

APSA Committee on Congressional Reform

Report from the Subcommittee on the Appropriations Process¹

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Political scientists often teach an idealized version of the congressional budget and appropriation processes known as the “Regular Order.” But most observers and participants in annual appropriations efforts deem the process broken. In this report, we review the state of the process, briefly discuss the forces undermining the textbook process, outline the challenges facing reformers, and propose five steps that the Select Committee on the Modernization of Congress might consider. We conclude that Congress should eliminate procedural votes on the debt ceiling and end the ban on congressionally directed spending items. The other potential reforms present some significant opportunities but we urge consideration of some unintended consequences.

State of the Process

As codified in the Congressional Budget and Impoundment Control Act of 1974, budgeting and appropriating should unfold this way. The president initiates the process by presenting a budget request for the following fiscal year on or before the first Monday in February. The House and Senate then adopt a budget resolution that contain spending allocations for each committee, known as 302(a) allocations. Following adoption of the budget resolution, the Appropriations Committee divides its allocation among its subcommittees (known as 302(b) allocations) to generate a dozen appropriations bills. These bills, once adopted in committee and sent to the chamber floors, contain only appropriations, and House and Senate conferees iron out any differences in their respective appropriations bills in conference. After both chambers agree to each conference report, the president signs each appropriations bill into law before the beginning of the fiscal year on October 1.

Over the past several years, the process is best described as “Regular Disorder.” The president often misses the early February target for his budget request. With increasing frequency, the House and Senate fail to adopt a budget resolution. Over the past decade, few appropriations bills have been signed into law before the beginning of the fiscal year, and some never make it the floor. More commonly, Congress and the president use continuing resolutions (CRs) to fund governmental activities for many months. Occasionally, CRs provide all federal spending for an entire year. When appropriations bills do pass, they are often packaged together as omnibus bills that are negotiated by party leaders and the president, thus circumventing the involvement of the appropriations committees. These omnibus bills have increasingly become vehicles for legislative initiatives unrelated to appropriations. And finally, as we have recently witnessed, the regular disorder can morph into extended shutdowns of major portions of the federal government.

Reforming the way Congress appropriates offers the prospects for significant dividends. But reform is challenging. The deterioration of the appropriations process did not occur in a vacuum. Many deeper changes in the American political system drove these procedural woes. Political polarization has widened the gap in the spending priorities of the parties, and heightened partisan competition has increased incentives to use the process for partisan ends, including budgetary brinksmanship (Lee, Hanson).² Increased power in the hands of both House and Senate party leaders and the growth of executive power has sidelined appropriators and authorizers alike in favor of party leaders and presidents. Such connections pose three challenges. First, changing procedures may create partisan, ideological, and institutional winners

² See McCarty, Nolan. “Regular Order in Appropriations: Does It Matter?” in *Congress and Policymaking in the 21st Century* eds. Eric Patashnik and Jeffery Jenkins, 2015 Cambridge University Press; Lee, Frances. *Insecure Majorities: Congress and the Perpetual Campaign* 2018. University of Chicago Press; and Hanson, Peter. *Too Weak to Govern*. Cambridge University Press, 2014.

and losers. Thus, building bipartisan, bicameral coalitions around proposals that can secure the support of the president is difficult. Second, changes in the appropriation process can exacerbate polarization and partisanship, tilt the balance of power between Congress and the president, and further centralize congressional decision-making. And third, reforms often generate unanticipated consequences, potentially undermining the purpose of the reform.

A Broken Process?

Any proposals for reform should start with a proper diagnosis of the underlying problems and a clear-eyed assessment of what is achievable. Towards the former, this section provides evidence on the performance of the appropriations process over time.

While our focus is on congressional reform, it is useful to start with the first stage of the regular process: the submission of the president's budget. Currently, the Congressional Budget Act requires presidents to submit budget proposals to Congress before the first Monday in February. That deadline has varied over time, however. The Budget and Accounting Act of 1921 set a deadline of the first day of the regular congressional session.³ In the 1950s Congress changed the deadline to the first 15 days of the session. In the 1980s, the deadline was moved up to the first Monday after January 3; in 1990, Congress established the current rule of the first Monday in February.

Figure 1 demonstrates the timing of presidential budget requests since Fiscal Year 1923 (the first year such a submission was required under the Budget and Accounting Act of 1921). Note that budget submission delays were almost unheard of prior to the late 1970s.⁴ In fact, the

³ Before the passage of the 20th Amendment, regular congressional sessions typically began in December. So the budget request for fiscal year 1923 was due in December of 1921.

⁴ The only exception was FY1955 when President Eisenhower missed the deadline by a single day.

modal pattern of the 1950s and 1960s was for the budget to arrive on Capitol Hill a few days early except for the initial budgets of new administrations. But late budgets remain rare. Other than the first budgets of new administrations, there have been ten late budgets, including six of the last eight. The timing of new administration budgets does not exhibit any clear trend. In summary, delays in the submission of budget proposals are a fairly recent phenomenon and so are unlikely causes of the longer-term breakdown in the budget and appropriations process.

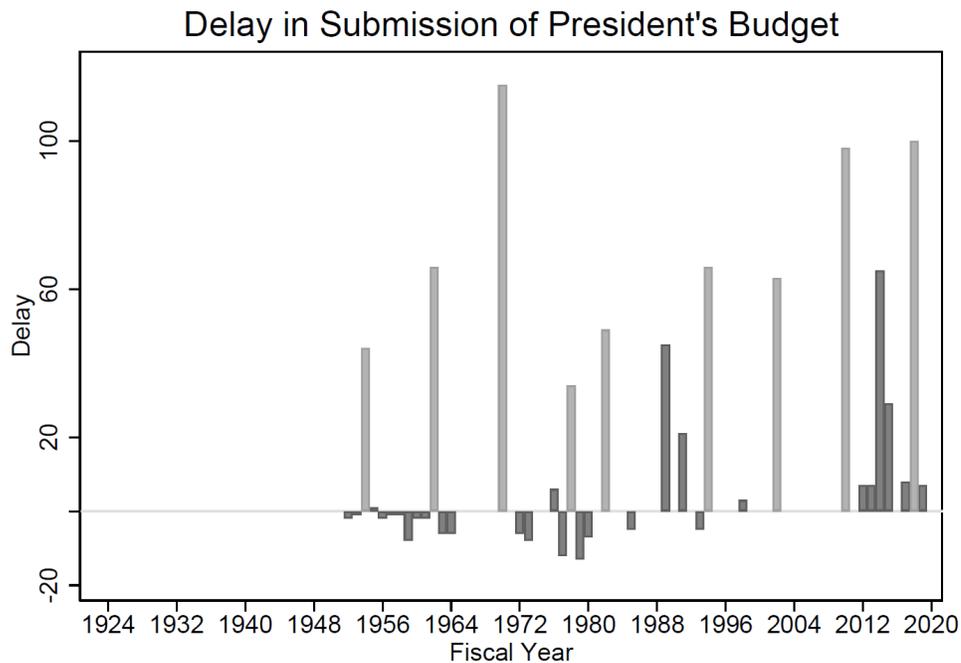


Figure 1: Delay in Submission of President’s Budget Each annual observation shows the number of days after the deadline that the president submitted his budget. Negative numbers are early submissions. The lighter bars are the first budgets of new presidential administrations.

