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Senate "Minibus" Misses the Mark on Reining in Spending and Pursuing Conservative Policies

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This week, the Senate is expected to consider a four-bill "minibus" appropriations package that would combine the Interior and Environment and Financial Services and General Government package that passed the House last week with the Senate's version of the Agriculture, Rural Development, Food and Drug Administration (FDA), and Related Agencies, and Transportation, Housing and Urban Development, and Related Agencies appropriations bills. In total, the package would appropriate $154.2 billion among the four subcommittees' jurisdiction.[1] This *Issue Brief* focuses on the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, and Transportation, Housing and Urban Development, and Related Agencies portion of the bill.[2]

While it is important that the Senate make progress on appropriations bills and return to a semblance of regular order, this bill misses the mark. The Senate minibus continues to provide funding for failed, wasteful, and inefficient programs that do not meet the standard of the core constitutional responsibilities of the federal government. It also fails to make progress on key conservative policies and reforms. This paper identifies programs that should be eliminated, places where spending cuts can be made, and conservative policy riders that should be pursued.[3]

Agriculture, Rural Development, FDA, and Related Agencies

The Agriculture, Rural Development, FDA, and Related Agencies portion of the minibus provides $23.2 billion in discretionary funding for those agencies in 2019, an increase of $225 million compared to 2018 and more than $6 billion higher than the President's request. The bill provides funding to support federal agriculture, conservation, and nutrition programs.

Instead of continuing to provide funding for burdensome programs that impede farmers and businesses, this bill should focus on eliminating wasteful programs and lifting regulations that make it harder for Americas taxpayers and workers to do business.

Agriculture, Rural Development, FDA, and Related Agencies Recommendations

- **Repeal the U.S. Department of Agriculture's (USDA) Catfish Inspection Program.** While the FDA regulates domestic and imported seafood, the 2008 farm bill created a special exception requiring the USDA to regulate catfish sold for human consumption. This program, which has not yet been implemented, would impose costly duplication because facilities that process seafood, including catfish, would have to comply with both FDA and USDA regulations. The evidence does not support the health justifications for the more intrusive inspection program, to which there has been wide bipartisan opposition.

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The U.S. Government Accountability Office (GAO) criticized the program in a 2012 report with the not-so-subtle title *Seafood Safety: Responsibility for Inspecting Catfish Should Not Be Assigned to USDA*.[4] The President's fiscal year (FY) 2019 budget called for catfish inspection to be returned solely to the FDA.[5]

The USDA catfish inspection program would also have serious trade implications. Foreign countries that want to export catfish to the U.S. would need to establish a new regulatory system equivalent to the USDA program. The USDA's approval of these new regulatory systems could take years. Catfish-exporting countries would likely retaliate with and win trade disputes, since the program would be an unjustified trade barrier. The program would also reduce competition, harming American consumers.

- **Eliminate the USDA's Conservation Technical Assistance Program.** The minibus provides $879 million in funding for conservation programs, $5 million more than 2018 funding and $210 million above the President's request.[6] The USDA's Natural Resources Conservation Service runs this costly program that offers landowners technical assistance on natural resource management. This assistance includes help in maintaining private lands, complying with laws, enhancing recreational activities, and improving the aesthetic character of private land. Private landowners are the best stewards of a given property and, if necessary, can seek private solutions to conservation challenges.[7]

  Federal taxpayers should not be forced to subsidize advice for which landowners should be paying. In addition, this government intervention could be crowding out the private solutions that should be available to private landowners.

Agriculture, Rural Development, FDA, and Related Agencies Policy Riders

- **Prohibit funding for national school-meal standards.** The USDA's school-meal standards for the Healthy, Hunger-Free Kids Act of 2010 have been a failure. They are a burden on schools and have led to many negative outcomes. A September 2015 GAO report shows that since the implementation of these standards, participation in the school lunch program has declined, food waste remains a significant problem, and some schools have dropped out of the school lunch program at least partly because of the standards.[8] Some schools have even had to draw from their education funds to cover the costs imposed by these standards.[9] No funding should be directed toward implementation or enforcement of these standards. Any new standards should give states and local educational authorities much greater flexibility and respect the role of parents in helping their children make dietary decisions.

