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Annual Privatization Report 2014

Federal Government Privatization

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Privatization in the federal government in 2013 can be summarized as a lot of talk, but little action.

The spending agreement negotiated by Budget Committee Chairs Senator Patty Murray (D-WA) and Representative Paul Ryan (R-WI) at the year's end failed to reduce the debt and deficit through privatization. That was not due to a lack of trying by advocates of greater reliance on private enterprise. A delegation of members of the House petitioned Ryan to include “assumptions to reduce spending and increase revenue through utilization of the private sector ... to provide commercially available goods and services. Examples of these private sector options include vouchers, asset sales, contracting out, divestiture, franchising, concessions, employee stock ownership plans (ESOPs), and public-private partnerships.”¹ A coalition of 43 organizations, including Reason Foundation, recommended an aggressive privatization agenda in the budget blueprint.²

The Business Coalition for Fair Competition, an alliance of associations, think tanks, corporations and individuals, released a list of its top 10 most egregious examples of unfair government competition with private enterprise for the year.³ The list included:

- The Department of Defense (DoD) operated 178 grocery stores (domestic commissaries) with a \$1.3 billion annual subsidy, as well as 60 movie theaters world-wide, costing \$120,000 each.⁴
- NASA is in the movie business. The NASA-owned Michoud Facility in Louisiana served as the production location for major Hollywood films, in competition with a nearby private studio.⁵
- Not only is the Federal Aviation Administration (FAA) the compiler and sole provider of U.S. aeronautical cartographic data, but the FAA is also a manufacturer and merchant of U.S. sectional charts, duplicating a private company's idea for a unique tear-resistant paper chart product.
- The Government Accountability Office found the Energy Department's national laboratories lost money performing “work for others.”⁶ The laboratories are authorized to perform work for other federal agencies and nonfederal entities. About 88 percent of this work is for other federal agencies, with the majority performed for the Department of Defense.
- In April, 2013, the Internal Revenue Service (IRS) released the final report of its Colleges and Universities Compliance Project, finding colleges and universities are engaged in more than 30 commercial activities—including advertising, fitness/recreation centers, golf courses, sports camps, facility rentals and arenas—in many cases without properly reporting the income from such enterprises and failing to pay their unrelated business income tax (“UBIT”).⁷ George Mason University in Fairfax, Virginia announced in December 2013 it will close its hotel, the Mason Inn, after losing \$11 million.⁸
- UNICOR, a federal corporation that uses prison labor, (also known as Federal Prison Industries, Inc. (FPI)), won a \$246.6 million contract to produce Interceptor Body Armor Outer Tactical Vests for various foreign military sales customers.⁹ FPI manufactures products and provides services (clothing and textiles, graphics and signage, office furniture, manufacturing, electronics, fleet and industrial products, recycling, and services such as call center, help desk support and mapping, etc.) to executive agencies in the federal government, including the military.
- Implementation of Obamacare empowered the government to hire Health Care “Navigators” in 2013 to engage in unfair government competition with private sector insurance brokers.
- Several government agencies have been accused of patent infringement, intellectual property (IP) theft, or outright duplication of private sector technology, allegedly replicating software, hardware, and supporting technologies found in the private sector.¹⁰

- Local and regional transit authorities, heavily subsidized by the Federal Transit Administration, engaged in competition and duplication with private sector motorcoach operators, despite the federal government's "Charter Bus Service Rule" designed to put the brakes on such public sector encroachment.

Some 850,000 federal employees are engaged in positions that are commercial in nature.¹¹ Little is being done to privatize those positions, or even subject them and the functions in which they reside to any direct public-private cost comparison or evaluation. Congress and the president have presented federal agencies with the worst of two worlds from a public administration standpoint. On one hand, sequestration is bringing reductions to agency budgets, but a congressional moratorium on public-private cost comparisons and competitions under OMB Circular A-76 prevents agency managers from exploring or implementing ways to save money and operate more efficiently.

Federal employees still make maps, design roads, manage websites, write software, serve meals, mow lawns, paint walls, wash clothes and do thousands of other tasks that have little to do with governing. The federal government is the nation's largest banker, insurer, homeowner, landlord, utility provider, and bus, transit and passenger train operator, to name just a few of Uncle Sam's more significant commercial activities.

Legislation to permanently apply the "Yellow Pages Test"—which would examine activities of government that are also commercially available from private companies found in the Yellow Pages of the telephone book—languished in Congress in 2013.

Representative John J. "Jimmy" Duncan, Jr. (R-TN) and Senator John Thune (R-SD) introduced the "Freedom from Government Competition Act" in Congress. H.R. 1072 and S. 523, respectively, would implement the test across the government to require agencies to subject commercial activities to market competition to break up government monopolies and prove a better value to the taxpayer.

Big ticket privatization initiatives were proposed, such as the Obama administration's plan to divest the Tennessee Valley Authority (TVA), but no action was taken. The Protecting American Taxpayers and Homeowners Act, H.R. 2767, to privatize the government-sponsored enterprises for mortgage financing Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"), was approved on a straight

party line vote in the House Financial Services Committee in July, but never reached the House floor. Nor has S. 1217—legislation that would restructure, but not privatize, Fannie Mae and Freddie Mac—been acted upon.

