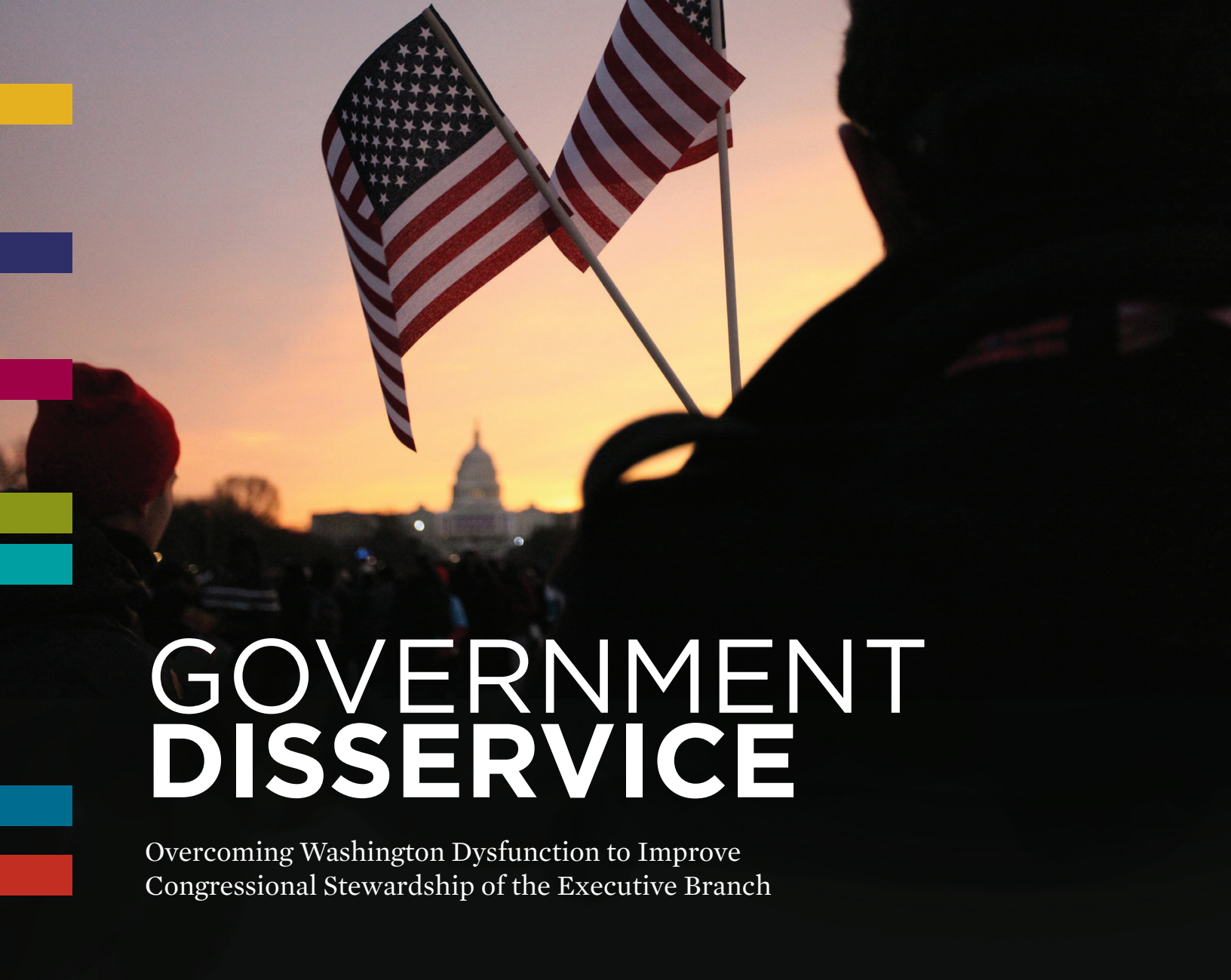




GOVERNMENT DISSERVICE

Overcoming Washington Dysfunction to Improve
Congressional Stewardship of the Executive Branch

SEPTEMBER 2015



PARTNERSHIP FOR PUBLIC SERVICE

The Partnership for Public Service is a nonpartisan, nonprofit organization that works to revitalize the federal government by inspiring a new generation to serve and by transforming the way government works. The Partnership teams up with federal agencies and other stakeholders to make our government more effective and efficient. We pursue this goal by:

- Providing assistance to federal agencies to improve their management and operations, and to strengthen their leadership capacity
- Conducting outreach to college campuses and job seekers to promote public service
- Identifying and celebrating government's successes so they can be replicated across government
- Advocating for needed legislative and regulatory reforms to strengthen the civil service
- Generating research on, and effective responses to, the workforce challenges facing our federal government
- Enhancing public understanding of the valuable work civil servants perform

Support for this report was provided by The William and Flora Hewlett Foundation. The opinions expressed in this report are those of the Partnership for Public Service and do not necessarily reflect the views of The William and Flora Hewlett Foundation.

INTRODUCTION

Fifteen years into the new century, our nation's policy-makers are being called on to make serious and difficult choices that will affect generations of Americans. There is little sign, however, that the environment on Capitol Hill will help their efforts. Polarization, acrimony and intense partisanship regarding matters both routine and critical to the country's well-being have become the way of life in Congress and throughout Washington.

There are many factors underlying this current state of affairs, but the result has been gridlock, a continued erosion of public trust in government, and constraints that have made it difficult for executive branch agencies to manage operations, implement policies and deliver important services to the American people.

This is particularly troubling given today's fast-paced and complicated global environment. Terrorism, unemployment, government debt, crumbling infrastructure, porous national borders, climate change, human trafficking and other problems—domestic and international—are real. Dealing with them requires cooperation and compromise at many levels—within and between the House and the Senate, between Congress and the executive branch, and among federal leaders trying to solve government-wide problems in a system that is organized into stovepipes. Yet cooperation and compromise have been in short supply.

Former Rep. Tom Davis of Virginia, one of the authors of *The Partisan Divide: Congress in Crisis*, wrote that Washington has been characterized by a perpetually divided government and by political parties that have sorted themselves out ideologically. He described an environment in which centrists on either side have become a rare breed, the minority party acts as the parliamentary opposition, bipartisanship has become “a dirty word” and “members fear retribution from their respective party bases when they choose to compromise for the greater good.”

