See You in September," *Congressional Quarterly*, July 28, 2017, http://www.cq.com/doc/news-5153917?2 (accessed August 21, 2018).
7. Congressional Budget Office, "CBO Estimate for Rules Committee Print 115-31–The Make America Secure and Prosperous Appropriations Act, 2018," August 18, 2017, https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/makeamericasecureandprosperousappropriationsact2018.pdf (accessed August 21, 2017).
8. Niv Ellis, "Senate Panel Might Not Take Up Budget Until October," *The Hill*, August 10, 2017, http://thehill.com/policy/finance/346068-senate-panel-might-not-take-up-budget-until-october (accessed August 17, 2017).
9. News release, "Background: Fiscal Year 2018 Funding Guidance," Committee on Appropriations, U.S. Senate, July 20, 2017, https://www.appropriations.senate.gov/imo/media/doc/072017%20FY2018%20Funding-Guidance.pdf (accessed August 24, 2017).
10. Justin Bogie, "Budget Gimmicks Increase Federal Spending and Mask True Costs of Legislation," Heritage Foundation *Backgrounder* No. 3234, July 26, 2017, http://www.heritage.org/sites/default/files/2017-07/BG3234.pdf.
11. Justin Bogie, "Congress Must Embrace These 5 Principles to Create a More Responsible Budget," The Daily Signal, May 23, 2017, http://dailysignal.com/2017/05/23/congress-must-embrace-5-principles-create-responsible-budget.

There is no better opportunity than now—while the economy is steadily growing and businesses and American workers are optimistic about the future—to pursue a fiscally responsible budget.[12] Heritage's *Blueprint for Balance* offers a ready-made budget for Congress to take the right fiscal action this fall.[13]

Address the Debt Limit Separately and Enact Spending Controls

With the national debt nearing $20 trillion, Congress must rein in spending before increasing the debt limit again.

The debt limit was reinstated on March 16, 2017, after having been suspended for more than a year.[14] Since then, the Treasury Department has used so-called extraordinary measures to continue federal-deficit spending in the absence of current statutory authority to borrow more funds. However, these debt-limit loopholes will also soon be exhausted, confronting Congress with the need to raise the debt limit in order to cover all government obligations, without delay, or institute massive cuts to government programs nearly overnight. The CBO projects that these measures will be exhausted in early to mid-October.[15]

Approaching the debt limit confronts Congress and the Administration with the results of unsustainable budget decisions: massive and growing amounts of debt. In response, lawmakers should adopt spending cuts and critical reforms to stop out-of-control spending and debt. A fiscal crisis that forces lawmakers to take action when investors lose confidence in the U.S. government would have far worse consequences than deliberate congressional action now, to ensure that necessary government functions are sustained. Instead, Senate Republican leaders are signaling willingness to pair a debt-limit increase with a relaxation of the discretionary spending limits established by the 2011 Budget Control Act. The strategy aims to make it easier for lawmakers to swallow the bitter pill of a higher debt limit by sweetening it with higher spending on both defense and non-defense programs.

Congress has been here before. Congress last lifted the debt limit in November 2015 as part of the Bipartisan Budget Act (BBA), commonly known as the Obama–Boehner budget deal. That agreement increased total discretionary spending by $80 billion over two years.[16]

Congress should not raise the debt limit with another bad budget deal. Rather, Congress should address the debt limit separately, and adopt spending controls before raising the debt limit again.

One approach is for Congress and the Administration to include the debt limit as part of a broader budget package that provides spending and tax relief through reconciliation.[17] Adopting a comprehensive budget plan, including automatic enforcement mechanisms,[18] in order to achieve a balanced budget before the end of the budget window may seem like a daunting task, yet budget options to get there abound. Heritage's *Blueprint for Balance* designs one clear path to balance.[19] Such a strategy might necessitate a short-term increase in the debt limit for timing reasons, and it can only work with a firm commitment from the White House and Congress to realize this path.

The borrowing limit best serves its purpose if lawmakers see it as an important wake-up call to restrain rising spending and borrowing. Today, the public debt is about twice the historical average. At nearly $20 trillion, debt subject to the limit exceeds what the U.S. economy produces in goods and services as measured by gross domestic product annually.