After the president submits a budget, both chambers of Congress go to work on a budget resolution. Under “regular” order, both chambers adopt resolutions and the differences are reconciled by a conference committee. Congressional performance in this stage of the process shows clear deterioration over time. Figure 2 plots the number of stages successfully reached for each annual budget resolution. These possible stages are House adoption, Senate adoption,

House agreement to conference report and Senate agreement to conference report. From 1976 to 1998, Congress successfully cleared all four of these hurdles. Since then, Congress has completed a budget resolution just under half the time. In 2011, neither chamber adopted its own budget resolution.

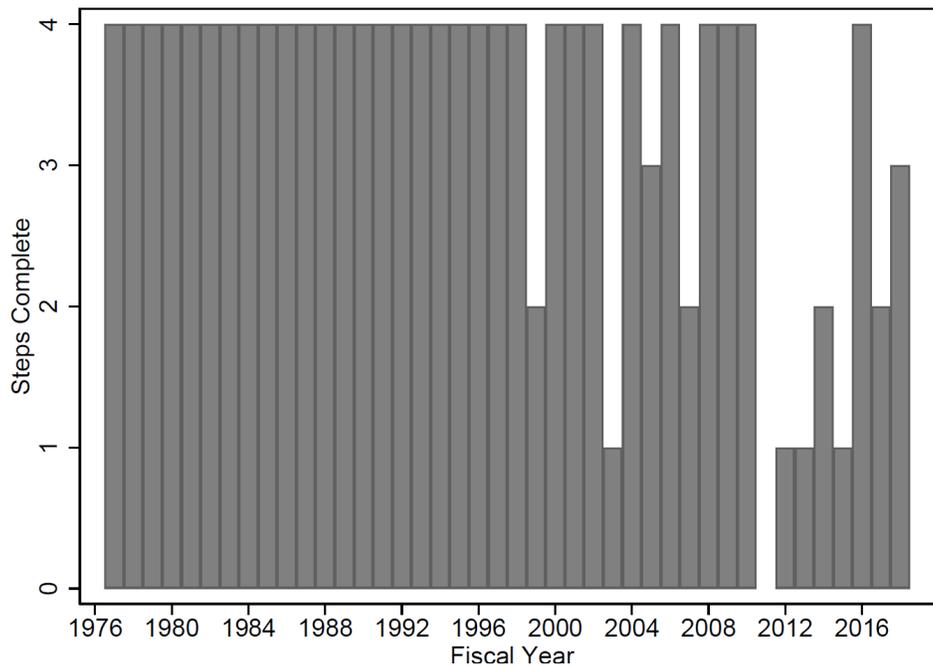


Figure 2: Progress of Budget Resolutions The progress of each annual budget resolution is scored from zero to four. Adoption of an initial resolution by either chamber scores one point and the adoption of a conference report by either chamber scores one point

Other than the obvious time trend, no other clear pattern emerges. Party control of government – whether divided or unified – does not seem to play a role. The perfect success rate up to 1998 covers periods of both divided (FY1977, FY1982-FY1993, and FY1996-FY1998) and unified control (FY1978-FY1981 and FY1994-FY1995). The budget resolution also survived split party control of Congress from FY1982 to FY1988. Since 1998, resolutions have both succeeded and failed during divided and unified governments, but have failed more often during unified control. No split party congress over this period has successfully passed a budget resolution, however.

Because budget resolutions can include instructions to committees to write a filibuster-proof “reconciliation bill,” Senate majority parties have at times pursued so-called “shell budget resolutions” for the sole purpose of exploiting the reconciliation process to advance majority party policy priorities. Reconciliation is an expedited parliamentary maneuver to bring existing spending, revenue, and debt limit laws into compliance with current fiscal priorities as set forth in the budget resolution. Reconciliation bills in the Senate are privileged, so motions to proceed to their consideration are not debatable. In addition, provisions of the Budget Act place specific time limits on the consideration of a reconciliation bill, so historically it has been unnecessary to invoke cloture. This effectively reduces the support needed to pass legislation in the chamber from three-fifths of all members to a simple majority of those voting. Senate Republicans in recent years have adopted a budget resolution only to consider major legislative initiatives under reconciliation rules, including repeal of the Affordable Care Act, a sweeping tax reform package, and the opening of Alaska’s Arctic National Wildlife Refuge to oil and natural gas drilling. Because the president’s signature is not required and budget resolutions are not subject to filibuster, it is somewhat surprising that there are so many instances where single party control of Congress failed to result in a successful budget resolution, suggesting that intra-party differences can also undermine the budget process.

Under the “regular order,” appropriators go to work to allocate funds according to the budget resolution.⁵ In 2011, the Senate adopted neither a budget nor a deeming resolution. If appropriation bills are not passed by the beginning of the fiscal year, Congress and the president must agree to a CR or face a government shutdown such as the ones that occurred in 1995-1996,

⁵ If a chamber has not passed its budget resolution, it may pass a “deeming resolution” which contains temporary 302(a) allocations. See Lynch, Megan S. 2013. “The Deeming Resolution: A Budget Enforcement Tool.” Congressional Research Service.

2013, and 2018-19. Generally, CRs continue the funding levels of the previous fiscal year, but many also include some modifications of spending levels. CRs often contain changes to the authorizing statutes, and because they are often “must” pass legislation, unrelated legislation is often attached.⁶

Consequently, delays in the passage of appropriation bills and the resulting “governing by CR” has drawn wide concern. Late appropriation bills are said to create budgetary uncertainty for government agencies and private actors, reduce the ability to adjust to new spending priorities, undermine the role of committee expertise, and weaken fiscal governance.⁷

To measure the trends in the propensity to begin a fiscal year without completed appropriation bills, McCarty (2015) compiled data on each regular appropriation bill for FY1974 to FY2014.⁸ For this report, these data have been updated through FY2019. His measure of delay simply compares the date of final enactment with the start date of the fiscal year. He considers an appropriation bill enacted if it is signed by the president as a stand-alone appropriation bill or as a separate title of an omnibus appropriation bill.⁹

⁶ See Tollestrup, Jessica. 2013. “The Congressional Appropriations Process: An Introduction.” Congressional Research Service. p. 21 and White, Joe. 1988. “The Continuing Resolution: A Crazy Way to Govern?” The Brookings Review 6(3):28-35.