1 Anne Kin, "This Week: Senate Considers Four-Bill Spending Package," CQ, July 23, 2018, http://www.cq.com/doc/news-5362278?2&srcpage=news&srcsec=cqn (accessed July 23, 2018).

2 For recommendations on the Interior and Environment and Financial Services and General Government portion of the bill, see Justin Bogie, Daren Bakst, Nicolas D. Loris, Katie Tubb, and Norbert J. Michel, "The House Interior, Environment, and Financial Services 'Minibus'—Progress on Policy, But Fails to Cut Spending," Heritage Foundation *Issue Brief* No. 4888, July 18, 2018, http://report.heritage.org/ib4888.

3 Many of the recommendations in this paper can be found in The Heritage Foundation, *A Blueprint for Balance: A Federal Budget for 2019* (Washington, DC: The Heritage Foundation, 2018), https://www.heritage.org/blueprint-balance.

4 U.S. Government Accountability Office, *Seafood Safety: Responsibility for Inspecting Catfish Should Not be Assigned to USDA*, May 2012, GAO–12–411, https://www.gao.gov/assets/600/590777.pdf (accessed July 24, 2018).

5 Office of Management and Budget, *Budget of the United States Government*, *Fiscal Year 2019*.

6 S. Rep. 115-2259, 115th Cong., 2nd Sess., May 24, 2018, https://www.congress.gov/115/crpt/srpt259/CRPT-115srpt259.pdf (accessed July 23, 2018).

7 Daren Bakst, "Addressing Waste, Abuse, and Extremism in USDA Programs," Heritage Foundation *Backgrounder* No. 2916, May 30, 2014, https://www.heritage.org/agriculture/report/addressing-waste-abuse-and-extremism-usda-programs.

8 U.S. Government Accountability Office, "School Nutrition: USDA Had Efforts Underway to Help Address Ongoing Challenges Implementing Changes in Nutrition Standards," GAO–15–656, September 2015, http://gao.gov/products/GAO-15-656 (accessed July 25, 2018).

9 Erik Wasson, "Michelle's Meals Turn Off the Kids," *The Hill*, May 21, 2014, http://thehill.com/policy/finance/206734-michelles-meals-turn-offthe-kids (accessed July 25, 2018).

- **Prohibit funding for the community eligibility provision.** The community eligibility provision is a policy that was implemented by the Healthy, Hunger-Free Kids Act of 2010. It expands free school meals to students regardless of family income. Under this provision, if 40 percent of students in a school, group of schools, or school district are identified as eligible for free meals because they receive benefits from another means-tested welfare program like food stamps, then all students can receive free meals. The community eligibility provision is essentially a backdoor approach to universal school meals. Schools should not be providing welfare to middle-class and wealthy students. Ending the community eligibility provision would ensure that free meals are going only to students from low-income families. No further funding should be directed toward implementing this provision.

- **Withhold funding for federal fruit-supply and vegetable-supply restrictions in marketing orders.** In June 2015, the Supreme Court of the United States decided *Horne v. Department of Agriculture*,[10] a case regarding the federal government's authority to fine raisin growers who did not hand over part of their crop to the government. The Court held that forcing growers to turn over their raisins was a taking of private property requiring just compensation.[11] Although the "raisin case" received much attention because of the outrageous nature of the government's actions, it is far from unique. In particular, the USDA uses its power to enforce a number of cartels through industry agreements known as marketing orders. Fruit and vegetable marketing orders[12] allow the federal government to authorize supply restrictions (volume controls), limiting the amounts that agricultural producers may sell. Marketing orders are bad enough, but at a minimum, Congress should stop funding these volume controls that limit how much of their own fruits and vegetables farmers may sell, and it should get the government out of the market and cartel-management business.[13]

Transportation, Housing and Urban Development, and Related Agencies

The Transportation, Housing and Urban Development, and Related Agencies (THUD) appropriations bill primarily provides funding to the Departments of Transportation and Housing and Urban Development as well as the numerous programs and agencies that lie within those departments. This bill provides $71.4 billion in discretionary funding for those purposes. This represents an increase of $1.1 billion compared to current levels and is $23.4 billion above President Trump's budget request.[14]

The bill makes little progress toward reining in wasteful spending or advancing conservative and free-market policy provisions.