12. Ibid.
13. Romina Boccia et al., *Blueprint for Balance: A Federal Budget for Fiscal Year 2018*, The Heritage Foundation, April 2017, http://www.heritage.org/budget-and-spending/report/blueprint-balance-federal-budget-fiscal-year-2018.
14. Romina Boccia, "2017 Debt Limit Should Trigger Spending Limit—with Enforcement," Heritage Foundation *Backgrounder* No. 3190, February 27, 2017, http://www.heritage.org/debt/report/2017-debt-limit-should-trigger-spending-limit-enforcement.
15. Congressional Budget Office, "Federal Debt and the Statutory Limit, June 2017," June 29, 2017, https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52837-debtlimit.pdf (accessed August 21, 2017).
16. Winfree et al., "Analysis of the Bipartisan Budget Act of 2015."
17. Romina Boccia and Adam Michel, "Pathways for Pro-Growth, Fiscally Responsible Tax Reform," Heritage Foundation *Backgrounder* No. 3219, May 25, 2017, http://www.heritage.org/taxes/report/pathways-pro-growth-fiscally-responsible-tax-reform.
18. Boccia, "2017 Debt Limit Should Trigger Spending Limit—with Enforcement."
19. Boccia et al., *Blueprint for Balance: A Federal Budget for Fiscal Year 2018*.

Excessive government debt puts a real drag on economic growth, restricting job creation, wage improvements, and business expansion.[20] If Congress and the President are to deliver sustainable economic growth of at least 3 percent annually, they must enact spending and tax reforms that unleash the economy and control federal deficits and debt.

The only fiscally responsible path is to control spending and debt before expanding the Treasury's ability to borrow again.

Reform and Better Target the State Children's Health Insurance Program

The statutory deadline for the congressional reauthorization of the State Children's Health Insurance Program (CHIP) is September 30, 2017. Congress should convert CHIP funding into a defined contribution program, giving parents control over enrolling their children in any health plan of their choice. Congress should also require states to share more of the costs of the program, for example, by limiting federal payment to coverage for children at or below 250 percent of the federal poverty level (FPL).

Congress enacted CHIP, a joint federal–state program, in 1997 to reduce non-insurance among low-income children, particularly those in families in many states that did not qualify for Medicaid. Taxpayers have spent billions on the program since its inception. A popular program, with strong bipartisan congressional support, it has been previously reauthorized and received funding on multiple occasions, including through Obamacare.

CHIP has indeed reduced the number of uninsured children. However, the design of the program has generated a number of troublesome fiscal and policy problems.

First, the program was originally sold as federal–state partnership, named the State Children's Health Insurance Program (SCHIP). Today, the program has largely become another federal program. In FY 2016, states spent less than $2 billion of the total $15.6 billion in CHIP spending.

Second, in many states, the program is little more than Medicaid, or an adjunct of Medicaid, a poorly performing welfare program. Only 13 states have created an exclusive stand-alone CHIP program, while the rest have simply integrated or combined some or all of their CHIP program with the Medicaid expansion.

Third, the program needs to improve the quality of its care options. While millions of children have gained coverage, the evidence is that CHIP-enrolled children do not have the same ease of referrals to specialists as children in private coverage; CHIP enrollees also rely more on hospital emergency department care. Moreover, as Heritage analysts predicted a decade ago, the expansion of CHIP, including state CHIP programs that have become an adjunct of Medicaid, has contributed to a "crowd-out" of private health insurance coverage for children.[21]

Congress should reauthorize CHIP with two specific policy changes. First, Congress should convert CHIP funding into a defined contribution program, thus giving parents the option of enrolling their children in any health plan of their choice, including, if available, employer-based coverage. Parental choice would enable parents to include their children in their own health care plans, allowing for whole family coverage, as well as providing them an opportunity to secure better quality care. The formal separation of parents from children in health insurance coverage is an undesirable anomaly. Second, Congress should require the states to share more of the cost of the program. One way to accomplish this objective is to limit federal payment over time to coverage for children at, or below, 250 percent of the FPL. The vast majority of CHIP-enrolled children today are in fact within that income range. If states wish to support children in families with higher levels of income they can, and should, be free to do so, but without federal taxpayers footing the bill.

Advance Reforms in the Federal Aviation Administration Reauthorization

The Federal Aviation Administration (FAA) is a sub-agency of the Department of Transportation. Its primary functions include promulgating and enforcing aviation safety regulations, providing air traffic control (ATC) services, and dispensing grants for airport capital improvements. The FAA's legal authority expires on September 30, 2017.

