



Testimony

Appropriations With Expired Authorizations

Keith Hall
Director

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Committee on the Budget
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Chairman Enzi, Ranking Member Sanders, and Members of the Committee, thank you for the opportunity to testify on the subject of unauthorized appropriations. My statement today draws on the most recent of the Congressional Budget Office's annual reports titled *Unauthorized Appropriations and Expiring Authorizations*, known as the UAEA report, which was published in January 2016.¹

Summary

Spending authorizations are the first component of the long-standing two-part legislative practice of distinguishing between the laws that establish federal entities or programs that are to be funded through annual appropriations, and the laws that fund them. Once the authorizations are in place, funding for the agencies, programs, or activities is then provided separately in annual appropriation laws.

What Are Unauthorized Appropriations?

The term “authorization” can mean organic or enabling legislation, which broadly authorizes the creation of an agency, program, or activity; “authorization” can also mean an authorization of appropriations, which explicitly authorizes the funding for an agency, program, or activity.

Authorizations of appropriations can specify the amounts that may be appropriated for certain fiscal years or indicate that the amounts are indefinite, authorizing the appropriation of “such sums as may be necessary.” Such authorizations are intended to provide guidance regarding the amount of funds necessary to carry out the authorized activities of an agency. In most instances, even when an explicit authorization of appropriations has expired, the organic legislation remains in effect.

Broadly speaking, unauthorized appropriations occur when there is no current authorization for a program. CBO's UAEA report, which is mandated by the Congressional Budget and Impoundment Control Act of 1974, has a narrower focus: It seeks to identify programs that have had an explicit authorization of appropriations that has expired. The report does not list every program and activity that is funded without an authorization because tracking all expiring organic legislation would be virtually impossible; nor does the report include appropriations that may have an organic authorization but have never had an explicit authorization of appropriations. In

general, there is no well-defined categorization that links appropriations for many individual programs and activities to enabling authorizations.

How Much Has Been Appropriated for Programs Whose Explicit Authorization of Appropriations Has Expired?

On average, over the past decade, about one-fourth of total discretionary appropriations were provided for programs and activities whose explicit authorizations of appropriations had expired. CBO's most recent UAEA report, which covers fiscal year 2016, reported that \$310 billion—about one-quarter of discretionary appropriations in 2016—was provided for programs and activities whose explicit authorization of appropriations had expired and whose appropriations could be identified. More than half of those unauthorized appropriations were provided for programs whose explicit authorization expired more than a decade ago.

The \$310 billion includes funding for many programs that have organic legislation in effect that broadly authorizes the program—for example, the activities of the National Aeronautics and Space Administration (NASA). That amount, however, does not encompass all of the programs whose explicit authorizations of appropriations had expired. Appropriations for some programs cannot be easily identified because they are part of a larger appropriation account. As a result, in its UAEA reports, CBO has been unable to identify the amount appropriated for many of the expired items; quite a few of those amounts are probably small, and some of them may be part of appropriations that are listed elsewhere in the report.

Background on Authorizations

Authorizations define or reference the purposes for which appropriated money may be obligated and spent. The term “authorization” is used to describe two types of measures; both may—and often do—occur within the same law. One is an organic (or enabling) statute, which creates a federal agency, establishes a federal program, prescribes a federal function, or provides for a particular federal obligation or expenditure within a program. Such an authorization may provide an agency with the authority to obligate and spend federal funds in the form of direct—mandatory—spending.

The second type of authorization, which is the focus of CBO's UAEA report, authorizes the appropriation of funds. Such authorizations of appropriations can serve as a guide to the amount of funding necessary to carry out the authorized program or activity by including a specified dollar amount (called a definite authorization); or they may

1. Congressional Budget Office, *Unauthorized Appropriations and Expiring Authorizations* (January 2016), www.cbo.gov/publication/51131.

Table 1.

Appropriations With Expired Authorizations, by Year

	2007	2008 ^a	2009	2010	2011	2012	2013	2014	2015 ^b	2016
Unauthorized Appropriations (Billions of dollars)	n.a.	167	n.a.	291	n.a.	261	n.a.	302	294	310
Number of Laws	n.a.	214	n.a.	250	n.a.	259	n.a.	270	260	256

Source: Congressional Budget Office.

For 2007, 2009, 2011, and 2013, amounts could not be determined because temporary continuing appropriations covering most or all of the unauthorized programs were in effect when CBO issued its report.

n.a. = not available.

a. The National Defense Authorization Act for Fiscal Year 2008 was enacted on January 28, 2008, which was after CBO issued its report for that year. However, for purposes of comparison, the effects of the act have been excluded from the data in this column.

b. Full-year funding for programs within the Department of Homeland Security was not enacted when CBO issued its report for 2015. Therefore, totals for the department's unauthorized appropriations are omitted from this column.

authorize such sums as may be necessary to carry out the activity (called an indefinite authorization). Federal programs that have appropriations authorized in that way are generally known as discretionary programs because they require annual funding through the appropriation process.