“The end result is that the new normal makes it difficult to achieve consensus and undermines efforts to compromise. Divided government and party-line voting have established themselves as the norms,” Davis wrote. “Even bad legislative outcomes fail to shake the underlying foundations of these factors.”¹

In their 2012 book *It's Even Worse Than It Looks*, congressional scholars Thomas Mann and Norman Ornstein wrote that we live in a time of the “politics of hostage taking, of putting political expedience above the national interest and tribal hubris above cooperative problem solving.”²

This rise of partisanship has been well documented, but what has not been examined thoroughly is the profound way in which the political divide has diminished the capabilities of the executive branch of our government to function effectively.

Congress influences executive branch action in four primary respects: budget and appropriations; legislation to shape policies and programs; oversight of the agencies and the programs and policies they administer; and political appointee confirmation.

Breakdowns or lapses in each of these areas have contributed to consequential dysfunction of the executive branch, playing out in many ways that have hindered government from carrying out domestic and foreign policies, and serving the needs of our country's citizens.

The Partnership for Public Service interviewed former high-level political appointees and career executives from every Cabinet agency who served in either the Clinton, Bush or Obama administrations, as well as former representatives, senators and seasoned Capitol Hill aides. Some agreed to be quoted by name, and others asked to remain anonymous or offered background information to provide context and deepen our understanding. We sought their perspectives on the relationship between Congress and the executive branch and how it has changed over time; how they view each other; and the extent to which partisanship and gridlock on Capitol Hill have affected the management and operation of a \$3.5 trillion enterprise that administers and implements the nation's laws, policies and programs on behalf of the American people.

1 Tom Davis, Martin Frost and Richard Cohen, *The Partisan Divide: Congress in Crisis* (Premiere, 2014), 44

2 Thomas E. Mann and Norman J. Ornstein, *It's Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism* (Basic Books, 2012), 4

Based on our interviews and other sources, we found that:

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THERE IS A PERVASIVE LACK OF UNDERSTANDING of and appreciation for the concerns of the executive branch among many members of Congress and staff, and agency leaders exhibit a similar attitude toward members of the House and Senate. Political appointees believe lawmakers do not appreciate how their actions negatively affect the management of agencies and the delivery of services to the public. Members of Congress, in contrast, are considerably more focused on the battles over policy, funding and the proper role and size of government than they are about effective agency operations.

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THE EXECUTIVE-LEGISLATIVE DIVIDE IS NARROWED on many day-to-day issues, even in a highly charged partisan atmosphere, when individuals build relationships across the branches and across the aisle on a personal basis to sort out problems and reach an understanding, but such exchanges seem to be the exception rather than the rule.

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FEDERAL EXECUTIVES respect the importance of congressional oversight regarding policy, how programs are administered and how efficiently money is being spent. But there is a pervasive sense among executive branch appointees that lawmakers are more interested in grabbing headlines and scoring political points than improving agency operations. Former lawmakers and congressional aides defend the oversight role, but acknowledge it is not as thorough or productive as it should be, and that this function has become less effective over time. Data show the amount of time spent by lawmakers at committee and subcommittee meetings to delve into agency operations, debate policy and legislate has declined from earlier eras, particularly in the House.

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THE REPEATED FAILURE BY CONGRESS TO AGREE ON A BUDGET and pass appropriations bills on time, combined with a government shutdown, sequestration and repeated fights over extending the government's borrowing authority, have disrupted government operations, resulting in lost productivity and the inability to plan, innovate and hire for critical positions. Chronic dysfunction in the congressional appropriations process also has caused lapses in services to the public; wasted taxpayer dollars; prevented agencies from entering into new private-sector contracts or terminating unnecessary activities; led to postponements in new programs and projects; and delayed the delivery of grants to states, localities and other organizations.

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THE SENATE CONFIRMATION PROCESS for executive branch appointees, often delayed by political fights over policy issues unrelated to a nominee's qualifications, has left critical leadership positions vacant for long periods of time and imperiled departmental business by stalling decision-making and placing agencies in a holding pattern. The onerous vetting and paperwork requirements imposed by Congress and the White House contribute to the delays. The process has become a disincentive for many qualified people to serve in senior government positions.

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LEGISLATION APPROVED BY CONGRESS often has negative unintended consequences for federal agencies, and agencies are further stymied when important legislation like a reauthorization bill is held up for political reasons. Agencies devote precious time and resources to meet congressional mandates, but often get little help from Congress to address important policy or management challenges.

These findings are a sobering and stark reminder that Capitol Hill is not an island; what happens or fails to happen in the halls of Congress has a profound effect on the rest of our government, and on the American people who fund, empower and rely on that government for everything from Social Security benefits to national defense.

While partisan divisions are unlikely to subside anytime soon, there are many good and creative ideas to reduce dysfunction on Capitol Hill and between the branches. Our report highlights the steps that members of Congress, committee leaders and staff can take, individually and collectively, to improve congressional stewardship of the executive branch. We also note that there are many ways agency leaders can work better, or differently, with Congress, and we include our suggestions in this report.

Our recommendations:

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MEMBERS OF CONGRESS AND AGENCY LEADERS SHOULD TAKE RESPONSIBILITY for developing personal working relationships across the aisle and across the branches to improve understanding, build trust and solve problems.

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TO IMPROVE OVERSIGHT, Congress should seek more and better information to understand agency programmatic and operational challenges, and agencies should communicate regularly and candidly with Congress about what is working well and where they need help.

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TO REDUCE THE DISRUPTIONS IN FEDERAL AGENCY OPERATIONS that stem from the dysfunctional budget and appropriations processes, Congress should adopt a biennial budget and appropriations cycle, increase collaboration between and within the branches, and address overlap, duplication and cross-agency challenges.

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TO STREAMLINE THE CONFIRMATION PROCESS, the Senate should reduce the number of presidential appointments subject to confirmation, streamline the paperwork requirements and improve coordination with the executive branch.

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TO IMPROVE LEGISLATIVE OUTCOMES, congressional leaders should work with all members to help them develop better knowledge of the legislative process and also work effectively with federal agency executives to understand the effect of legislation on agency operations and programs.