20. Salim Furth, "High Debt Is a Real Drag," Heritage Foundation *Issue Brief* No. 3859, February 22, 2013, http://www.heritage.org/debt/report/high-debt-real-drag.

21. Nina Owcharenko, "Fixing SCHIP and Expanding Children's Health Care Coverage," Heritage Foundation *Backgrounder* No. 2029, May 2, 2007, http://www.heritage.org/health-care-reform/report/fixing-schip-and-expanding-childrens-health-care-coverage.

The FAA is long overdue for reform. Congress has not enacted a substantive long-term reauthorization of the FAA since 2012, allowing modernization efforts to stall while perpetuating ineffective and wasteful programs.[22] Congress must use the reauthorization as an opportunity to structurally reform the FAA, not to pad its budget or increase its expansive regulatory purview.

While each chamber of Congress has produced its own FAA reauthorization bill and passed it out of committee, neither bill has received a vote on the House or Senate floor. The Heritage Foundation produced a comparative analysis of the base language of both the House bill (21st Century Aviation Innovation, Reform, and Reauthorization (AIRR) Act; H.R. 2997) and the Senate bill (Federal Aviation Administration Reauthorization Act of 2017; S. 1405) in a June *Issue Brief*.[23]

The Senate bill, disappointingly, does not include any major reforms. Instead, the bill calls for increasing funding for the FAA across the board and substantially increasing the agency's regulatory purview by instructing it to further regulate air carriers' ticketing and business practices.[24] The bill increases inefficient funding for the Airport Improvement Program (AIP) and continues wasteful spending on Essential Air Service (EAS). Overall, the bill does nothing to resolve the structural problems of the FAA, and expands its misguided regime of subsidies and regulations.

The House bill, while exhibiting some of the same flaws, is a marked improvement over the Senate's proposal. Its signature reform is an overhaul of the nation's ATC system, which it removes from the FAA and establishes as a more independent, nonprofit corporation. Removing ATC from the FAA is a much-needed reform to enhance safety and free the service from political micromanagement.

Currently, the FAA acts as both the provider and regulator of ATC services, creating a conflict of interest that the International Civil Aviation Organization recommended eliminating in 2001.[25] A litany of government reports documents the FAA's struggles with updating the ATC system and with hiring practices and budget uncertainty from micromanagement by politicians in Congress.[26] Removing ATC services from the FAA and establishing a private operator to provide ATC would significantly improve the governance structure of the service while trimming the size of the federal government. While the ATC reform proposal and overall bill could be improved, the 21st Century AIRR Act is far superior to its Senate counterpart.[27]

Given the two options, the most prudent action would be for Congress to pursue policies in the 21st Century AIRR Act. However, given the Senate's reluctance to embrace the House principles for ATC reform, passage of the House bill may not be politically feasible. The next best option would be to pass a short-term extension—no more than one year, and preferably shorter—in order to continue to build support for ATC reform and other policy changes. A long-term bill lacking reforms—such as the bill in the Senate—would only delay needed improvements for years and should not be considered.

Furthermore, Congress should augment ATC reform with a more aggressive reform agenda, in its final bill (or by extension, if necessary). Other areas of aviation policy that deserve congressional attention are:

- **Airport funding.** Localize airport funding by eliminating the AIP, corresponding aviation taxes, and burdensome airport revenue regula-

22. See the FAA Modernization and Reform Act of 2012, Public Law No. 112–95, 112th Congress, 2nd Session.
23. Michael Sargent, "2018 FAA Reauthorization: Potential for Positive Air Traffic Control Reforms, But More Policy Improvements Needed," Heritage Foundation *Issue Brief* No. 4724, June 26, 2017, http://www.heritage.org/sites/default/files/2017-06/IB4724.pdf.
24. Ibid.
25. Langhorne Bond and Robert Poole, "Time to Separate the ATO from FAA Safety Regulation," Reason Foundation, April 26, 2011, http://reason.org/news/show/separate-the-ato-from-faa (accessed August 24, 2017).
26. See, for example, U.S. Department of Transportation, Office of Inspector General, "Observations on FAA's Efforts to Implement Reforms and Modernize the National Airspace System," May 17, 2017, https://www.oig.dot.gov/library-item/35697 (accessed August 24, 2017); U.S. Department of Transportation, Office of Inspector General, "Total Costs, Schedules, and Benefits of FAA's NextGen Transformational Programs Remain Uncertain," November 10, 2016, https://www.oig.dot.gov/library-item/33888 (accessed August 24, 2017); and U.S. Government Accountability Office, "Observations on the Effects of Budget Uncertainty on FAA," November 19, 2015, http://www.gao.gov/products/GAO-16-198R (accessed August 28, 2017).
27. Sargent, "2018 FAA Reauthorization: Potential for Positive Air Traffic Control Reforms, But More Policy Improvements Needed."

