

ISSUE BRIEF

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Time to End “Zombie” Appropriations

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A growing problem on Capitol Hill has been the expanding practice of Congress appropriating funds to so-called zombie programs, which are programs that have never been authorized or are operating under an expired authorization. Under House and Senate rules, an appropriation cannot be made for a purpose unless separate authorizing legislation has been passed into law. These rules are often ignored, which has led to rampant growth of unauthorized appropriations.

In its latest report on unauthorized and expiring authorizations, the Congressional Budget Office (CBO) reports that for fiscal year 2016, the omnibus appropriations bill appropriated more than \$310 billion to agencies and programs that had not been reauthorized, and another \$611 billion for programs that would expire on or before September 30, 2016.¹ The CBO report does not even take into account additional programs that have never been authorized.

Congress should not be appropriating funds for purposes that are unauthorized. The authorization process is designed in part as an oversight tool. It is a chance for Members of authorizing committees to closely examine the activities that the federal government is funding, and to make decisions about whether they are worthy purposes. Starting this appropriations cycle, Congress should stop making

appropriations to zombie agencies and programs, and should not provide any more funding until they have been reauthorized.

The Role of Authorizations

Each year, Congress goes through the process of passing appropriations bills to fund a wide array of discretionary government programs and services. Before this can happen though, these activities must first be authorized by their respective committees of jurisdiction. Of the 38 standing committees in the House and Senate, 31 are authorizing committees tasked with this purpose. An authorization may be for one year, multiple years, or in some cases indefinite. Authorizations and appropriations work in tandem to fund the myriad of activities that the federal government engages in on a daily basis.

The term “authorization” can be used to describe two types of legislation: (1) those that enable, meaning that they create a federal agency or program and prescribe a federal function; or (2) legislation that provides federal obligations or expenditures within a program. Authorizations can continue a government function indefinitely or for a specified period of time, and can provide funding through direct spending or it may specify a purpose for which an appropriation will be made annually.²

While both the House and Senate have rules that are supposed to ensure that no program or government activity can receive an appropriation unless it has first been authorized, there is little enforcement of the points of order against unauthorized appropriations. In the House, points of order against these appropriations are often waived in the rules report for the bill. In the Senate, the definition of an unau-

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thorized appropriation is narrower, meaning that any appropriation that comes to the floor as part of a bill from the Appropriations Committee is considered to be authorized. Unauthorized appropriations generally only apply to amendments offered during bill debate.³ Ultimately, whether an appropriation is unauthorized and in violation of a House or Senate rule is determined by the Speaker of the House or the Presiding Officer of the Senate.⁴

Neglecting Oversight Duties

Many of the federal government's most well-known agencies have been operating without authorizations for years. The Federal Bureau of Investigation, the Drug Enforcement Agency, and the Bureau of Alcohol, Tobacco, and Firearms have continued without reauthorization since 2009. The State Department was last authorized in 2003. The Federal Elections Commission has been operating without an authorization for the past 35 years.⁵ These are just a few amongst a long list of programs whose authorizations have languished for years.

Authorizations define the priorities of agencies and the activities that the government carries out to meet those priorities. Expiring authorizations provide Congress an important oversight opportunity in which Members can take a close look at the agency and re-evaluate the mission and purpose so that it can evolve with changing priorities and technology. Expiring authorizations also ensure that Congress stays aware of the size and scope of these programs and ensures that they do not turn into zombie programs—spending billions of dollars on auto-pilot with little government review or oversight.⁶

Technically, government programs do not have to be reauthorized every year. So long as Congress continues to provide appropriations for those purposes, they can continue indefinitely. By Congress failing to employ its oversight authority, however, ineffective and outdated programs have continued to bloat unchecked, wasting billions of dollars of taxpayer money.⁷

Separate authorization and appropriations processes make it harder to spend money—a very good thing in the current period of ballooning federal spending and debt. The authorization process also helps to curb government growth. When working properly, the process ensures that if agreement cannot be reached on the role and scope of programs, the programs cease to exist.⁸ Once again, if Congress would exercise its oversight duties, the authorization process would provide a valuable opportunity for re-evaluating programs and priorities.