Federal Government

STATS AND KEY TERMS

4.1 MILLION

EXECUTIVE BRANCH EMPLOYEES
(Includes postal and uniformed
military personnel)

1.8 MILLION

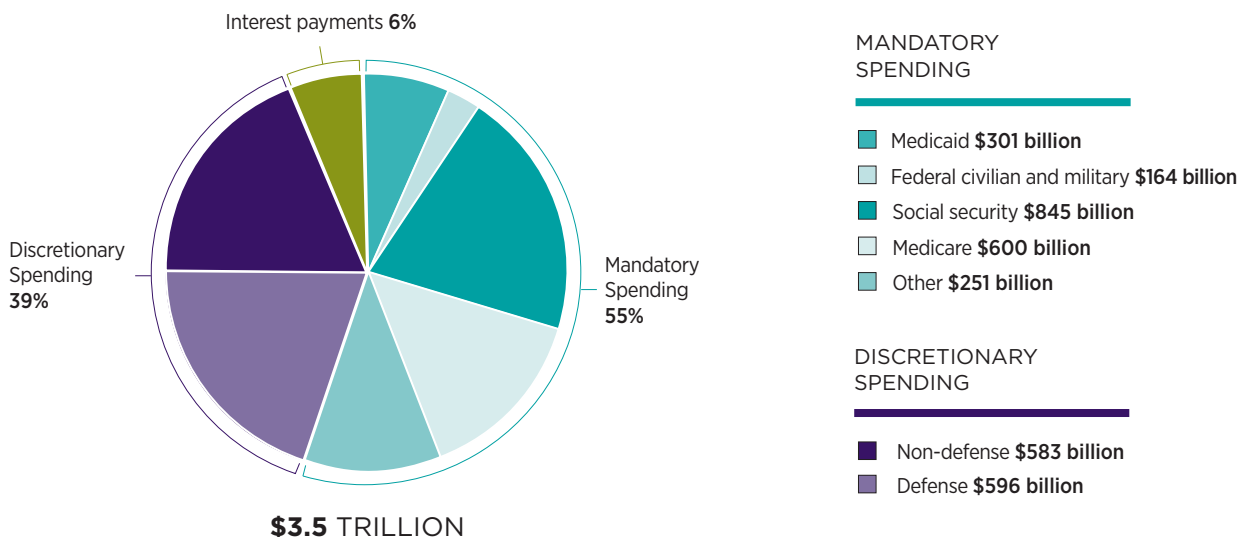
FULL-TIME, PERMANENT,
NONSEASONAL CIVIL SERVANTS

29,674

LEGISLATIVE BRANCH
EMPLOYEES

THE U.S. FEDERAL BUDGET (2014 ACTUAL)

Less than half of the federal budget is made up of money that is appropriated to agencies by Congress, while just under half again is disbursed to federal civilian agencies. This money pays for everything from maintaining national parks to medical research to care for veterans.



Source: CBO, The Budget and Economic Outlook: 2015 to 2025, Table 3-1/3-2, p. 60, 64 (<http://1.usa.gov/1JfMD2U>)

KEY DEFINITIONS

Appropriation: Legal authority for federal agencies to spend money. Appropriations for the federal government can take the form of regular appropriations, continuing resolutions or supplemental appropriations. When functioning properly, authorizing committees designate what spending should occur, and appropriations committees provide the authority, which must be ratified by the full Congress.

Authorization: Legislation allowing for the operation of a federal agency or program, either indefinitely or for a specific period of time, or which sanctions a particular type of expenditure. An authorization is normally a prerequisite for an appropriation, and under congressional rules, an appropriation may not be considered until its authorization has first been considered.

Continuing Resolution: An appropriation act that allows federal agencies and programs to continue to spend money in the event that regular appropriation acts have not been enacted by the beginning of the fiscal year.*

Funding Gap: A period of time during which appropriations have not been enacted into law. A funding gap may result in a government shutdown when the gap is of sufficient duration that agencies are forced to stop all activities that do not involve human safety or the protection of property. Under the Anti-Deficiency Act, agencies are banned from spending money in the absence of appropriations.**

Sequestration: The automatic, across-the-board reduction in federal discretionary spending, originally outlined in the Gramm-Rudman-Hollings Deficit Reduction Act of 1985. Sequestration most recently came into force in 2013, as part of the Budget Control Act of 2011.***

Sources: Unless otherwise noted, all definitions adopted from the Congressional Deskbook "A Glossary of Terms Used in the Federal Budget Process," GAO, September 2005.

**Jessica Tollestrup, "Federal Funding Gaps: A Brief Overview," Congressional Research Service, October 11, 2013.

***D. Andrew Austin, "The Budget Control Act and Trends in Discretionary Spending," Congressional Research Service, November 26, 2014.

FINDINGS

There is a pervasive lack of understanding of and appreciation for the concerns of the executive branch among many members of Congress and staff, and agency leaders exhibit a similar attitude toward members of the House and Senate

A number of former executive branch political appointees expressed deeply critical views about Congress, citing a lack of understanding by lawmakers regarding important policy and management issues, and bemoaning the adversarial and hyperpartisan atmosphere that makes it difficult to reach a mutual understanding and govern effectively.

At the same time, former members of Congress and Capitol Hill aides who were interviewed acknowledged that there is often little sympathy or a full appreciation about how funding uncertainties, senior-level vacancies, policy vacuums and the increasingly confrontational nature of the oversight process impede agencies from carrying out their missions. In many instances, they said, the battles over the proper role of government, policy disagreements or the desire to reduce federal spending trump any concerns about effective agency management.

But when agencies fail to perform as expected, even if partially the result of congressional action or inaction, lawmakers are often the first to direct their anger at the agencies, and at agency leaders.

In short, there is a pervasive sense that those running executive branch agencies and those serving in Congress often live in parallel universes—a condition that many believe has grown worse over time.

Linda Gustitus, who served as a longtime aide to former Democratic Sen. Carl Levin of Michigan, said executive branch appointees generally feel that members of Congress do not understand the complexities of running large organizations or appreciate the difficulties agency executives face. “Many people in the executive branch at the top levels think Congress is something they have to put up with, and they are quite disdainful,” she said.

On the other hand, Gustitus said members of Congress often feel “they are the bosses and in the driver’s seat, and are the voice of the people.” Gustitus said “an element of distrust and distance” has always characterized this relationship, but in recent years there has been an intensity to these feelings,

a much sharper partisan divide and “an unwillingness to have a dialogue and engage in problem-solving.”

A former high-ranking Obama administration political appointee from a major department said from his experience, many members of Congress are “not working hard to make government better,” but are more interested in finding ways to “show that government is not performing well and then to make a big deal of it.”

“It’s really hard for me to think of Congress as serious. There is a partner on the other side of the executive-legislative interaction that in general is focused overwhelmingly on politics,” said the former federal executive. “They don’t work that

hard. They don’t take the time to understand that much. And in general they aren’t focused on policy for the commonweal.”

Margaret Spellings, the secretary of education under President George W. Bush, said that in the past, “there was more respect for the prerogatives of the executive branch.” Now, she said, there is “an overreaction and backlash” from Congress and “a lot of wing clipping going on.”