Transportation, Housing and Urban Development, and Related Agencies Recommendations

- **Limit Highway Trust Fund Spending to Gas Tax Revenues.** The minibus continues to follow the fiscally irresponsible lead of the Fixing America's Surface Transportation (FAST) Act, the most

10 Horne v. Department of Agriculture, 135 S. Ct. 2419 (2015), https://www.leagle.com/decision/insco20150622a72 (accessed July 25, 2018).

11 Daren Bakst, "The Federal Government Should Stop Limiting the Sale of Certain Fruits and Vegetables," Heritage Foundation *Issue Brief* No. 4466, September 29, 2015, http://www.heritage.org/research/reports/2015/09/the-federal-government-should-stop-limiting-the-sale-of-certain-fruits-and-vegetables.

12 These marketing orders cover fruits, vegetables, and specialty crops. See U.S. Department of Agriculture, Agricultural Marketing Service, "Marketing Orders for Fruits, Vegetables, & Specialty Crops," http://www.ams.usda.gov/rules-regulations/moa/fv (accessed July 25, 2018). There also are milk marketing orders, but they are different from fruit and vegetable marketing orders. See U.S. Department of Agriculture, Agricultural Marketing Service, "Federal Milk Marketing Orders," U.S. Department of Agriculture, http://www.ams.usda.gov/rules-regulations/moa/dairy (accessed July 25, 2018).

13 Daren Bakst, "The Federal Government Should Stop Limiting the Sale of Certain Fruits and Vegetables," Heritage Foundation *Issue Brief* No. 4466, September 29, 2015, http://www.heritage.org/research/reports/2015/09/the-federal-government-should-stop-limiting-the-saleof-certain-fruits-and-vegetables.

14 News release, "Summary of the FY 2019 Transportation, Housing and Urban Development, and Related Agencies Appropriations Bill," U.S. Senate Committee on Appropriations, June 7, 2018, https://www.appropriations.senate.gov/news/minority/summary-of-the-fy-2019-transportation-housing-and-urban-development-and-related-agencies-appropriations-bill (accessed July 24, 2018).

recent surface transportation reauthorization, passed in December 2015. The five-year FAST Act increased chronic deficit spending out of the Highway Trust Fund (HTF). The HTF is supposed to fund federal highway and transit projects with revenues from gas tax collections and other fees. Instead, the FAST Act transferred $70 billion to the HTF to cover yet another revenue shortfall, "paid for" with unrelated provisions and budget gimmicks. This bailout came on top of $70 billion in previous bailouts, bringing the total transfers into the trust fund to $140 billion since 2008.[15]

The higher spending levels in the FAST Act put the trust fund on a course to spend nearly $200 billion more than it will take in over the next 10 years. Because the authorization increased spending without pursuing any reforms to improve the solvency of the HTF, it sets the trust fund up to require an even larger bailout after it is projected to begin incurring shortfalls again in 2021. From 2021–2028, the Congressional Budget Office (CBO) projects the shortfall could reach more than $160 billion.[16]

Despite the unsustainable outlook for the HTF, the minibus blindly follows the FAST Act's recommendation and increases spending out of the trust fund. The bill allows for a total of $55.2 billion in spending for 2019, divided between $45.3 billion out of the Highway Account and $9.9 billion out of the Mass Transit Account.[17] The CBO projects highway trust fund revenues to total only $42 billion for 2019, which would result in a $13 billion deficit.[18]

While the FAST Act provides contract authority that enables HTF deficits through 2020, Congress should take steps this year to address the chronic spending problem plaguing the trust fund. It should leverage every legislative opportunity to end the irresponsible and unsustainable practice of trust fund bailouts.