⁷ See White, Joe. 1988. “The Continuing Resolution: A Crazy Way to Govern?” The Brookings Review 6(3):28-35, Devins, Neal E. 1988. “Appropriations Redux: A Critical Look at the Fiscal Year 1988 Continuing Resolution.” *Duke Law Journal* and Hanson, Peter. 2013. “Abandoning the Regular Order: Majority Party Influence on Appropriations in the United States Senate.”

⁸ See McCarty, Nolan “Regular Order in Appropriations: Does It Matter?” in *Congress and Policymaking in the 21st Century* eds. Eric Patashnik and Jeffery Jenkins, 2015 Cambridge University Press.

⁹ Thus, he does not count continuing resolutions that set funding levels for the remainder of the fiscal year as completed appropriations. In drawing a distinction between passing appropriation bills and finishing the fiscal year under a CR, there are, however, some difficult coding decisions. In FY1987 and FY1988, omnibus appropriation bills were passed in the form of a CR so that changes to authorizing legislation could be included. McCarty counts these as CRs rather than successful appropriation bills since the procedures deviated from the regular order. But the basic patterns are not changed if year-long CRs are treated as completed appropriations.

Figures 3 and 4 present the distribution of appropriation delays in months from the beginning of the fiscal year.¹⁰ Figure 3 presents the data for the entire sample. Appropriation delays are the norm. Only about 10% of all appropriation bills are enacted prior to the beginning of the fiscal year. The modal month of enactment is during the third month of the fiscal year (currently December). But a substantial share of bills are enacted in months 4, 5 and 6.

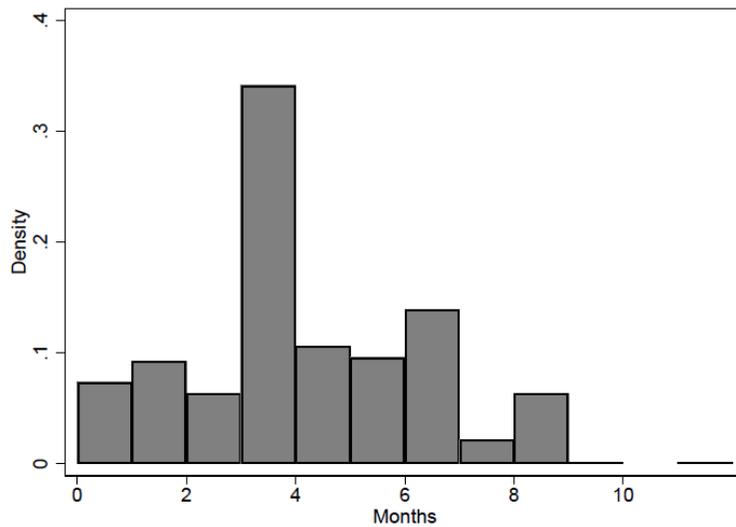


Figure 3: Distribution of Delays in Enacted Appropriation Bills: 1974 -2019

Figure 4 shows the distribution of delays beyond the start of the fiscal year since 2002. Clearly, delays have become much more common. Very few appropriation bills have been completed on time since 2002 and the frequency of delays exceeding two months has gone up dramatically.

¹⁰ Currently, the fiscal year begins on October 1. Prior to 1976, it began on July 1. In both figures, a delay of zero is assigned to any bill passed prior to the start of the fiscal year.

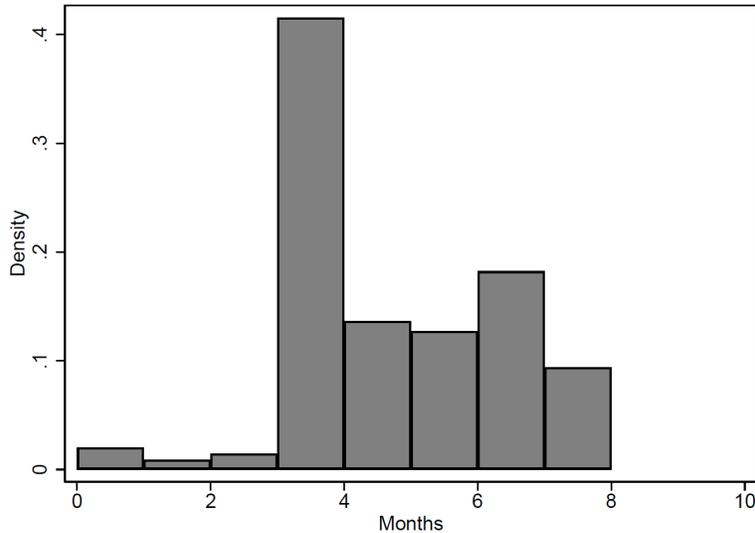


Figure 4: Distribution of Delays in Enacted Appropriation Bills: FY 2002 -2019

Figure 5 presents the trends in appropriation delay in a different way. The figure plots the percentage of the 12 or 13 appropriation bills that have been enacted prior to each month since 1984. A trend line has been added to help identify the overtime patterns. The increased frequency of spending much of the fiscal year without appropriations. Over the past few years, there have been very few months for which more than 40% of the appropriation bills were in effect (although the very recent performance is slightly better). But the figure also demonstrates that there is historical precedent for the current era of poor performance. Delayed appropriations bills were quite common in the 1980s.¹¹ These non-monotonic trends suggest that the current difficulties reflect more than a longer-term trend such as partisan polarization.

¹¹ The number of months without appropriation bills in the 1980s is clearly increased by the decision not to treat the spending packages of FY1987 and FY1988 as successful appropriation bills. But because those packages were substantially delayed, the figure would not look qualitatively different if I treated those cases as omnibus appropriations rather than year-long CRs.