Robert Gates, who served as secretary of defense in both the George W. Bush and Obama administrations, was extremely critical of Congress in his book, *Duty: Memoirs of a Secretary at War*. Gates called Congress “uncivil, incompetent in fulfilling ba-

sic constitutional responsibilities, micro-managerial, parochial, hypocritical, egotistical, thin-skinned, often putting self (and reelection) before country—this was my view of the majority of the United States Congress.”³

“Sharp questioning of witnesses should be expected and is entirely appropriate,” Gates wrote. “But rude, insulting, belittling, bullying and all too often highly personal attacks by members of Congress violated nearly every norm of civil behavior as they postured and acted as judge, jury, and executioner.”⁴

3 Robert M. Gates, *Duty: Memoir of a Secretary at War* (New York: Alfred A. Knopf, 2014), 581

4 Ibid.

SOME LAWMAKERS LACK KNOWLEDGE OF PROGRAMS AND POLICIES

Former lawmakers and agency leaders said that as a general rule, the committee chairmen, ranking members and their staff have a working understanding of the agencies that they oversee. There also are members of Congress who have made it their business to be knowledgeable about specific subject areas and agencies.

It is also true that some members lack expertise in the areas for which they have oversight responsibility.

Jim Leach, formerly a Republican House member from Iowa and chairman of the National Endowment for the Humanities, said it seems there are greater numbers of representatives than in the past who simply do not take the time to gain knowledge about the agencies that fall under the jurisdiction of the committees on which they serve, making it harder to engage in serious policymaking. He said that “professional knowledge is given less attention than it was decades ago.”

“Ask a member who is on the housing-related committee if they

have been to the Department of Housing and Urban Development. Ask a member of a committee dealing with banking if they have been to Treasury or the Federal Reserve. Have members of the foreign affairs committee been to the State Department? It’s shocking how little interchange occurs,” said Leach.

According to others interviewed, the same is true on the foreign policy front, with fewer members traveling abroad because such trips have been stigmatized as junkets. But foreign travel can provide opportunities for lawmakers to meet world leaders, learn from our uniformed and civilian employees serving overseas and get fresh insights into the impact of U.S. policy abroad.

Former House Appropriations Committee Chairman Robert Livingston of Louisiana noted that many House members serve on several committees and subcommittees, and that hearings are often held at the same time. When members do not, or cannot, attend committee hearings or meetings, they miss

important opportunities to learn about the agencies they oversee. “When members don’t know what is happening in the agencies in their jurisdiction, they resort to their ideology,” he said.

“When members don’t know what is happening in the agencies in their jurisdiction, they resort to their ideology.”

ROBERT LIVINGSTON
FORMER HOUSE APPROPRIATIONS
COMMITTEE CHAIRMAN

CONGRESSIONAL AIDES PLAY A CRITICAL ROLE

The need for expertise is not limited to members of Congress; it is important for staff as well. Staff serve a vital role by informing lawmakers of the agency issues most in need of attention. Most major agencies are administering complex, multibillion-dollar programs, and having overseers who can understand the programs and keep up with developments is critical.

Steve Chalk, a deputy assistant secretary for operations at the Department of Energy, noted with regard to Capitol Hill staff, “We have some people who have been around awhile. They really know the programs.”

Another senior executive noted that the work many agencies do is technical in nature. He said federal leaders must be able to master the substance, and having lawmakers and staff who “know their stuff” leads to far more productive relationships between the branches. But many House and Senate staff mem-

bers fall short of the mark, lacking the information and understanding they need to assist federal agencies and advise members of Congress.

Polly Trottenberg, who was a longtime Capitol Hill staffer and later undersecretary for policy at the Department of Transportation, said that when she joined the Obama administration, “I was stunned at the things I had not known as a Hill staffer about the challenges, restrictions and complexities of operating in the executive branch—relative ignorance about the budget process, the federal hiring process, procurement and how rulemaking works.”

William Moschella, a former House staffer and later the principal associate deputy attorney general during the Bush administration, agreed that more agency experience among Capitol Hill staff would benefit Congress.

“I would have been a better congressional staffer had I had a couple

years in the executive branch. I think that the Hill attracts a lot of very smart, sometimes ambitious, ideological people, but that being said, a 25-year-old doesn’t know a lot, doesn’t have a lot of life experience,” said Moschella. “Recently there has been a lot of turnover, so members definitely need to be educated and a lot of the staff is new. Again, very smart individuals, but not necessarily very experienced.”

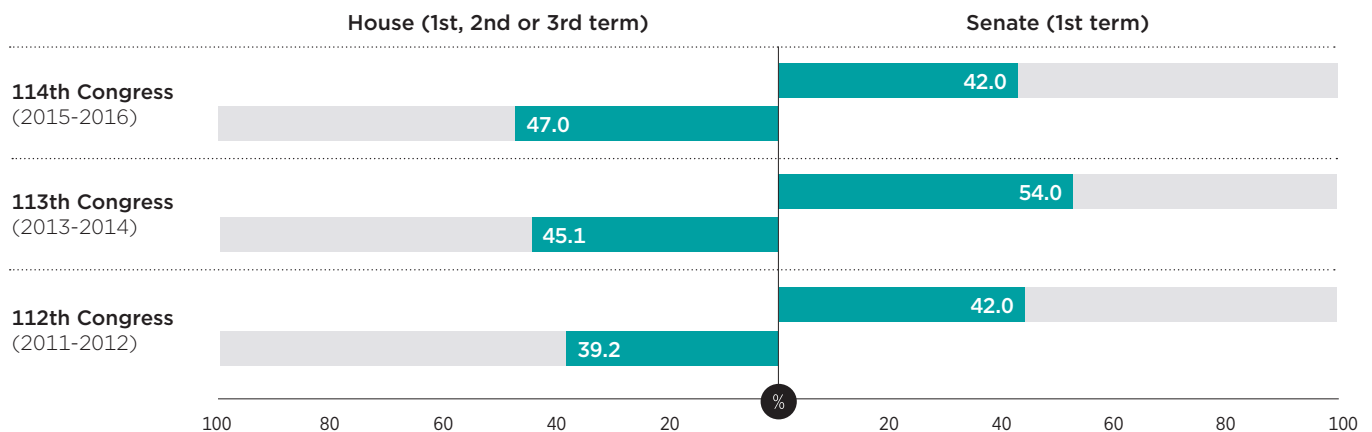
When asked whether members and staff generally understood many of the complicated issues confronting his department, a former Obama administration official said, “There are some members and some staff for whom the answer is yes. But they are overwhelmingly in the minority. Congress isn’t incentivized to be experts; they’re not accountable for policy outcomes.”