- **Eliminate the Federal Transit Administration (FTA).** Most of the FTA's budgetary resources are drawn from the Mass Transit Account of the HTF, from which the bill provides $10.9 billion in contract authority for transit formula grants and other operations, as is consistent with the FAST Act. The bill places an obligation limitation of $9.9 billion on the contract authority drawn from the trust fund for 2019. In addition, the bill provides $2.6 billion in discretionary budget authority for FTA operations and other grant programs, totaling the FTA's budgetary resources at $13.5 billion. The FTA funds transit projects that are not federal concerns and provides incentives for localities to build wasteful projects through generous grant subsidies. The agency and its grant programs should be eliminated.

- **End subsidies to the Washington Metropolitan Area Transit Authority (WMATA).** The minibus provides $150 million for FY 2019, the same as current funding. The WMATA is the only transit agency in the country to receive direct appropriations from Congress. Federal subsidies for the WMATA should be abolished.

- **Eliminate Capital Investment Grants (New Starts).** The bill provides $2.55 billion for the deleterious New Starts program, which administers discretionary grants for new mass transit projects. The bill cuts New Starts funding by $90 million compared to 2018 levels, but this program should be eliminated.

- **Phase out grants to the National Railroad Passenger Service Corporation (Amtrak).** The bill provides $1.94 billion in capital and operating subsidies for Amtrak, the same as current year

15 Michael Sargent, "Going Nowhere FAST: Highway Bill Exacerbates Major Transportation Funding Problems," Heritage Foundation *Issue Brief* No. 4494, December 3, 2015, http://www.heritage.org/research/reports/2015/12/going-nowhere-fast-highway-bill-exacerbates-major-transportation-funding-problems.

16 Congressional Budget Office, "Projections of Highway Trust Fund Accounts—CBO's April 2018 Baseline," April 2018, https://www.cbo.gov/system/files?file=2018-06/51300-2018-04-highwaytrustfund.pdf (accessed July 23, 2018).

17 S. 3023, 115th Cong., 2018.

18 Congressional Budget Office, "Projections of Highway Trust Fund Accounts—CBO's April 2018 Baseline."

funding. All federal subsidies for Amtrak should be phased out and the viable portions of the corporation privatized.

- **Eliminate the Federal Housing Administration.** The Federal Housing Administration's (FHA) main role is to provide lenders with mortgage insurance.[19] The FHA charges fees to provide lenders with full loan-loss coverage when a borrower defaults on a loan. The FHA has a history of not charging high enough fees to cover all of its losses, leaving taxpayers liable for the difference. Furthermore, the FHA's operation crowds private firms out of the market because they cannot easily compete with underpriced government insurance. The FHA has consistently had trouble meeting safety and soundness guidelines, has undermined the stability of the housing market, and in recent years has needed several billion dollars to cover its losses. In return for the substantial costs to taxpayers, the FHA's mortgage insurance programs have had minimal impact on homeownership rates.

  History suggests that additional reforms to the various FHA insurance programs will, at best, merely provide temporary financial improvements to the agency, without appreciable benefits to the housing market. Congress should therefore eliminate the FHA and get the federal government out of the home financing business.

- **Eliminate Community Planning and Development programs.** The minibus provides $7.8 billion for Community Planning and Development programs, of which more than $3.4 billion goes toward Community Development Block Grants (CDBG). In general, CDBG programs have been fraught with waste and abuse for decades.[20] After more than 40 years—and more than $100 billion of CDBGs—it is virtually impossible to argue they have revived communities and increased economic growth in distressed neighborhoods.[21] These programs should be left to state and local governments and the private sector if they see reason to finance them. They do not serve a core role of the federal government and should be eliminated.