tions.[28] Alternatively, uncap the Passenger Facility Charge and lower AIP grants and ticket taxes proportionally.[29]

- **Essential Air Service.** Eliminate the EAS. Alternatively, reform the EAS by enforcing or lowering the $200 per passenger subsidy cap and raising the minimum distance a recipient airport can be located in relation to the closest hub airport.

- **Regulatory restraint.** Eliminate provisions that call for proscriptive regulation of the aviation industry, such as those that govern air carrier employment practices, ticketing operations, and airport grant assurances.

- **Airport privatization.** Expand access to the Airport Privatization Pilot Program by reducing airlines' veto power, uncapping the number of available pilot slots, allowing partial or full privatization, and approving the use of tax-exempt bonds at private airports.[30]

With the President's focus on rebuilding the nation's infrastructure, Congress has a rare opportunity to significantly improve the state of the country's aviation infrastructure—at little cost to taxpayers—through ATC reform and other policy changes. It should not squander its opportunity to reform the FAA in this year's authorization.

Phase out the National Flood Insurance Program

Authorization for the National Flood Insurance Program (NFIP) is set to expire on September 30, 2017. Congress should phase out the deeply flawed program and enable private insurance to replace it.[31]

The federal government issues virtually all primary flood insurance for homeowners and businesses, and the NFIP owes nearly $25 billion to taxpayers. Moreover, the NFIP has failed to adequately map flood risks and its subsidies actually promote development in flood zones, which worsens the devastation of natural disasters

Congress last renewed the NFIP in 2012, taking steps to reduce subsidies and to base rates on a property's flood risk—an essential element of viable insurance. However, the congressional "flood caucus" in 2014 successfully reversed many of the reforms at the behest of local politicians and property owners who benefit from the subsidies.[32]

Tinkering with operational reforms will not remedy the distortionary incentives inherent in a flawed government insurance scheme—especially because the NFIP, as designed, is financially unsound.

The NFIP has fiscally irrational policy objectives, such as offering subsidized insurance premiums to encourage program participation and community-based floodplain management.

Private insurers focus on a different set of objectives. These include ensuring rate and capital adequacy, maintaining solvency, and producing a return on investment.

The differences between the NFIP and private insurers apply to rate-setting as well. For example, the NFIP generally accepts all applicants regardless of an individual's property risk, and sets rates across a smaller number of broad rate classes. Private insurers generally insure applicants based on individual property risks and a larger number of more specific rate classes.

28. Michael Sargent, "End of the Runway: Rethinking the Airport Improvement Program and the Federal Role in Airport Funding," Heritage Foundation *Backgrounder* No. 3170, November 23, 2016, http://www.heritage.org/budget-and-spending/report/end-the-runway-rethinking-the-airport-improvement-program-and-the.

29. See, for example, Investing in America: Rebuilding America's Airport Infrastructure Act, H.R. 1265, 115th Cong., 1st Sess.

30. For more details, see Sargent, "2018 FAA Reauthorization: Potential for Positive Air Traffic Control Reforms, But More Policy Improvements Needed," and Michael Sargent and Nick Loris, "Driving Investment, Fueling Growth: How Strategic Reforms Can Generate $1.1 Trillion in Infrastructure Investment," Heritage Foundation *Backgrounder* No. 3209, May 8, 2017, http://www.heritage.org/government-regulation/report/driving-investment-fueling-growth-how-strategic-reforms-can-generate.

31. Diane Katz, "The National Flood Insurance Program: Drowning in Debt and Due for Phase-out," Heritage Foundation *Backgrounder* No. 3224, June 22, 2017, http://www.heritage.org/government-regulation/report/the-national-flood-insurance-program-drowning-debt-and-due-phase-out.

32. Ben Weyl, "CQ—Hensarling Stranded in Opposition to Flood Insurance Bill," Representative Jeb Hensarling, February 24, 2014, https://hensarling.house.gov/media-center/in-the-news/cq-roll-call-hensarling-stranded-in-opposition-to-flood-insurance-bill (accessed June 16, 2017), and Diane Katz, "No Retreat on Flood Insurance Reform," Heritage Foundation *Issue Brief* No. 4153, February 21, 2014, http://www.heritage.org/government-regulation/report/no-retreat-flood-insurance-reform.