For the handful who had some familiarity with particular policy issues, he said, “there were a ton who had no clue.”

TENURE OF REPRESENTATIVES AND SENATORS

Percentage of members serving 6 years or fewer

Since 2011 there has been significant turnover in both the House and Senate, with nearly half of representatives and senators serving 6 or fewer years. This turnover has a large impact on the legislative process and relationships among members.



Sources: “Vital Statistics on Congress Data on the U.S. Congress—A Joint Effort from Brookings and the American Enterprise Institute” (<http://brook.gs/1JQJpIO>)
Roll Call, “House Seniority List—114th Congress” (<http://bit.ly/1FIjGAQ>)
Roll Call, “Senate Seniority List—114th Congress” (<http://bit.ly/1FIjHEO>)

AGENCY EXECUTIVES COULD DO MORE TO UNDERSTAND CONGRESS

Former Rep. Leach noted that executive branch agencies need individuals who have a better understanding of how Capitol Hill works and know how to navigate the system. Sometimes that is not the case, he said. “Executive branch leaders should recognize that they need professionals to deal with Capitol Hill. They don’t have very many, but the Hill is better off being met by professionals rather than politicians.”

Ray LaHood, a seven-term Republican congressman who served as President Obama’s transportation secretary, said Cabinet members and other top executive branch appointees need to be responsive to members of Congress and directly engage them on the issues if they want to make headway.

“When you have a relationship, it means there is a good understand-

ing of what the issues are that you’re dealing with and what the problems are,” said LaHood. “But it also works both ways because a member of the Cabinet can get a feel for what members of Congress are dealing with.”

LaHood noted that Obama’s first Cabinet included five former members of Congress, and said, “I think those Cabinet members brought a very healthy respect for Congress, having been elected. We had a Saturday morning Cabinet seminar just on Congress, and the former members conducted part of the seminar on things that people should be attuned to in dealing with members of Congress.”

Others, however, take the view that they are better off with as little interaction with Congress as possible, a tactic that may work for some

and backfire for others. One former executive branch appointee, for example, said he was “wary of Congress” and tried to keep his distance.

“If you are called to testify before Congress, nothing good can come of it, generally,” he said. “In fact, I told my congressional relations people that I would judge them by their ability to keep me from testifying before Congress.”

A former Capitol Hill aide and political appointee said the “gotcha” culture and use of hearings “for show” often makes agency leaders reticent about being completely forthcoming. “Agencies don’t tend to come up to Capitol Hill and be completely transparent,” said the former executive. “They often provide marketing materials instead of direct answers.”

PERSONAL RELATIONSHIPS CAN BRIDGE THE DIVIDE BETWEEN CONGRESS AND FEDERAL AGENCIES

The gulf between the executive and legislative branches can be narrowed when individuals from each branch develop personal connections. Relationships matter, even in a highly charged partisan environment, and they are critical to solving problems.

Thad Allen, the former commandant of the Coast Guard, said he made a special effort to meet with key members of Congress who served on committees with jurisdiction over his operations, whether it meant going to Capitol Hill or visiting them in their districts and states on the weekends.

“Anybody in an agency in this town that isn’t doing that isn’t doing their job,” said Allen. “You have to help them make informed decisions. It’s in the best interest of the country and the agency.”

Dan Glickman, a former Democratic congressman from Kansas and the agriculture secretary in the Clinton administration, said “the most suc-

cessful Cabinet members spend time cultivating relationships with Congress, especially in the committees.”

“I viewed my job as the secretary of the USDA and congressional relations,” said Glickman.

Margaret Spellings, the former education secretary, echoed the same sentiment. She said she maintained good relations with key lawmakers who were influential in education policy, including the late Sen. Edward Kennedy of Massachusetts. While everything was not always smooth sailing, she said “constant communication” and negotiation on a personal basis were critical to making progress and reaching consensus.

A Senate Committee on Veterans Affairs hearing on June 24, 2015, provides a prime example of how efforts by individuals to reach across the branches can make a difference.

Dan Sullivan, a Republican senator from Alaska, discussed a growing crisis in veterans’ health care in his state, and said that he had planned to put a hold on the nomination of Dr. David Shulkin to serve as undersecretary of health for the Department of Veterans Affairs, but was able to allay his concerns after having a talk with the nominee. “I talked to Dr. Shulkin last night. I was going to put a hold on his nomination. [Instead] I got a commitment from him to come to Alaska as part of field hearings...to help address these issues,” said Sullivan.⁵

While a hold on the nomination would have resulted in an indefinite vacancy in an important position

5 U.S. Senate Committee on Veterans Affairs, Hearing on “Pending Health Care and Benefits Legislation,” June 24, 2015. <http://l.usa.gov/1MxTM20>

and diminished the department's ability to respond to the senator's concerns, a personal conversation between the senator and the agency nominee, combined with what the committee chairman called a "spirit of cooperation" yielded a far more positive outcome: the VA filled a key role at a critical time and the senator gained a senior department official who is committed to addressing the problems in his home state.

Another notable example of this dynamic involved Rafael Borrás, the former undersecretary for management at the Department of Homeland Security, and Tom Coburn, the former Republican senator from Oklahoma known as "Dr. No" for his

propensity to singlehandedly block nominees and hold up legislation.⁶

Borrás said during his confirmation process, he met with Coburn and was upfront about the management issues he would focus on, the biggest problems he faced and how he would address them.

"I think he appreciated sort of plain talk," said Borrás. "The things I talked about seemed to make sense to him. And those were our early conversations. I didn't know him, but we just hit it off and he was very supportive throughout my tenure."

6 Catalina Camia, "Senate's Dr. No says a poignant farewell," *USA Today*, Dec. 11, 2014. <http://usat.ly/1TTe4a>

Other interviewees agreed that transparency on the part of agency leaders builds trust between agencies and Capitol Hill.

Steve Preston, who served as the Small Business Administration administrator and then as secretary of the Department of Housing and Urban Development under President George W. Bush, said he "wanted everything we were doing to be transparent," and regularly invited Capitol Hill staffers over to the SBA to "show them how we were doing on the big initiatives."

"In my Senate hearings, I made a point to be honest if something wasn't working well and how we were addressing it," said Preston.

CONSTRUCTIVE RELATIONSHIPS BETWEEN CONGRESSIONAL REPUBLICANS AND DEMOCRATS CAN MAKE A DIFFERENCE

Personal connections between Republicans and Democrats serving in Congress have deteriorated over the years, with lawmakers from the two political parties often viewing each other as adversaries rather than colleagues, and spending little time getting to know one another or seeking common ground.

