

**Written testimony of Kevin R. Kosar  
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Before the U.S. Senate, Committee on Homeland Security and Government Affairs,  
Subcommittee on Federal Spending Oversight  
October 30, 2019**

Thank you, Chairman Paul, Ranking Member Hassan and members of the subcommittee for holding this hearing, and thank you for receiving my testimony.

I am vice president of policy at the R Street Institute, and I previously spent 11 rewarding years as an analyst and acting research manager at the Congressional Research Service (CRS), where I provided nonpartisan research and advice to legislators, their staffs and committees.

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It is the beginning of fiscal year 2020 (FY2020), and Congress and the president are off to an inauspicious budgetary start. Contrary to the directives of the Congressional Budget and Impoundment Control Act of 1974 (CBICA), President Donald J. Trump did not submit a budget in a timely manner; a budget resolution was not adopted by both chambers in April; and none of the 12 FY2020 appropriations bills were passed before September 30.<sup>1</sup> The government is operating under a continuing resolution, and there is talk in the air of a possible government shutdown this autumn. Which is to say nothing of the possibility of the government beginning to run a \$1 trillion deficit.<sup>2</sup>

There also is the subject of today's hearing, unauthorized appropriations (UAs). This past March, the Congressional Budget Office reported that it had:

identified 971 authorizations of appropriations that expired before the beginning of fiscal year 2019 that had not been overtaken by subsequent legislation as of February 15, 2019. Those authorizations appeared in 257 laws and authorized a combined annual total of at least \$158 billion for the last year they were in effect for various agencies, programs, or functions.<sup>3</sup>

Congress appropriated \$307 billion towards these expired authorizations' purposes.

For certain, the rise in unauthorized appropriations is a symptom of the broken congressional budget process. But the rise of these "zombie appropriations" and "zombie programs," as I termed them, is troubling in and of itself.<sup>4</sup>

<sup>1</sup> Congressional Research Service, *Appropriations Status Table: FY2020*.

<https://crsreports.congress.gov/AppropriationsStatusTable>; and Committee for a Responsible Federal Budget, *Upcoming Congressional Fiscal Policy Deadlines*, Oct. 2, 2019.

<http://www.crfb.org/blogs/upcoming-congressional-fiscal-policy-deadlines>.

<sup>2</sup> Donna Borak, "US deficit estimated to hit \$1 trillion for 2020, CBO says," CNN, Aug. 21, 2019.

<https://www.cnn.com/2019/08/21/politics/cbo-us-deficit-one-trillion/index.html>.

<sup>3</sup> Congressional Budget Office, *Expired and Expiring Authorizations of Appropriations: Fiscal Year 2019*, March 2019, pp. 2-3. <https://www.cbo.gov/system/files/2019-03/55015-EEAA.pdf>.

For one, Congress is simply not following the plan it set out in the CBICA: authorize, then appropriate. For another, the rise of zombie programs gives the appearance that Congress is abdicating some degree of its oversight duties. It creates programs, authorizes some level of spending for them for a time, and proceeds to disregard the authorizing statutes. Government watchdogs and the public would be forgiven for wondering whether Congress is really overseeing these programs or has abdicated its power of the purse.<sup>5</sup>

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The growth in the number of UAs has been fueled by a variety of factors.

Prof. James Thurber, who previously testified before the Senate, notes that partisan polarization contributes to the budget process by making the enactment of any legislation difficult.<sup>6</sup> Additionally, he reminds us, “before the 1950s, most authorizations were permanent. The move to shorter authorization periods was an attempt to force more oversight for federal programs.”<sup>7</sup>

A report of a task force of the American Political Science Association also points out that governing by continuing resolutions and cromnibus has become commonplace.<sup>8</sup> These spending statutes keep the money flowing to programs at last year’s levels—regardless of the expiration of authorizations.

Less appreciated, but not less critical, is that insufficient congressional capacity contributes to burgeoning unauthorized appropriations. Consider that the executive branch has perhaps 180 agencies, which administer untold thousands of statutes and programs. The *Code of Federal Regulations*, the corpus of existing regulatory law, runs more than 180,000 pages.<sup>9</sup> The sheer gigantism of the executive branch—which, to be clear, was erected and funded by Congress—has utterly outstripped Congress’ ability to oversee it. The CBO reported that 130 authorizations for appropriations found in 35 statutes were due to expire in FY2019 alone. Reauthorizing all those statutes would be an enormous amount of work.

<sup>4</sup> Kevin Kosar, “Inappropriate Appropriations,” *Weekly Standard*, Feb. 26, 2016. <https://www.washingtonexaminer.com/weekly-standard/inappropriate-appropriations>; and Kevin Kosar, “Interview by Jake Tapper: The Lead with Jake Tapper,” CNN, Feb. 19, 2016. <http://edition.cnn.com/TRANSCRIPTS/1602/19/cg.02.html>.