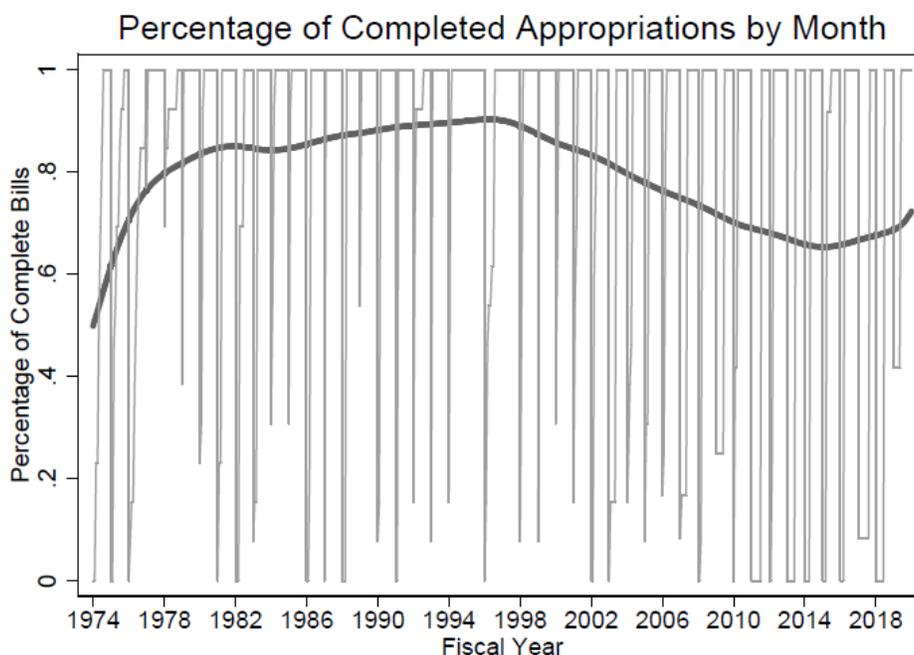


Figure 5: Completed Appropriations by Month The level of the line reflects the proportion of appropriation bills that have been completed in each month of the fiscal year. The darker line is a lowess smoother.

Not surprisingly, these patterns of late appropriation bills shape the usage of continuing resolutions. But as Figure 6 shows, there are substantial differences in the usages of CRs that are not quite accounted for by delayed appropriation bills. In the 1970s, CRs were less numerous but longer than those of recent years. Back then, CRs were more often used to craft omnibus legislation that included appropriation and authorization legislation than as stop-gap measures when appropriation bills were not passed on time. In the 1990s, the low point for appropriations delays, CRs were frequent but very short in nature. Over the past decade, CRs were frequently employed and have increased markedly in duration. From FY1991 through FY2002, the median CR lasted only 7 days. Since FY 2003, the median has been 21 days.

Duration of Continuing Resolutions Weighted by Appropriations Covered

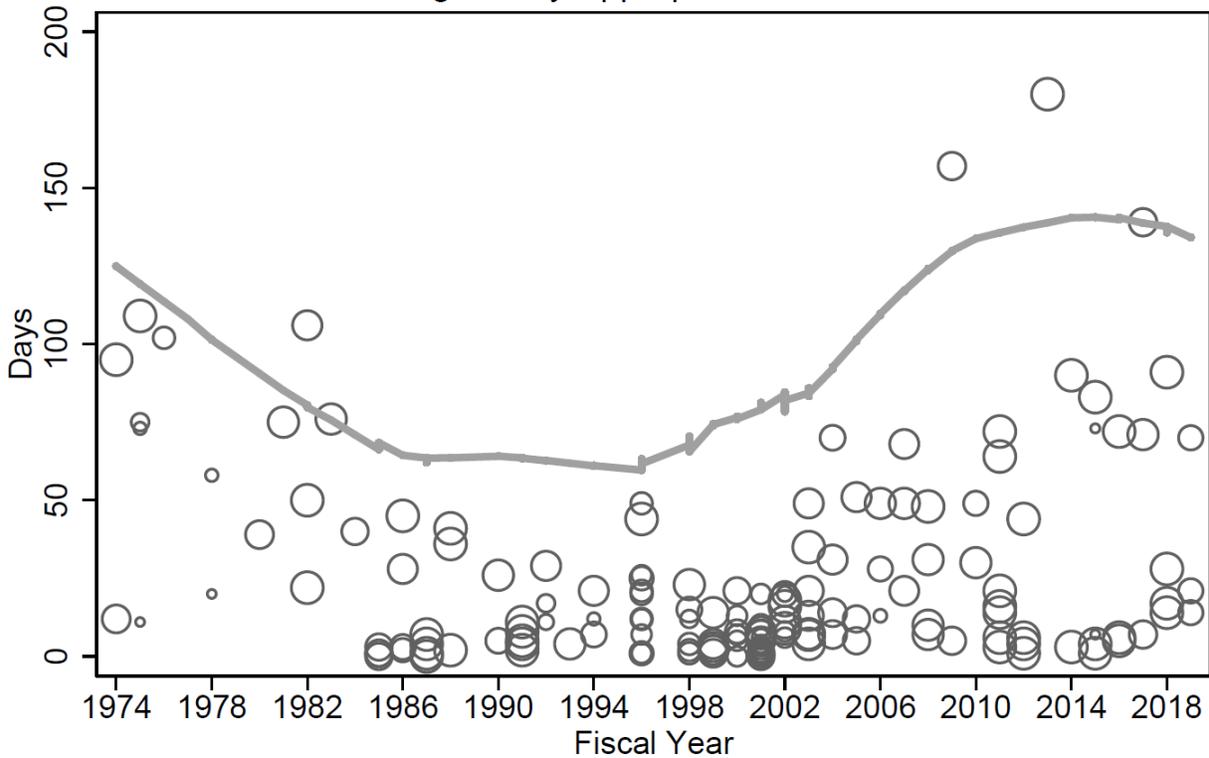


Figure 6: Duration of Continuing Resolutions FY74 to FY19

Although CRs impose a number of costs, they do keep the government funded.

Obviously, that is not the case for shutdowns that occur when Congress and the president fail to agree on a short-term measure. The Congressional Research Service notes there have been 20 funding gaps since 1976, of which 10 lasted fewer than 3 days (typically covering a weekend) and another 6 occurred prior to 1980, before which agencies typically continued to operate during a lapse in appropriations.¹² Therefore, 16 of the 20 funding gaps since 1976 had no

¹² For more information on funding gaps, see James V. Saturno, “Federal Funding Gaps: A Brief Overview,” CRS Report RS20348, Updated February 4, 2019, available at <https://fas.org/sgp/crs/misc/RS20348.pdf>. Before 1980, agencies tended to curtail some activities in response to a funding gap but typically continued to operate. In 1980, then-Attorney General Benjamin Civiletti issued a legal opinion that government work could not continue until Congress agreed to pay for it. He later revised this opinion to exclude essential operations.

impact or limited impact on government operations. The four funding lapses that resulted in sustained shutdowns of parts of the government occurred in 1995-96 (two), 2013, and 2018-19. However, the shutdowns in 2013 and 2018-19 combined to last 50 full days, or longer than all the other government shutdowns from 1980 to the present put together.