Republican Rep. Lamar Smith of Texas sought to break this mold when he became chairman of the House Judiciary Committee, holding a bipartisan retreat in 2011 for all members of the panel. Smith arranged for Democrats and Republicans to sit next to one another during the gathering, and he enlisted outside speakers on relevant topics, including "Getting to Yes." Smith also reached an understanding with the ranking committee Democrat, John Conyers of Michigan, that when they disagreed on issues, as they inevitably would, they would not make it personal.

"One of my goals as chairman was to take a committee with a partisan reputation and try to make it more

productive," said Smith. Despite strong differences, Smith said, the committee approved more than 30 bills during the two-year session, including a major overhaul of the nation's outdated patent laws that not only involved working across party lines in committee, but also with Democratic Sen. Patrick Leahy of Vermont, then the chairman of the Senate Judiciary Committee, and David Kappos, then the head of the U.S. Patent and Trademark Office.

Smith and Leahy were named "Policymakers of the Year" in 2011 by Politico, which noted that "the America Invents Act became the only major piece of tech legislation signed into law in 2011—a rare instance in which a bipartisan effort bore fruit."⁷ Smith believed he and Leahy were able to work with each other, and with Kappos, to get the law passed because they knew "the goal was worthy and we trusted each other."

7 Politico staff, "Jackson, Leahy, Smith and Ryan named policymakers of the year," *Politico*, Nov. 30, 2011. <http://politi.co/1E5kej4>

Another example involved Republican Rep. Jason Chaffetz of Utah, who became chairman of the House Committee on Oversight and Government Reform in 2015, and Rep. Elijah Cummings of Maryland, the ranking Democrat on the panel. Chaffetz and Cummings made it a priority to build a constructive working relationship, even before Chaffetz was officially named as the committee's new chairman.

The two members visited each other's congressional districts to learn about the issues of importance to constituents, improve understanding of the other's perspective and demonstrate a spirit of bipartisan cooperation. The experience helped create a bond that, while not always enough to overcome partisan and policy disagreements, has contributed to a more civil atmosphere on the committee.⁸

8 Wesley Lowery, "House members try a DIY preemptive bipartisanship," *Washington Post*, July 6, 2014. <http://wapo.st/1O5Lcaw>

RECOMMENDATIONS

Members of Congress and agency leaders should take responsibility for developing personal working relationships across the aisle and across the branches to improve understanding, build trust and solve problems.

To build stronger relationships and improve communication, we recommend:

- Agency leaders should be proactive in building and owning congressional relationships and use their congressional affairs staff to strengthen their presence on Capitol Hill, not insulate them from it. Further, agency leaders should hold their staff accountable for developing positive working relationships with members and staff.
- Chairmen should host bipartisan committee retreats at the beginning of each Congress to identify bipartisan oversight and legislative priorities, and ground rules for working well together and with federal agencies.
- The bipartisan, bicameral congressional leadership should hold an annual bipartisan retreat at which members from both sides of the aisle can establish and reinforce core principles of decorum, and agreements for mutual accountability.
- The dean of each state congressional delegation should host an annual gathering of all delegation members to build relationships across party lines, welcome new members and discuss areas of mutual interest.
- Members should participate in field hearings and seek opportunities to visit the districts of other representatives and senators, particularly those on the other side of the aisle.
- Committee chairs and ranking members should take turns hosting a quarterly breakfast or lunch with the leader of each major agency in their committee jurisdiction; agency leaders should reciprocate with regular invitations for committee members to come to agency headquarters for both official meetings and informal conversations.
- Members, congressional staff and agency executives with Capitol Hill experience should educate new agency leaders about best practices for building and maintaining positive working relationships with Congress (both at the individual member and committee levels); this could take the form of mentorships, workshops or one-on-one training.

Federal executives understand the importance of congressional oversight, but feel lawmakers are more interested in grabbing headlines than making improvements

Oversight of the executive branch is a primary duty of Congress, involving inquiries into how policy is implemented, how programs are administered, how agencies are managed and how money is spent. Oversight is the means by which Congress can identify what is working, find problems, and hold agencies and their leaders accountable. The overwhelming sentiment expressed by those interviewed is that congressional oversight, when done well, fulfills an important and legitimate role.

Recent examples of bipartisan congressional oversight include inquiries into delays by the National Highway Traffic Safety Administration in recalling millions of faulty and dangerous airbags, an investigation into misconduct and performance failures within the Secret Service, and the hearings examining falsified records covering up the long wait times for veterans at the Department of Veterans Affairs' hospitals and clinics.

An example of thorough oversight that led to a legislative outcome was the effort undertaken by Republican Rep. Darrell Issa of California, Democratic Rep. Gerry Connolly of Virginia, Democratic Sen. Tom Carper of Delaware and Republican Sen. Tom Coburn of Oklahoma to address long-standing problems with how the government acquires information technology—an effort that began in 2012 and led to the passage and enactment of the Federal Information Technology Acquisition Reform Act in December 2014.⁹

In crafting the law, both the House and Senate held numerous hearings examining the federal government's information technology challenges. The bill went through multiple iterations and received input from agencies and external stakeholders. This collaborative effort resulted in legislation that addressed an enterprise-wide challenge facing the federal government, and illustrated the positive outcomes when individuals work across party lines, and across the branches, to solve problems.

Sean O'Keefe, a longtime congressional staff member who became the deputy director of the Office of Management and Budget and then NASA administrator, said, "The oversight function can influence corrections, which is a really positive dimension of the effect Congress can have on executive branch program implementation responsibilities. Getting there is no fun, but it has consequential benefits. This is in addition to Congress' powerful influence over programs through appropriations."

⁹ U.S. House Committee on Oversight and Government Reform, Federal Information Technology Acquisition Reform Act. Library of Congress, 2015. <http://1.usa.gov/1Lml4S>

POLITICAL APPOINTEES SEE SOME OVERSIGHT HEARINGS AS POLITICAL THEATER

In many instances, oversight of the executive branch has been used by members of Congress to gain media attention, put their political opponents in a weak position or enhance their own electoral prospects and standing among colleagues. A number of those interviewed said that from their experience, congressional oversight is often political in nature rather than thoughtful or productive, and can hamper rather than help agencies succeed.

Rafael Borrás, the former undersecretary for management at the Department of Homeland Security, said he had mixed experiences, but overall found Congress wanting.