<sup>5</sup> There is substantial evidence indicating that congressional oversight generally has waned since the 1980s. E.g., the number of days that committees and subcommittees meet has dropped. Jason Robert et al., “APSA Task Force Memorandum: The House of Representatives’ work schedule: Issues, and options for reform,” Sept. 12, 2019. <https://www.legbranch.org/the-house-of-representatives-work-schedule-issues-and-options-for-reform/>.

<sup>6</sup> Testimony of James Thurber, Senate Committee on the Budget, 114th Congress, Feb. 3, 2016, p. 2. <https://www.budget.senate.gov/download/dr-james-thurber>.

<sup>7</sup> Ibid.

<sup>8</sup> Nolan McCarty et al., “APSA Committee on Congressional Reform: Report from the Subcommittee on the Appropriations Process,” Sept. 17, 2019, p. 5. <https://www.legbranch.org/app/uploads/2019/09/APSA-task-force-appropriations-memorandum.pdf>.

<sup>9</sup> Kevin Kosar, “How to Strengthen Congress,” *National Affairs*, Fall 2015. <https://www.nationalaffairs.com/publications/detail/how-to-strengthen-congress>.

To make matters worse, Congress has weakened its capacity while the size of the executive government has ballooned. The number of congressional staff who can assist with this workload has not kept up with the rising workload.<sup>10</sup> And the quantity of time Congress is in session today—and able to hold hearings and consider reauthorizations—is about the same as it was in 1969, when government was smaller.<sup>11</sup>

To be clear, however, building sufficient congressional capacity is not enough. In order to decrease zombie appropriations and programs, legislators need to feel incentivized.

Unfortunately, there is an “eat-your-spinach” aspect to the reauthorization of appropriations. Those who crafted the 1974 CBICA and its imperatives clearly believed that going through a two-step budget process—authorize then appropriate—was good budget practice. As I wrote elsewhere:

Having to complete two steps, rather than one, makes spending harder—always a good idea. With two bills that must complete the arduous path to the president's desk, the process should encourage fiscal restraint and, in theory, help keep budget deficits down. Congress might authorize trillions in federal spending any one year, but can always appropriate fewer dollars if revenues (e.g., taxes) are expected to be less than that. Government growth also might be curbed, legislators imagined, if programs' ability to receive funds timed out. If Congress and the president could not agree to reauthorize a program, it would die. Requiring that programs and agencies be reauthorized offers regular opportunities to rethink and revise policies. It's a cornerstone of congressional oversight.<sup>12</sup>

But clearly, Congress has not chosen to make reauthorizing appropriations a priority.<sup>13</sup> The Senate, for example, could have expended a great deal of floor time during the past two years reauthorizing programs. Instead, it has allocated much time approving nominees to the federal judiciary. (The Senate, notably, has not enacted any of the 12 appropriation bills for FY2020.)

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<sup>10</sup> Lee Drutman et al., “Modernizing Congressional Capacity: A Report of the APSA Presidential Task Force Subcommittee on Congressional Capacity,” Sept. 26, 2019. <https://www.legbranch.org/app/uploads/2019/09/APSA-memo-capacity-subcommittee-report-09-2019.pdf>.

<sup>11</sup> Jason Robert et al., “APSA Task Force Memorandum: The House of Representatives’ work schedule: Issues, and options for reform,” Sept. 12, 2019. <https://www.legbranch.org/the-house-of-representatives-work-schedule-issues-and-options-for-reform/>.

<sup>12</sup> Kevin Kosar, “Inappropriate Appropriations,” *Weekly Standard*, Feb. 26, 2016. <https://www.washingtonexaminer.com/weekly-standard/inappropriate-appropriations>.

<sup>13</sup> In 1985, Congress mandated that the CBO report on unauthorized and expiring expirations—in hopes these reports would goad Congress to undertake reauthorizations. Congressional Budget Office, *Expired and Expiring Authorizations of Appropriations: Fiscal Year 2019*, March 2019, p. 1, note 1. <https://www.cbo.gov/system/files/2019-03/55015-EEAA.pdf>.

Thus, in closing, I suggest that slaying zombie appropriations and programs will necessitate reforms to ensure Congress has the capacity and the motives to devote time and energy to reauthorizing appropriations.<sup>14</sup>

Thank you for your time and consideration. I would be happy to answer any questions the subcommittee or its staff may have.

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<sup>14</sup> As James Madison theorized in Federalist 51, “The interest of the man must be connected with the constitutional rights of the place.” [https://avalon.law.yale.edu/18th\\_century/fed51.asp](https://avalon.law.yale.edu/18th_century/fed51.asp).