Shutdowns and continuing resolutions have several negative consequences on government operations, the federal workforce, and the economy.¹³ First, under CRs, the awarding of contracts may be delayed, and Congress typically prohibits the start of new programs, projects, and activities, as well as the termination of existing programs, projects, and activities. Under shutdowns, government services deemed “non-essential” are not provided to the public. For example, in 1995, new patients were not accepted into clinical research at the National Institute of Health (NIH), the Centers for Disease Control and Prevention ceased disease surveillance, national parks closed, the processing of visa applications stopped, and certain payments to federal contractors were delayed. Second, the federal workforce suffers. Employees gain utility from pay and non-pecuniary sources, and CRs and shutdowns decrease relative utility of government work from loss of policy control. Employees can no longer initiate or stop new program or contracts, and there are potential implications for new hiring. Survey data from the Office of Personnel Management show that perceptions of resource sufficiency negatively correlate with long delays and that departure intentions positively correlate with long delays. In addition to reducing employee morale, shutdowns cause massive furloughs, or the placement of employees in a temporary, non-duty, non-pay status. CRS highlights an Office of Management and Budget estimate that the 2013 shutdown resulted in the furlough of

¹³ References regarding shutdowns in this paragraph are derived from Clinton T. Brass et al, “Shutdown of the Federal Government: Causes, Processes, and Effects,” CRS Report RL34680, Updated December 10, 2018, available at <https://fas.org/sgp/crs/misc/RL34680.pdf>.

approximately 850,000 employees per day, or 40 percent of the federal civilian workforce. Third, shutdowns may have negative macroeconomic effects due to cessation of government activities that the private sector relies on, such as permitting, IRS income verification used by financial institutions to determine credit worthiness, a halt to the processing of federal loans to small businesses, and disrupted tourism due to the closure of national parks.

Appropriations and Congressional Accountability

A second set of problems arises from shifts in power within the House and Senate that have accompanied the breakdown in the appropriations process. Relative power has shifted from committees to parties, as party leaders have centralized authority over the spending process at the expense of Appropriations committee and subcommittee chairs and rank-and-file members. Legislative compromises now tend to be orchestrated by leadership and their staff, limiting the influence of rank-and-file members in the legislative process.

To pass appropriations bills, party leaders now often package them in omnibus bills. Figure 7 shows the number of distinct appropriation bills and the mean number of titles per bill. Clearly, the number of separately enacted appropriations bills has declined while the number of titles in each bill has gone up.

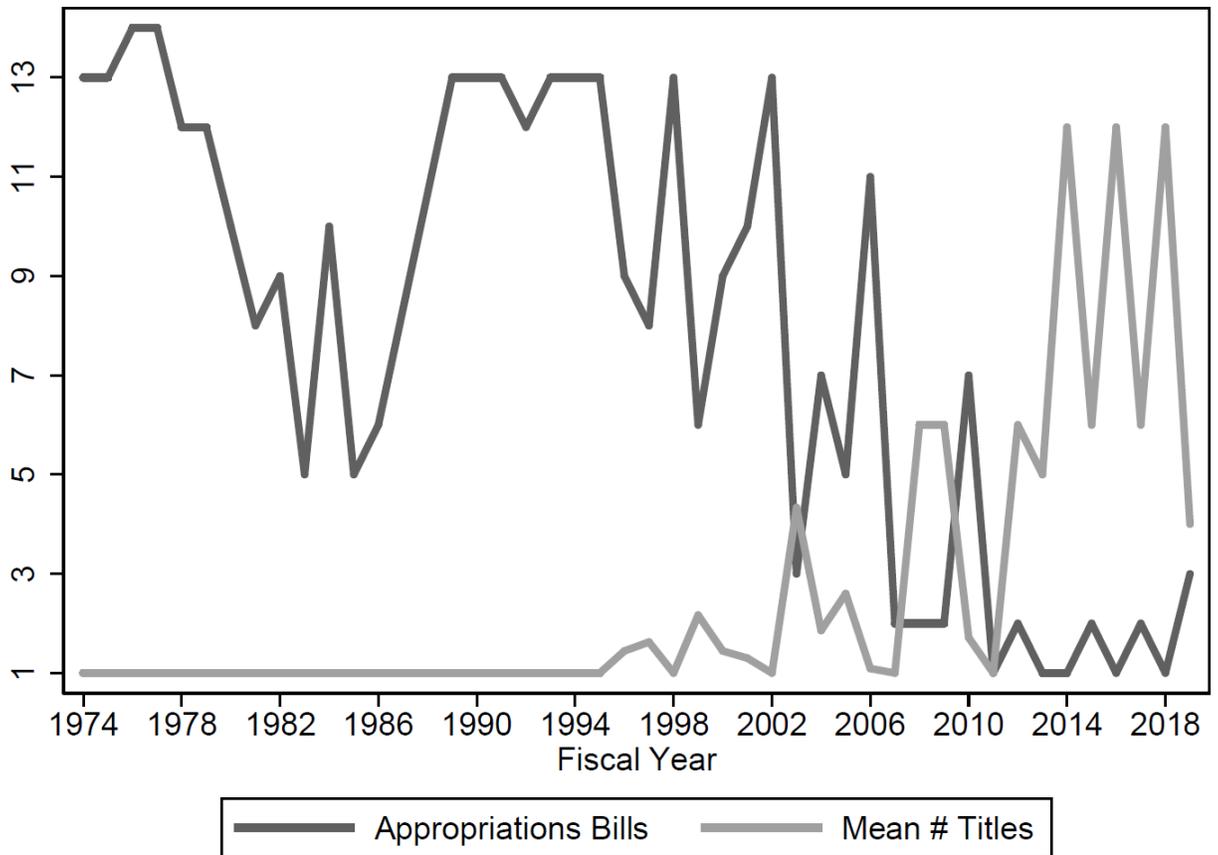


Figure 7: Appropriations Bills and their Mean Number of Titles

Conditional on enacting regular appropriations, Congress has used at least one omnibus package each year since FY2007. In fact, Congress last enacted a stand-alone appropriations bill before the start of the fiscal year a decade ago. When bills are not considered individually, rank-and-file members often face up-or-down votes on legislation on which they have had little input and which may include initiatives unrelated to appropriations. The authorization process, in particular, has suffered from this centralization of power in party leadership, since authorizing committees typically do not face hard deadlines to pass new legislation. With the exception of the National Defense Authorization Act (NDAA), authorizing committees often have a difficult

time securing floor time for their bills, and the authorization of appropriations has become less commonplace.