“It’s a harsh thing to say, but it has to be said. I don’t think the members by and large take their oversight responsibility seriously enough,” said Borrás. “At many of the hearings I’ve been to, many members of the committee didn’t show up. If they did, they read prepared statements and then they left, so they could be on the record for having been there. But they don’t

really engage and they don’t prepare well enough in advance. However, for the most part, I’ve been treated well at hearings.”

Borrás said there were times when issues were raised that had nothing to do with the subject of the hearing or when he was asked to justify statements by his Cabinet secretary that were taken out of context. In other instances, he said, he was dressed down by a member of a committee, and then staff or another committee member would later apologize.

“I would often tell my staff and my colleagues that when you go to the Hill, it’s Broadway, it’s a theater, and it’s a stage. And you are part of the performance,” said Borrás.

Olympia Snowe, the former Republican senator from Maine who was interviewed separately for a Washington Post leadership column, noted that in today’s polarized environment, Congress is not passing legislation to address a number of issues affecting agencies, and there is little opportunity for real dialogue in committees about the

problems and how to fix them.

“If the agency leaders want to communicate some of the problems they have, there is not really an avenue to channel constructive change,” she said. “And I sense that if you are working for an agency, it would be very difficult to consult with Congress on any issues in this current environment.”¹⁰

Donald Wolfensberger, a former staff director of the House Rules Committee and a resident scholar with the Bipartisan Policy Center, said Congress has been faulted for decades for not living up to its obligation to conduct “real conscientious and planned oversight.”

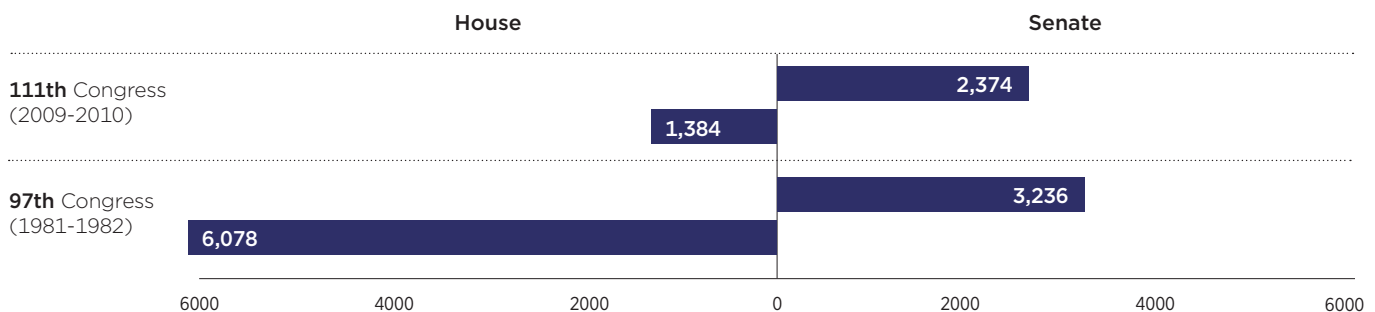
“As far as programmatic oversight, members find it boring, there’s little payoff and they are offending special interest groups,” said Wolfensberger. “Members don’t like to offend the people who are helping fund their campaigns.”

10 Tom Fox, “How Congress and federal leaders can work better together,” Washington Post, Jan. 7, 2015. <http://wapo.st/1MX9pCT>

COMMITTEE AND SUBCOMMITTEE MEETINGS AND HEARINGS

During the first two years of the Reagan and Obama administrations

Committee and subcommittee hearings are an opportunity for members to hear testimony, review legislation and debate policy, but have declined significantly in number over the past several decades as the schedules of members of Congress become more packed and there are fewer opportunities to act on legislation.



Source: “Vital Statistics on Congress Data on the U.S. Congress—A Joint Effort from Brookings and the American Enterprise Institute” (<http://brook.gs/1JQJpIO>)

Judging from the data, committees are meeting less often than in the past to hear testimony, review legislation and debate policy.

In the 97th Congress, from 1981 to 1982 during President Reagan's first two years in office, there were 6,087 House committee and subcommittee meetings held. In the 111th Congress, from 2009 to 2010 during President Obama's first two years, there were just 1,384 House committee and subcommittee meetings. During the same time frames, the number of Senate committee and subcommittee meetings dropped from 3,236 to 2,374.¹¹

Steve Preston, who served as the head of the Small Business Administration and later as housing secretary under President George W. Bush, said at SBA oversight hearings, there was "a great degree of variability, depending on the topic, the chair and the person asking the questions."

"While many of the hearings covered important ground, more often they were politically motivated with little regard for our work or the progress we were making," Preston said. "There was very little political will to change or eliminate a program that was ineffective, especially if the beneficiary of the program had political leverage."

"Often, overseers did not dig to understand whether programs were actually delivering their mandate," he added. "In addition, people often assumed money would cure problems rather than understanding whether the program was well designed or had an effective delivery system for achieving its goals."

A former high-ranking Obama administration appointee had similar experiences.

"When I worked in government, congressional oversight went way beyond helpful, constructive and efficient," said the former official. "The message was, we're here to look for dirt to make you look bad on whatever pretense we can find, and we will focus on laying blame and getting news coverage for it."

While acknowledging that the oversight process can be contentious and at times unproductive, John Lawrence, the former chief of staff for House Minority Leader Nancy Pelosi, was more philosophical about the give and take between Congress and executive branch officials.

"The tension between the two branches is inevitable," said Lawrence. "You also have changing personalities and changing priorities, so as different people find themselves in key positions on committees or in leadership, they assert their views on their interpretation of the particular legislative intent or the carrying out of the policy."

"A lot of people don't understand it was designed this way 228 years ago," Lawrence added. "They see the way it has evolved as somehow being at odds with the nature of the system. For better or worse, it's inherent in the nature of the system."

"While many of the hearings covered important ground, more often they were politically motivated."

STEVE PRESTON

FORMER HEAD OF THE SMALL BUSINESS ADMINISTRATION
FORMER HOUSING SECRETARY

11 Norman J. Ornstein, Thomas E. Mann, Michael J. Malbin, Andrew Rugg and Raffaella Wakeman, "Vital Statistics on Congress Data on the U.S. Congress—A Joint Effort from Brookings and the American Enterprise Institute," July 2013. <http://brook.gs/1JQJpIO>

Managing Amid the Congressional Clamor

Scott Gould was the deputy secretary of the Department of Veterans Affairs from 2009 until 2013. He was responsible for the day-to-day operations of the sprawling department with more than 300,000 employees, a budget at the time of more than \$132 billion, 1,200 medical facilities, 131 cemeteries and 58 regional offices delivering benefits to veterans. In an interview, Gould described what it was like managing the huge department, ensuring critical services were provided and dealing with the countless stakeholder demands amid loud, strident criticism from Congress.

