

Issue Brief

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BY: DEMIAN BRADY

New House Reform Could Help Reduce Unauthorized Appropriations

Introduction

TV shows about zombies draw in millions of viewers on cable networks and streaming services. But a very different kind of zombie, zombie programs across the federal government, draw on hundreds of billions of taxpayer dollars.

With notable exceptions of programs like Social Security and Medicare (which combined represent 30 percent of federal outlays), Congress must renew authorizations for every federal program every so many years. Committees are supposed to hold hearings to review the effectiveness of the federal programs before reauthorizing them and committing more federal funding – a duty these committees often fail to fulfill. An additional problem is that appropriators can still provide funding to programs after their authorization has run out.

New data from the Congressional Budget Office (CBO) shows that there are currently [1,115 programs with expired authorizations](#) but are still being funded. As NTUF [noted](#), the Rules package approved for the House of Representatives this year includes some important reforms such as restoring dynamic scoring for major

Key Facts:



There are 1,115 federal programs receiving taxpayers dollars even though their authorizations have expired.



Committees are supposed to hold hearings to review the effectiveness of federal programs before reauthorizing them and committing more federal funding.



A new rule in place this year in the House provides unique opportunities to reduce spending on these zombie programs.

proposals and requiring a supermajority for tax hikes. It also includes a new rule that could help to crack down on hundreds of billions of dollars in unauthorized spending.

How Can Spending Be Unauthorized?

In essence, there is a two-step statutory process for establishing and funding federal programs. Authorization legislation establishes the parameters of a program and provides budget authority. This can either be for a specified dollar amount or it can be open ended through the use of language authorizing “such sums as may be necessary.” Similarly, programs could be authorized for a single year, over several years, or permanently. Pursuant to the authorization language, appropriation bills provide money for the federal department and agencies to spend on the programs.

Unfortunately, programs are regularly funded through appropriations bills despite having expired authorizations. In general, House and Senate rules provide for points of order against the consideration of appropriations without an authorization. But these are not self-enforcing. So unauthorized spending can continue if no one makes the point of order. If any are made, they are typically waived. Even though this results in “unauthorized appropriations,” the spending still has the force of law.

Given the mix of the size of the federal government and Congress’s work load, it might be understandable if the authorizations had recently expired. But sadly, programs with expired authorizations go back to 1980.

Accounting for Unauthorized Spending

We know this because the Congressional Budget Act of 1974 requires CBO to report to Congress every January 15 on those programs with expired authorizations and those whose authorization will soon expire.

The backlog of laws enacted late in the previous Congress delayed CBO’s full data set this year. Two days before the required deadline, CBO published a spreadsheet on the status of authorizations based on laws enacted through September 30, the end of Fiscal Year 2022. On February 2, CBO produced a spreadsheet based on the remaining laws enacted through the end of the 117th Congress, including [34 bills signed into law](#) on January 5, 2023.

CBO’s final spreadsheet includes a list of 2,130 programs with their name or description, the year and law in which they were last authorized, links to where the program’s information can be found in the U.S. Code of law, the House and Senate authorizing committees of jurisdiction, the appropriations subcommittee of jurisdiction, when they expired or will expire, and the last budget authorization amount. CBO has not yet matched up the latest appropriations with the expired programs.

Of the programs listed, 355 are set to expire this year, 574 will expire by the end of FY 2027, and another 86 through 2037. So that leaves 1,115 programs with expired authorizations. The table below shows the count of programs with unauthorized appropriations and the dollar amount of the last budget authority provided in law.

Time Period	Number of Expired Programs	Dollar Amount of Last Authorization (in Billions)
1980s	22	\$7.20
1990s	64	\$27.80
2000s	270	\$50.40
2010s	535	\$45.60
2020	85	\$78.90
2021	77	\$13.40
2022	62	\$25.20
Total	1,115	248.3*

* Numbers may not total due to rounding. The total figures include 308 programs whose authorization amounts were not specified.

The oldest unauthorized program on the list is the Legal Services Corporation, which was [last authorized](#) for “such sums as may be necessary” in Fiscal Years (FYs) 1979 and 1980. Before that it was authorized to spend \$205 million in 1978.

LSC’s website notes that “Congressional oversight of LSC is conducted by the Judiciary Subcommittee on Courts, Intellectual Property and the Internet in the House of Representatives and the Committee on Health, Education, Labor and Pensions (HELP) in the Senate.” Only three results came up in [search](#) of the House Judiciary committee as far back as 2011, none of which involved hearings examining the LSC. A search of the Senate HELP committee finds [seven results](#) dating back to 2009: five for nominations to the LSC Board, one is a reconciliation legislation from the previous Congress, and the final one is a mention of the LSC in a report about workplace harassment issues. A wider search on Google shows a hearing was held in 1999 and some during the 1980s. Despite this lack of authorizations over the past 42 years, LSC spent \$465 million in FYs 2021 and 2022, and last year’s omnibus boosted its budget to [\\$560 million](#).

The New House Rule Targeting Unauthorized Outlays

As noted above, there are points of order that prohibit unauthorized spending in appropriations bills and amendments, but they are very rarely enforced. This year’s rules package for the House of Representatives includes a new point of order that takes a different tack to rein in unauthorized spending. If a member raises a point of order and it is upheld, the appropriation for that program in the bill would be reduced to the level set the last time the program was lawfully authorized. It is unclear whether this would apply to programs whose last authorization amount was unspecified, i.e., “such sums as may be necessary.” A better approach in these cases is to use the appropriations made in the year of last legal authorization as the base funding to use for implementing enforcement of this point of order.

The new House rule essentially provides members with up to 1,115 opportunities to challenge zombie programs and seek spending reductions from those programs Congress has not reauthorized.

Because this is a new rule, it is currently only in effect for the First Session of the 118th Congress. House leadership should adhere to the 72-hour rule before consideration of bills so that

lawmakers and the public have time to review the funding levels provided for unauthorized programs so that points of order can be appropriately brought against programs that have not been properly authorized.

Conclusion

One of Congress's key constitutional responsibilities is power over the public purse. Lawmakers owe it to taxpayers to ensure that federal programs are properly vetted before obligating public funds.

With unprecedented levels of federal debt, and deficits projected to average over \$2 trillion a year for the next decade, it is time to put an end to the 'business as usual' ways that let the budget get so far out of balance. If put to use, the new House rule will provide a unique opportunity for lawmakers to target unauthorized appropriations. Enforcing this point of order would be a significant way of encouraging the authorizing committees to return to regular order, hold oversight hearings of federal programs, and act as stewards of the public purse.

About the Author

Demian Brady is the Vice President of Research for National Taxpayers Union Foundation, where he runs the organization's Taxpayers' Budget Office.



*2023 National Taxpayers Union Foundation
122 C Street NW, Suite 700, Washington, DC 20001
ntuf@ntu.org*