Proposals

To address some of the consequences of these problems, we consider five potential procedural reforms. The proposals are intended to improve the functionality of the budget process. Within each proposal, we highlight potential separation of powers issues that might fundamentally alter the balance of power among the three branches. The taskforce is mindful that the budget and appropriations processes provide a significant source of leverage for Congress in their dealings with the executive, and we remain sensitive to how proposed changes to these processes might reallocate power both within each chamber and between the branches with significant constitutional implications. Rather than endorse specific proposals, we emphasize core trade-offs associated with each proposal and highlight concerns associated with their adoption. None of these reform proposals is novel; however, many are under active consideration among legislators considering reforms to the textbook version of the congressional budget and appropriations process. We hope the information provided here helps to inform those discussions that are ongoing.

- 1. Create an automatic continuing resolution (CR).** This proposal would institute a stopgap continuing resolution should Congress and the president fail to enact into law one or more of the appropriations bills by the start of the fiscal year, an approach currently instituted in Germany. The primary benefit of the automatic CR is that it would eliminate the possibility of future government shutdowns. Details on the automatic CR proposals vary by length and whether they would include across-the-board cuts to

incentivize cooperation on a full-year bill. Reform proposals in this vein usually take the form of making available x percentage of the prior year's funding. More complicated proposals reduce x as appropriations delays become longer.

However, the automatic CR also has drawbacks, of which we highlight three. First, an automatic CR would transfer power from the legislative branch to the executive branch. It does so in two ways. One, an automatic CR shifts the baseline consequences of inaction from a lapse in appropriations to x percentage of the prior year's funding. Assuming that x is preferable to the president than a lapse in appropriations, then the president has less incentive to make policy concessions through the regular appropriations process. In this way, an automatic CR might undermine inter-branch policy negotiation at precisely the moment when Congress has the most leverage.¹⁴ Two, an automatic CR might lead Congress to give the executive greater authority to transfer funds among programs. Budget priorities change from year to year, and providing funding at the previous year's level may not be responsive to changes in needs. To address this, Congress could give agency officials additional authority to shift funds where they are needed. However, doing so would create moral hazard problems, as agency officials could use this additional authority to implement their own policy preferences. Indeed, this is one explanation for why Congress historically has carried language in CRs prohibiting the initiation of new programs or the termination of existing programs during a CR's coverage period. Increasing transfer authority under an automatic CR would make governing by continuing resolution more attractive to the executive, thereby discouraging

¹⁴ See Chafetz, Josh. *Congress's Constitution: Legislative Authority and the Separation of Powers* 2017, pp. 61-77. Yale University Press.

the White House from compromising on spending bills. Members of the subcommittee acknowledge the trade-off between efficiency and the balance of power, and if this reform were to be adopted, we recommend that it be accompanied with greater checks on executive power such as strengthened prohibitions against reprogramming money during a CR.

Second, choosing the correct percentage of last year's spending x is very important. Setting x too high might create a pro-spending bias and make it difficult to reduce funding levels. Alternatively setting x too low may lead to large funding reductions if Congress and the president cannot agree on new appropriations. It is possible, however, that a low value could encourage appropriators to support higher levels of spending once the consequences of reducing spending were made plain.¹⁵ It is tough to predict how the setting of x would favor one party strategically. For example, any x less than 100% might have a conservative bias, albeit this would not seem to hold for defense funding. But as suggested above, formal models of bargaining might suggest that an x low enough could generate a progressive bias. What's more, it is difficult to predict how the setting of x would interact with party goals. Third, an automatic CR would seem to be a treatment of the symptom and not the underlying problems that generate stalemate over funding in the first place, which may be partisan or ideological in nature. Although shutdowns are undesirable, the threat of a looming shutdown is often sufficient to get legislators to the negotiating table to agree to a compromise. Removing this threat might make future

¹⁵ The logic of how an agenda setter can exploit undesirable status quos to obtain greater levels of spending was first explicated by Romer, Thomas, and Howard Rosenthal. "Political Resource Allocation, Controlled Agendas, and the Status Quo." *Public Choice* 33, no. 4 (1978): 27-43.

disagreements over funding more likely, not less likely, particularly if one party risks shouldering the blame for causing a shutdown more than the other. As a result of these tradeoffs, the committee is divided on the proposal to create an automatic continuing resolution.

- 2. Establish a biennial budgeting cycle.** This proposal would reform the annual budget and appropriations processes into a two-year cycle. Biennial budgeting has a long history at the state level. According to the National Conference of State Legislatures, 19 states currently operate with a two-year cycle, and additional states operate with mixed cycles that put significant portion of their budgets on a two-year cycle. However, states on the biennial cycle seem to have smaller budgets, and among the ten largest states in 2010, whether measured by population or legislative appropriations, only Ohio had an annual legislative session and a biennial budget.¹⁶ At the federal level, there is some bipartisan support for biennial budgeting (e.g., [Isakson-Shaheen bill](#)), and every president between Reagan and Obama has supported this reform. There are two major versions of this proposal. The first is a biennial budget resolution with annual appropriations, and the second is a biennial budget resolution with biennial appropriations. We distinguish between each proposal below but remain uncertain as to how effective either would be in preventing CRs and/or government shutdowns.

A biennial budget resolution with annual appropriations would establish 302(a) allocations each year for a two-year period, with the annual appropriations process

¹⁶ Data from Ronald K. Snell, “State Experiences with Annual and Biennial Budgeting”, National Conference of State Legislatures, April 2011, available at http://www.ncsl.org/documents/fiscal/BiennialBudgeting_May2011.pdf.

remaining in place. Supporters of this reform argue that disagreement over discretionary funding levels for defense and non-defense programs has delayed or stalled the appropriations process, and two-year budget deals make it more likely that Congress considers annual appropriations bills. This proposal would seem to replicate how Congress has come to bipartisan agreement to relieve reduced funding levels under the Budget Control Act (BCA). Since the BCA went into effect, Congress has enacted two-year budget deals to raise the BCA caps for defense and non-defense programs (in 2013, 2015, and 2018). However, opponents of this version of the proposal argue that reforming the budget process without corresponding reforms to the appropriations process do not go far enough. For example, research by McCarty (2014) finds no correlation between delays in adopting the budget resolution and enacting appropriations, which may suggest that multi-year budget resolutions will not make much difference in avoiding continuing resolutions if the appropriations process remains annual. In addition, keeping the annual appropriations process in its current form would not reduce the number of deadlines Congress must meet in order to avoid CRs or shutdowns.