There were, however, some small victories and positive signs.

In May, the Animal and Plant Health Inspection Service (APHIS), an agency of the U.S. Department of Agriculture, for the first time defined the term "urban rodent control" for the purposes of its wildlife services program. APHIS formally limited its own performance of commercially available services and established policy on the work it will not perform in the eradication of rats, mice, chipmunks, squirrels, porcupines, groundhogs and other species, leaving such services to the private sector pest management industry. The issue stems from a 1987 law that authorized APHIS to work in non-agricultural settings. The law was intended to permit the government to control birds at airports and engage in rabies control initiatives. But, the National Pest Management Association (NPMA) argued, the language “was written very broadly and authorizes almost any type of vertebrate work imaginable, including ‘urban rodent control’.”¹²

NPMA had long sought to have an official, enforceable definition of the term “urban rodent control.” The industry group pushed for the introduction of the Pest Elimination Services Transparency & Terminology (PESTT) Act, H.R. 730, in the U.S. House of Representatives by Rep. Mick Mulvaney (R-SC) and Rep. Kurt Schrader (D-OR). That brought APHIS to the negotiating table, resulting in a Federal Register notice and a policy letter to Congress.¹³

Another positive step was the White House release of a U.S. national space transportation policy on November 21, calling for increased competition to launch government missions and encouraging the use of hosted payloads.¹⁴ The new policy no longer requires the Defense Department to pay the annual fixed costs of launch services providers, but opens the field to market competition. “U.S. commercial space transportation capabilities that demonstrate the ability to launch payloads reliably will be allowed to compete for United States Government missions on a level playing field,” the new policy stated.

Public-private partnerships (P3) and innovative private sector financing of infrastructure and other traditional government activities were the focus of study, investigation and proposal, but little action. The Senate Commerce Committee held a hearing on ways to leverage innovative financing to supplement federal investment to rebuild the nation's infrastructure, while the House Transportation and Infrastructure panel explored the role of innovative

financing in intercity passenger rail and redeveloping underutilized federal property through public private partnerships. A bipartisan congressional P3 caucus was formed to educate and mobilize members of the House on public-private partnership initiatives.

The year 2014 may bring a new crop of proposals, particularly from a Defense Department adjusting to live with sequestration cuts.

- In November 2013, it was reported the Pentagon was studying closure of its 178 domestic commissaries. Senator Tom Coburn (R-OK) estimates taxpayers are burdened with a \$1.3 billion annual subsidy for the military's retail grocery stores.¹⁵ A privatization plan was expected to be included in the president's fiscal year 2015 budget request to Congress, but instead the Pentagon proposed a reduction in subsidies for domestic commissaries, rather than full privatization or closing of the government stores.¹⁶ At press time, the budget proposal was awaiting action in Congress.
- The Army announced in October it is looking to expand privatization in nearly all commercial activities.¹⁷ Privatization success in military housing and utilities has prompted new efforts to explore private sector performance of functions ranging from child care to food service. Katherine Hammack, assistant secretary of the Army for installations energy and environment, is looking at all options for expanding privatization efforts. Among those under consideration are voucher-based dining cards for on-base and community restaurants, in-home child care, base operations support, information technology, security, finance and accounting, recreation, and medical and library services.
- The Navy is advancing a plan to close its in-house data centers and move to secure commercial facilities. It issued a request for information in November 2013 seeking private sector proposals to consolidate approximately 12,000 servers and close 67 facilities and launched a multi-phase acquisition plan in the spring of 2014.¹⁸
- The House and Senate passed separate bills (H.R. 3080 and S.601, respectively) reauthorizing water resource projects that included new provisions to expand the use of public-private partnerships (PPPs) in water projects by federal, state and local agencies. The bipartisan conference report on H.R. 3080—the Water Resources Reform and Development Act of 2014—was released in May 2014 and passed both

chambers by overwhelming margins. The House-Senate agreement includes a provision creating a five-year pilot federal loan program—the Water Infrastructure Finance and Innovation Act (WIFIA)—to allow the Army Corps of Engineers and the Environmental Protection Agency to provide up to \$175 million in direct loans and loan guarantees for the construction of critical water infrastructure projects (e.g., levee and flood control projects, drinking water systems, wastewater treatment plants, desalination plants, new water supply facilities, etc.), including those delivered through PPPs. Eligible loan/guarantee recipients include state and local governments, corporations, partnerships, joint ventures, trusts, tribal governments and state infrastructure financing authorities. The program is modeled after the Transportation Infrastructure Finance and Innovation Authority (TIFIA) administered by the Federal Highway Administration, which has been used to help deliver many transportation PPP projects nationwide. The legislation also creates a PPP pilot program, allowing non-federal interests to finance construction of at least 15 authorized Army Corps water resources development projects, including locks and dams.

- Rep. John Delaney (D-MD) took an innovative approach to establishment of an infrastructure bank. The Partnership to Build America Act (HR 2084) proposes to leverage private dollars to fund large infrastructure projects. Unlike many other federal infrastructure bank proposals, Delaney does not initially capitalize with appropriated funds. Instead, it proposes to use tax earnings repatriated from overseas.

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