Transportation, Housing and Urban Development, and Related Agencies Policy Riders

- **Privatize the Federal Aviation Administration (FAA).** The bill provides a total of $14.4 billion to the FAA. This represents a $299 million cut from this year's level, but is $1.6 billion more than the President's request. The vast majority of the FAA's budgetary resources are allocated to the Air Traffic Organization (ATO) for Air Traffic Control (ATC) operations and capital investment. There is bipartisan agreement that ATC is not necessarily a governmental function and that the ATO should be privatized.[22] Sadly, the bill ignores the shortcomings of government-controlled ATC. According to the bill report, "The Committee does not support the administration's request to transfer the FAA's air traffic functions to a not-for-profit, independent, private corporation." The bill provides no language

19 John Ligon and Norbert J. Michel, "The Federal Housing Administration: What Record of Success?" Heritage Foundation *Backgrounder* No. 3006, May 11, 2015, http://www.heritage.org/research/reports/2015/05/the-federal-housing-administration-what-record-of-success (accessed July 23, 2018).

20 Ted DeHaven, "Community Development," *Downsizing the Federal Government*, The Cato Institute, 2009, http://www.downsizinggovernment.org/hud/community-development#_edn6 (accessed July 23, 2018).

21 CDBGs were authorized under Title I of the Housing and Community Development Act of 1974 (Public Law 93–393), and the HOME program was authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990 (Public Law 101–625). See Eileen Norcross, "Community Development Block Grant: The Case for Reform," testimony before the Subcommittee on Federal Financial Management, Government Information, and International Security, Committee on Homeland Security and Government Affairs, U.S. Senate, June 29, 2006, http://mercatus.org/publication/community-development-block-grant-case-reform (accessed July 23, 2018).

22 See Dorothy Robyn, "Alternative Governance Models for the Air Traffic Control System: A User Cooperative Versus a Government Corporation," Brookings Institution, April 6, 2015, http://www.brookings.edu/blogs/fixgov/posts/2015/04/06-faa-user-cooperative-government-corporation-robyn (accessed May 16, 2016), and Robert W. Poole Jr., "The Urgent Need to Reform the FAA's Air Traffic Control System," Heritage Foundation *Backgrounder* No. 2007, February 20, 2007, http://www.heritage.org/research/reports/2007/02/the-urgent-need-to-reform-the-faas-air-traffic-control-system.

that would allow movement on removing the ATO from government control.[23] This is a cynical position that concentrates power for the benefit of congressional appropriators at the expense of the traveling public. The bill should not seek to impede congressional efforts to move toward ATC privatization, which would then allow appropriators to phase out FAA funding for all non-safety provisions.

- **Eliminate "Buy America" restrictions.** Most federally funded infrastructure projects must comply with "Buy America" mandates, which require that certain input components must be manufactured in the United States. This protectionist mandate limits selection and price competition among input manufacturers, which often leads to higher costs for projects. "Buy America" requires the use of American-made steel, which in recent years has cost more than steel made in Western Europe or China—a price increase of roughly 30 percent in the case of Chinese-made steel. In addition, buses made in the U.S. were found to be twice as expensive as those made in Japan. Overall, "Buy America" provisions are allowed to increase the cost of an entire project by up to 25 percent before the project agency can apply for a waiver. Ending or waiving this bureaucratic and protectionist mandate would give U.S. infrastructure access to more numerous, better quality, and less-expensive components.
- **Require that the GAO examine infrastructure construction costs in the United States.** Data and recent reports indicate that infrastructure construction costs in the U.S. exceed those in peer countries, especially with regard to megaprojects. Congress should require the GAO to examine and determine the reasons for these excessive construction costs. The GAO should scrutinize all possible factors, from industry practices to government regulation, in order to provide a clear picture of the shortcomings of current practice.

Conclusion

The Senate Agriculture, FDA, and THUD appropriations minibus does little to reduce the footprint of the federal bureaucracy and cut burdensome regulations placed on America's farmers and businesses. It does nothing to claw back the irresponsible spending increases approved by the Bipartisan Budget Act and allows the HTF to continue on an unsustainable budget path.

The federal government currently engages in numerous programs that fall outside its constitutional role and duty. Those programs should be cut or eliminated. This minibus would be a great opportunity to start that process and advance conservative policy riders.

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23 S. Rep. 115-268, 115th Cong., 2nd Sess., June 7, 2018, https://www.congress.gov/115/crpt/srpt268/CRPT-115srpt268.pdf (accessed July 23, 2018).