A biennial budget resolution with biennial appropriations would establish a 302(a) allocation for a two-year period, with appropriations bills providing funding over the same two-year period. Proponents of this version of the proposal argue that biennial appropriations would have several benefits. First, it would reduce the number of deadlines Congress must meet to fund the government, which would likely reduce the number of CRs and/or government shutdowns. Second, it would reduce congressional workload by eliminating the need for annual review of routine matters, thereby giving

legislators more time for other areas of oversight. A side benefit to this approach might be that it gives Congress more time to consider authorization bills. Third, it would allow for better long-term planning at the federal, state, and local levels. Critics of biennial appropriations argue that their benefits are illusory. First, multi-year appropriations would increase the stakes of the negotiating process, thereby potentially making continuing resolutions last longer in duration. The frequency-duration trade-off is difficult to evaluate, and evidence in favor of multiyear budgeting in the states has been mixed.¹⁷ Evidence does suggest that legislatures in states with biennial budgets tend to return to their budgets during the non-budget year, undercutting the claim that biennial budgets save significant legislative time. In 2000, the National Conference of State Legislatures asked legislative fiscal staff in the 13 biennial budget states with annual legislative sessions whether legislatures spent less time on budget issues in the non-budget session than the budget session. Of the 11 states that responded, five said that the legislature spent proportionately less time on the budget, five that it spent about the same amount of time, and one that it spent more time. Second, critics argue that multi-year appropriations would make budget forecasting less accurate, as program needs would need to be estimated 30 months in advance every other year rather than 18 months under an annual budget cycle. This might lead to an increase in the number of supplemental funding bills, which may lead to increased levels of funding. In addition, it might lead to increased reprogramming authority, which would delegate additional power to the

¹⁷ For further discussion of experiences in the states, see Ronald K. Snell, "State Experiences with Annual and Biennial Budgeting," National Conference of State Legislatures, April 2011, available at http://www.ncsl.org/documents/fiscal/BiennialBudgeting_May2011.pdf. In 1972, the Council of State Governments examined a number of states that had recently adopted annual budgets for the first time with no clear findings of the advantages and disadvantages of biennial budgeting. A follow-up review by analysts at Texas A&M University in 1984 came to the same conclusion.

executive. Third, congressional oversight might become less effective, as executive agencies would not have to defend their budget requests to legislators every year. This might lead to a reallocation of power with significant constitutional implications. Fourth, much as in the manner described in the automatic CR proposal, a longer budgeting cycle might transfer power from the legislative to the executive by decreasing the frequency with which Congress exercises its maximum leverage over the executive.¹⁸ Consequently, we are also divided on the proposal to establish a biennial budgeting cycle. While some members think it would lead to modest improvements in Congressional performance, others see a very large downside in the balance between the executive and legislative branches.

3. Reform the debt ceiling. This proposal would reform the congressional procedures for setting the limit on the amount of national debt that can be incurred by the U.S. Treasury. Since the 1930s, Congress has used a government-wide debt limit to avoid having to pass a law authorizing each individual bond issue. Beyond this limit, the issuance of additional government debt is illegal. While committee members generally agree that the abuses of this procedure described below warrant reform, we vary in the extent to which we would like to reform the debt ceiling. One viewpoint argues that eliminating the debt ceiling would be an abdication of Congress's constitutional responsibility of issuing debt, while the other point of view argues that Congress may delegate the authority to the Treasury to borrow funds as needed by statute.

¹⁸For further discussion of the structural significance of annual appropriations in inter-branch bargaining, see Chafetz, Josh. *Congress's Constitution: Legislative Authority and the Separation of Powers*, pp. 61-62. Yale University Press.

While Congress is constitutionally responsible for controlling the national debt, there are several procedural options to reform the debt ceiling in its current form. One approach would be to suspend the debt ceiling, either temporarily or permanently. Congress has used this procedure in recent years for a fixed period of time. Procedurally, once a temporary suspension ends, the debt limit is re-established at a level that accommodates spending during the suspension period.¹⁹ Temporary suspensions would have the benefits of delegating to Treasury but would make it easier for Congress to reverse that discretion at the end of any suspension.²⁰ Of course, temporary suspensions would still require the regular congressional action that often leads to legislative brinksmanship. But at least the dates for action will be more predictable than the current system where the timing of debt limit increases are dictated by the uncertain processes of debt accumulation.

A second approach would be to return to the “McConnell Rule,” by which Congress would authorize the president to make specified increases of the debt limit, subject to expedited, filibuster-proof votes of congressional disapproval. Unless Congress voted to override a likely presidential veto of a disapproval resolution, the debt limit would increase.

¹⁹Congressional procedures to suspend the debt ceiling have been in place for decades. From 1979 to 2011 in the House, following passage of a budget resolution by the House and Senate, the “Gephardt Rule” required the House clerk to automatically engross and transmit to the Senate a joint resolution suspending the debt limit for that fiscal year. Although the Senate had no similar rule, the chamber often took up these House-passed bills to raise the debt ceiling.

²⁰ A permanent suspension could presumably be only reversed by new legislation requiring the president’s signature or a veto override.

The advantages of eliminating the debt ceiling in its current form are straightforward.²¹

The debt ceiling creates opportunities for political brinksmanship with little evidence that it provides any fiscal constraint. Instead, the policy decisions that result in debt are made when Congress passes laws related to taxes, discretionary appropriations, and mandatory programs, and the debt ceiling serves as an afterthought of these policy choices. By effectively eliminating the debt ceiling, Congress would minimize the chance of crises. Failure to raise the debt ceiling could lead to a situation in which the U.S. Treasury is unable to raise sufficient funds to make all payments due, which most market observers agree would have disastrous economic effects. The disadvantages of eliminating the debt ceiling in its current form, critics would argue, are two-fold. First, it would take away an opportunity for legislators to consider the cumulative consequences of their individual policy decisions. Second, it could be considered an abdication of Congress's constitutional responsibility for controlling the national debt. Members of the task force agree that the advantages here outweigh the disadvantages. We recommend eliminating the current practice of raising the debt limit through procedural votes in Congress.