Stopping Zombie Appropriations

Congress should stop providing appropriations to zombie agencies and programs immediately. The Heritage Foundation *Blueprint for Balance* proposes that Congress should authorize only those programs that represent federal constitutional priorities and eliminate funding for activities outside of the federal government's purview. The proposal would reduce discretionary spending limits by the projected amount of unauthorized appropriations each year. Once Congress reauthorizes a program, a cap adjustment of up to 90 percent of the previous year's funding level would then be provided.⁹ By discontinuing funding for unauthorized programs and

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1. Congressional Budget Office, "Unauthorized Appropriations and Expiring Appropriations," January 15, 2016, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51131-UAEA-Appropriations2.pdf> (accessed June 16, 2016).
 2. Ibid.
 3. Jessica Tollestrup and Brian T. Yeh, "Authorization of Appropriations: Procedural and Legal Issues," Congressional Research Service, September 9, 2014, <https://www.fas.org/sgp/crs/misc/R42098.pdf> (accessed June 16, 2016).
 4. Congressional Budget Office, "Unauthorized Appropriations and Expiring Appropriations," January 15, 2016, <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51131-UAEA-Appropriations2.pdf> (accessed June 16, 2016).
 5. Danny Vinik, "Expired: Meet Your Unauthorized Federal Government," *Politico*, February 3, 2016, <http://www.politico.com/agenda/story/2016/02/government-agencies-programs-unauthorized-000036-000037> (accessed June 16, 2016).
 6. Ibid.
 7. Ibid.
 8. Kevin R. Kosar, "Inappropriate Appropriations," *The Weekly Standard*, March 7, 2016, <http://www.weeklystandard.com/inappropriate-appropriations/article/2001273> (accessed June 17, 2016).
 9. The Heritage Foundation, *Blueprint for Balance: A Federal Budget for 2017*, February 2016, <http://thf-reports.s3.amazonaws.com/2016/BlueprintforBalance.pdf>.

not providing 100 percent funding once the program has been reauthorized, Congress has an incentive to reauthorize programs before they expire and to stop kicking the can further and further down the road. Right now there is no penalty if Congress does not reauthorize a program, which is one of the main reasons that Congress so often allows authorizations to lapse. A provision like this would force Congress to take action and perform its oversight duty on a regular basis.

Earlier this year, Representative Cathy McMorris Rodgers, (R–Washington), introduced the Unauthorized Spending Accountability Act, H.R. 4730, in an effort to combat the problem. The legislation would take several steps toward reigning in unauthorized spending including reducing appropriations and sun setting unauthorized programs over a three-year period; creating the Spending Accountability Commission to establish an authorization schedule for discretionary programs, and conducting a review of all mandatory programs; and establishing a rescission for unauthorized discretionary programs that could only be overridden if the Spending Accountability Commission reported mandatory spending

reductions in an amount equal to the discretionary rescission.¹⁰ While the *Blueprint for Balance* would put more pressure on Congress to act on the programs, and would provide stiffer penalties for failing to do so, Representative McMorris Rodgers should be commended for bringing much-needed exposure to the issue of zombie appropriations.

A Disservice to Taxpayers

Unless Congress takes immediate and decisive action to enforce its rules barring unauthorized appropriations, these zombie programs will continue and grow unchecked. Oversight is one of the major duties of Members of Congress, and by failing to take action for or against authorizations, they are doing a disservice to the constituents they were elected to serve. With America creeping ever closer to a financial disaster caused by rising debt and deficits, the country cannot afford to waste any more money on zombie programs.

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10. Unauthorized Spending Accountability Act of 2016, Congresswoman Cathy McMorris Rodgers, March 14, 2016, http://mcmorris.house.gov/wp-content/uploads/2016/03/USA-Act_1.pdf (accessed June 16, 2016).