Opponents claim that private insurers would cherry-pick customers, leaving behind property owners with the worst risks. But according to the Reinsurance Association of America, this this claim has not borne out in areas where private insurance has been tested.[33] Draft legislation circulating in the House proposes a five-year reauthorization of the NFIP. However, the need for immediate and far-reaching reforms argues for a shorter reauthorization in order to assess the progress of reforms. Furthermore, any reauthorization must avoid entrenching further the dysfunctional elements of the NFIP.

At a minimum, reauthorization of the NFIP should include:

- **Establishing equivalency for private insurance.** A market for flood insurance depends on allowing private coverage to fulfill the mandatory purchase requirements for federally regulated lenders, a federal agency lender, or a government-sponsored enterprise. Public access to flood records and risk ratings is also essential (without personally identifiable information).

- **Disclosing premium methodology.** Accountability requires transparency. The Federal Emergency Management Agency (FEMA) should be required to divulge its methodology for determining premiums.

- **Basing rates on replacement cost.** FEMA's current practice of setting coverage based on a national average for various structures fails to account for vast differences in property values across local communities and states. Rates based on replacement cost, by structure, would help to achieve actuarial soundness.

- **Allowing pro rata refunds.** The NFIP should be required to provide refunds on a proportional basis to policyholders who cancel during a policy term to obtain private coverage.

- **Adjusting risk mapping and premiums.** FEMA should be required to adjust all NFIP premiums for actuarial risk within four years of enactment.

- **Expanding rights of appeal.** Policyholders should be allowed to appeal a full or partial denial of claim from their Write Your Own insurer. States, local governments, and property owners should be allowed to appeal Special Flood Hazard Area designations and FEMA denials of requests to update flood maps.

The ultimate solution is to eliminate the subsidies and other giveaways that secure the government's flood insurance monopoly. Private insurers are interested in underwriting wide swaths of properties in flood zones. Congress should phase out the NFIP, enabling private companies to offer customized options that would likely increase the number of homeowners who insure against flooding.

Summarized Recommendations

As Congress heads into September, lawmakers should:

- **Reject any attempt to increase overall discretionary funding levels.** Instead, lawmakers should prioritize national defense funding within the boundaries of the aggregate BCA spending limits for FY 2018, and offset any defense funding increase with prudent domestic program eliminations and funding reductions.

- **Extend the Budget Control Act spending limits beyond 2021, without imposing arbitrary parity between defense and non-defense programs.** The BCA imposes fiscal discipline over discretionary appropriations. Congress must not allow spending limits to lapse.

- **Cut spending and adopt a path to balance the budget before increasing the debt limit.** Lawmakers should adopt fiscal controls, such as a Swiss-style debt brake or other similar expenditure limit, to rein in out-of-control entitlement spending.

- **Convert CHIP funding into a defined contribution program, allowing parents to enroll their children in any health plan of their choice.** Congress should also require states to

33. Reinsurance Association of America, "Private Flood Improves NFIP's Stability," [undated], http://www.reinsurance.org/RAA/News/2017/April_2017/Private_Flood_Improves_the_NFIP_s_Stability/ (accessed June 16, 2017).

share more of the costs of the program, for example, by limiting federal payment to coverage for children at or below 250 percent of the FPL.

- **Remove air traffic control from the FAA, and allow the private sector to provide ATC functions.** This would significantly improve the governance structure of the service and allow for modernization.

- **Improve U.S. aviation.** Congress should reform airport funding, regulation, and enable greater privatization of airport infrastructure.

- **Phase out the deeply flawed NFIP and enable private insurance to replace it.** Tinkering with operational reforms will not remedy the distortionary incentives inherent in a flawed government insurance scheme.

Congress will face a busy September of its own doing. Rather than addressing each of these issues with prudence and deliberation before the August recess, Congress once again delayed action on urgent and important matters right up until the final deadline. This is no accident; it is common practice for the many Members of Congress who shy away from taking responsibility for governing. Eleventh-hour deals with the threat of a government shutdown or other ultimatum provide lawmakers' with the political cover to make bad decisions that perpetuate the status quo. Members of Congress have all the tools at their disposal to address September deadlines with good policy choices. They only need act on them.

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