- 4. Re-institute earmarks.** This proposal would remove the legislative ban on congressionally directed spending items and re-institute the practice of earmarking. House and Senate rules define an earmark as any congressionally directed spending item, tax benefit, or tariff benefit that would benefit a specific entity, state, locality, or congressional district that is promoted primarily at the request of a member. Procedurally,

²¹ For more information on reforming the debt ceiling, see Kevin Kosar and Philip Wallach, "R Sheet on the Debt Ceiling," July 2018, available at <https://www.rstreet.org/wp-content/uploads/2018/07/Final-Debt-Ceiling-R-Sheet.pdf>.

the current earmark ban references a 2011 House rule that prohibits legislation containing an earmark. The Senate also has a rule pertaining to earmarks, but it only requires a pecuniary interest statement from the earmark's sponsoring member if legislation containing an earmark is considered. Anecdotally, there is considerable support among members to restore earmarking.

There are two areas of disagreement regarding this proposal. The first concerns whether earmarks should be permitted or prohibited in legislation. Supporters argue that earmarks grease the gears of legislative deliberation by giving lawmakers specific projects to support in appropriations bills – benefits that have a high traceability to their constituents. They also argue that legislators know the needs of their districts better than executive branch officials. In addition, supporters note that eliminating earmarks has neither reduced overall spending nor eliminated political decision making. Instead, the ban has only shifted power to the executive branch, since project-level decisions now get made by agency bureaucrats rather than by legislators. President Trump has suggested that Democrats and Republicans should re-consider the earmark ban to make it easier to pass legislation. Critics of earmarks argue that, at the time they were banned, earmarks were systematically abused with little or no vetting of their interest to taxpayers. They erupted in high-profile corruption scandals and promoted unnecessary spending. In addition, the inclusion of earmarks in appropriations bills would not necessarily increase member support of appropriations bills, as the inclusion of earmarks may cause members who are ideologically opposed to the practice to vote against bills they would otherwise support.

The second area of disagreement concerns the conditions under which earmarks should be permitted. One such condition is whether earmarks should be authorized before they can be appropriated. Supporters of authorized earmarks argue that projects would receive more vetting if they were both authorized and appropriated. In addition, requiring earmarks to be authorized might incentivize the passage of more authorization bills. Opponents argue that requiring earmarks be authorized might delay appropriations bills and further undermine the appropriations process, since authorization bills would need to be passed before appropriations bills could be considered. If authorizing committees did not pass their own bills, then project authorizations might be carried in the annual appropriations bills themselves, which might further undermine the work of authorizing committees. In addition, critics of an authorization requirement note that the authorization process may not necessarily lead to additional project vetting, as evidenced by the proposed Gravina Island Bridge, more commonly known as The Bridge to Nowhere, which was approved in a highway authorization bill.²² Other conditions include levels of transparency, limiting the types of recipients that may receive funding, and requiring equity of distribution of earmarks. We recommend ending the ban on congressionally directed spending items, but we are divided on the requirement for earmarks to be authorized before they can be appropriated.

- 5. Phase out funding for programs with unauthorized appropriations.** This proposal is aimed at more strictly enforcing a House rule that discourages appropriations for programs that do not also have an authorization of appropriations. According to the

²² For more information on The Bridge to Nowhere, see ProPublica “‘Bridge to Nowhere’ Timeline”, September 24, 2008, available at <https://www.propublica.org/article/bridge-to-nowhere-timeline>.

Congressional Budget Office, Congress appropriated \$307 billion to nearly 1000 programs and activities in fiscal year 2019 that lacked an authorization of appropriations, or roughly one-quarter of the discretionary federal budget.²³ Most versions of this proposal would create a mechanism that incentivizes congressional committees to keep authorization of appropriations current for programs within their jurisdiction. Programs with unauthorized appropriations would see their budgets reduced by a certain percentage each year, and if appropriations are not authorized after a fixed period of time, the program would be terminated completely. A version of this proposal (U.S.A. Act) has been introduced by McMorris Rodgers in the House.²⁴

Proponents argue that new procedural mechanisms, like those proposed in the U.S.A. Act would make more efficient use of taxpayer funds and would increase legislative oversight of the executive.²⁵ By assuming that programs without an authorization of appropriations receive less oversight than programs that have them, this reform would restore the authorization process by incentivizing authorizing committees to review and revise government programs more regularly, or else eliminate those programs. They also argue that the threat of automatic spending cuts would force authorizing committees to be more active in the legislative process. Opponents argue that the proposal abuses the term

²³ Congressional Budget Office figures quoted from ‘Dear Colleague’ letter supporting the USA Act from McMorris Rodgers, available at <https://www.ntu.org/library/doclib/2019/05/L19-05-06-USA-Act-Coalition-Letter.pdf>

²⁴ Supporters of this reform often refer to programs that lack an authorization of appropriations as “unauthorized programs”; however, the meaning of this term is subject to debate, as these programs still operate within their underlying statutory authority, even if they do not have an authorization of appropriations for the current fiscal year. We avoid the debate on what makes a program “unauthorized” and make explicit that this proposal pertains to funding for programs that lack an authorization of appropriations in a given fiscal year.

²⁵ For more information on support of this proposal, see <https://mcmorris.house.gov/usaact/>.

“unauthorized” and greatly exaggerates the problem.²⁶ The “unauthorized” here refers to the authorization of appropriations, which refers to internal congressional procedure that divides legislative responsibilities between the authorizing and appropriations committees and is separate from the extensive authorizing law that spells out an agency’s functions, powers, and limitations. Consequently, the term “unauthorized” as used in the proposal does not signify programs that are continuing past their intended termination date or that Congress intends to shut down. Opponents also argue that the proposed cure here is far worse than the disease. By requiring that programs be authorized regularly or face automatic budget cuts, this proposal would further encumber the legislative process by creating more “must pass” deadlines and funding cliffs. They also argue it would do so with a conservative bias, since legislators who favor reducing or eliminating certain programs might strategically obstruct their authorizations with the intent of de-funding them through this proposal. It can also be argued that this proposal would further undermine the appropriations process by requiring that additional authorizing bills move first before appropriations bills could be considered. We are divided on any proposals to phase out funding for programs with unauthorized appropriations.

²⁶ For more information on criticism of this proposal, see David Reich, “Proposals to Address ‘Unauthorized Appropriations’ Would Do More Harm than Good,” Center on Budget and Policy Priorities, August 31, 2016, available at <https://www.cbpp.org/research/federal-budget/proposals-to-address-unauthorized-appropriations-would-likely-do-more-harm>.