Senate rules dating from the 19th century institutionalize the distinction between—and the proper sequencing of—authorization and appropriation bills. Whether an appropriation is unauthorized and whether it violates a Senate rule is determined by the Presiding Officer of the Senate on the basis of advice from the Office of the Parliamentarian. Although CBO's annual report is intended to aid the Congress by identifying those authorizations of appropriations that have already expired or will expire in the current year, the report is not and should not be considered definitive with respect to the application of Senate rules.

Until the mid-1950s, most authorizations were permanent and rarely included provisions that authorized appropriations for a specific dollar amount or period of time. In an effort to improve oversight and provide for periodic review of government programs, the Congress began to include temporary authorizations of appropriations in legislation that created new programs and to insert such provisions in the reauthorizations for many existing programs. That trend accelerated over the ensuing decades. However, the reauthorization of expired or expiring authorizations of appropriations sometimes was delayed—in some cases for extended periods, which resulted in a number of appropriations being unauthorized.

CBO's Annual Report on Unauthorized Appropriations

By 1985, mounting concern over the perceived failure of the reauthorization process led the Congress to amend the Congressional Budget Act of 1974 to require CBO to report, by January 15 of each year, on the programs and activities that are funded each year without an authorization of appropriations.²

In preparing that report, CBO focuses on appropriations that are unauthorized because they have been provided for a program after that program's explicit authorization of appropriations has expired. However, as already mentioned, there is in most instances an underlying law—the organic, or enabling, statute—that governs the program and that typically is permanent. That permanent law continues to set the policies and guidelines under which appropriations are to be obligated, even if the authorization of appropriations has expired.

Under the definition of “unauthorized” used by CBO for its report, the total amount of unauthorized appropriations reported by CBO was \$167 billion in 2008. Since then, that amount has averaged close to \$300 billion (see Table 1). On average, over the past decade, about one-fourth of total discretionary appropriations was provided for programs and activities whose explicit authorizations had expired.

2. The report also identifies programs and activities for which an existing authorization of appropriations is due to expire, but that is not the focus of this testimony.

Table 2.

Unauthorized Appropriations in Fiscal Year 2016, by the Last Year in Which the Program or Activity Was Authorized

	1980- 2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Billions of Dollars	160	4	1	60	2	13	12	39	7	11

Source: Congressional Budget Office.

In the UAEA report for fiscal year 2016, CBO identified \$310 billion in appropriations that was provided for programs and activities whose authorizations of appropriations had expired and whose appropriations could be identified. More than half of those appropriations were provided for programs or activities whose authorization expired more than a decade ago (see Table 2).

The explicit authorization of appropriations for several large agencies or programs had expired when CBO issued its report, including the National Institutes of Health (NIH, with appropriations of \$31 billion for 2016) and NASA (with appropriations of \$19 billion for 2016). Both of those agencies have organic authorizations, however—NIH's in Title 42 and NASA's in Titles 42 and 51 of the U.S. Code.

Some other large appropriations with expired authorizations of appropriations were those for programs authorized in the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Public Law 109-162; \$27 billion), the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228; \$26 billion), and the Quality Housing and Work Responsibility Act of 1998 (P.L. 105-276; \$26 billion).

The 2016 report also lists many programs and activities for which a specific appropriation amount could not be identified. In those cases, activities were funded through larger appropriation accounts (for example, the health resources and services account of the Department of Health and Human Services), but the specific amount provided for the activity whose authorization of appropriations had expired could not be identified, either in the appropriations bill

itself or in supporting documentation. In those instances, the report noted that the specific dollar amount of the unauthorized 2016 appropriation was not available.³ Many of those amounts probably are small and some of them may be part of appropriations that are listed elsewhere in the report.

3. In the process of preparing the annual UAEA report, CBO contacts authorizing committees, providing them with a preliminary list of the unauthorized appropriations under their jurisdiction. When CBO determines that no funds are being used for the program or activity or that it has been reauthorized, that program or activity is not listed in the report.

This testimony was prepared by Theresa Gullo and Janet Airis. The statement draws on the Congressional Budget Office's January 2016 report *Unauthorized Appropriations and Expiring Authorizations*. That report and the agency's other annual updates on the topic satisfy the requirements of section 202(e)(3) of the Congressional Budget and Impoundment Control Act, as amended. Jeanine Rees edited the testimony and prepared it for publication. It is available on CBO's website (www.cbo.gov/publication/50955).



Keith Hall
Director