GOULD: “When you take on these jobs, it’s like a championship football game with a full stadium. You step out on the field and people are screaming. They’re just going crazy. Half of them are watching and hoping you do one thing; the other half want you to do something else; some just want you to fail. It’s a deafening roar and you can barely hear 80 feet to the right side and 80 feet to the left. You start to ignore the yelling. And so pretty soon the people who are yelling are thinking, ‘Why doesn’t this person hear me?’ And you’re thinking, ‘Just to survive in this environment, I have to cut out all the noise so I can focus on the things that need to be done.’

So what is happening subtly is, the quality of the two-way communication between executive and legislative branch, between agencies and the people they serve, is getting lost. The parties are screaming at each other and intentionally abusing the people in your organization.

As a senior manager with a sense of mission and purpose, you think: ‘I just have to ignore some of this and focus on execution.’ So you start to rely on others to tell you what’s important and what’s not. You adopt mechanisms to filter the information that you’re getting, and then what happens is that only the stuff that is very loud or in unusual language cuts through. I think that the people who are shouting recognize this, so they choose words like, ‘I am outraged. This is despicable. These people are buffoons. They should be fired. They should literally be shot.’

You adopt a style of forbearance and pretty soon you catch yourself ignoring it. Looking back on it now, there were times when I had to tune out to survive because of the emotional intensity. But when you tune out, you miss the opportunity for that critical bit of information—a perspective or a data point that can make all the difference.”

REQUESTS FOR DOCUMENTS CAN BE OVERWHELMING FOR AGENCIES

Scott Gould, the former deputy secretary of the Department of Veterans Affairs in the Obama administration, said some committee members with jurisdiction over his department would submit hundreds of questions for the record, requiring days or even weeks of staff time to provide answers in writing. The intent, he said, seemed “punitive” and designed to “tie you up,” not to develop a better understanding of the department’s operations.

“A great example of this occurred in the budget process where the department received hundreds of questions related to the budget, each with multiple parts from a single member of Congress,” said Gould. “Lawmakers who had asked for a thousand-page response in a short time frame would say publicly that the agency hadn’t responded to them and was withholding information.”

Others suggested that many congressional requests for information are reasonable and intended for constructive purposes, but agencies often do not have the records management capability to locate and produce the information, and that causes friction.

Another source of friction involves reporting mandates on the agencies. Some interviewees said that Congress requires detailed and often duplicative reports, but then members neither read them nor take any action even when those reports suggest a program is no longer needed.

“There’s more reporting than is helpful or efficient. I would also tell you quite clearly that Congress asks for reports and has no interest in actually paying attention to them. That, I think, is sad,” said one federal agency leader.

“The department received hundreds of questions related to the budget, each with multiple parts.”

SCOTT GOULD

FORMER DEPUTY SECRETARY OF THE
DEPARTMENT OF VETERANS AFFAIRS

OVERLAPPING COMMITTEE JURISDICTION CREATES PROBLEMS FOR FEDERAL AGENCIES

The challenge of competing congressional jurisdictions presents difficulties for the executive branch, and perhaps the most studied and documented case of fragmented jurisdiction involves the Department of Homeland Security.

The vast majority of the major executive departments are responsible to one or two major committees in the House and another one or two in the Senate, with additional subcommittees as well as the House and Senate oversight and appropriations committees. However, this phenomenon of multiple overseers hit a new high with the creation of DHS.

DHS and its subcomponents are accountable to more than 100 committees, subcommittees, caucuses and commissions. The redundancy places an enormous burden on the

department, consuming staff who set aside departmental work to respond to a multitude of congressional inquiries, and the time of executives who are called to testify.¹² The 9/11 Commission in 2004 recommended consolidating oversight of the department; in response, some realignment occurred and the House Homeland Security Committee was created, but other committees were unwilling to give up their piece of jurisdiction.

12 Aspen Institute, “Task Force Report on Streamlining and Consolidating Congressional Oversight of the U.S. Department of Homeland Security,” September 2013. <http://bit.ly/1PuJBLH>

RECOMMENDATIONS

To improve oversight, Congress should seek more and better information to understand agency programmatic and operational challenges, and agencies should communicate regularly and candidly with Congress about what is working well and where they need help.

There are a number of steps that both Congress and executive branch agencies can take to improve oversight as a means of information-sharing, transparency and problem-solving:

- Agency leaders should be transparent with members of Congress about what's working, what's not, what they are doing to fix problems and where they need help, including with respect to challenges that cross agency boundaries. Agencies should include this information prominently in testimony before Congress and agency strategic plans.
- Agency leaders should do more to engage members of Congress and congressional staff in agency events without regard for party affiliation, including those held in a member's congressional district or state.
- Members of Congress and staff should seek opportunities to visit agency headquarters or field offices to interact with political and career staff and learn more about management and program challenges.
- Lawmakers should participate in congressional delegation trips relating to agencies or programs for which they have oversight or funding responsibility to gain a better understanding of the agency's work, talk with employees and build stronger working relationships with colleagues.
- Committees should reduce the burden of reporting requirements by inviting the input of a federal agency before it is required to write a new report and not mandating that reports be submitted on an annual basis except in unusual circumstances. A sunset date should be included for new reporting requirements.
- Each committee with agency oversight jurisdiction should create a clearinghouse of frequently asked "questions for the record" to reduce the number of redundant questions to which agencies must respond.
- Congress should invest in congressional staff education to improve expertise on both policy and management issues, and to provide opportunities for staff to learn first-hand about the executive branch. This may include the assignment of congressional staff to an executive branch agency for a detail or job-shadowing arrangement of limited duration.
- Each committee with agency oversight jurisdiction should have a bipartisan oversight subcommittee, co-chaired by one member of the majority and one member of the minority and with equal numbers from each party. The co-chairs should work jointly to establish and implement an annual subcommittee oversight agenda.

The repeated failure by Congress to meet funding deadlines has disrupted government operations, resulting in lost productivity and the inability to plan, innovate and hire for critical positions

The failure of Congress to approve annual federal budgets and pass 12 separate appropriations bills on time each year has become a way of life in Washington, creating tremendous uncertainty and multiple management and financial inefficiencies for government agencies.

The negative effect on the ability of the agencies to fulfill their missions has often seemed to be of little concern to many lawmakers, some of whom are focused on using the appropriations process to win specific policy battles or to control spending and reduce the federal budget deficit.

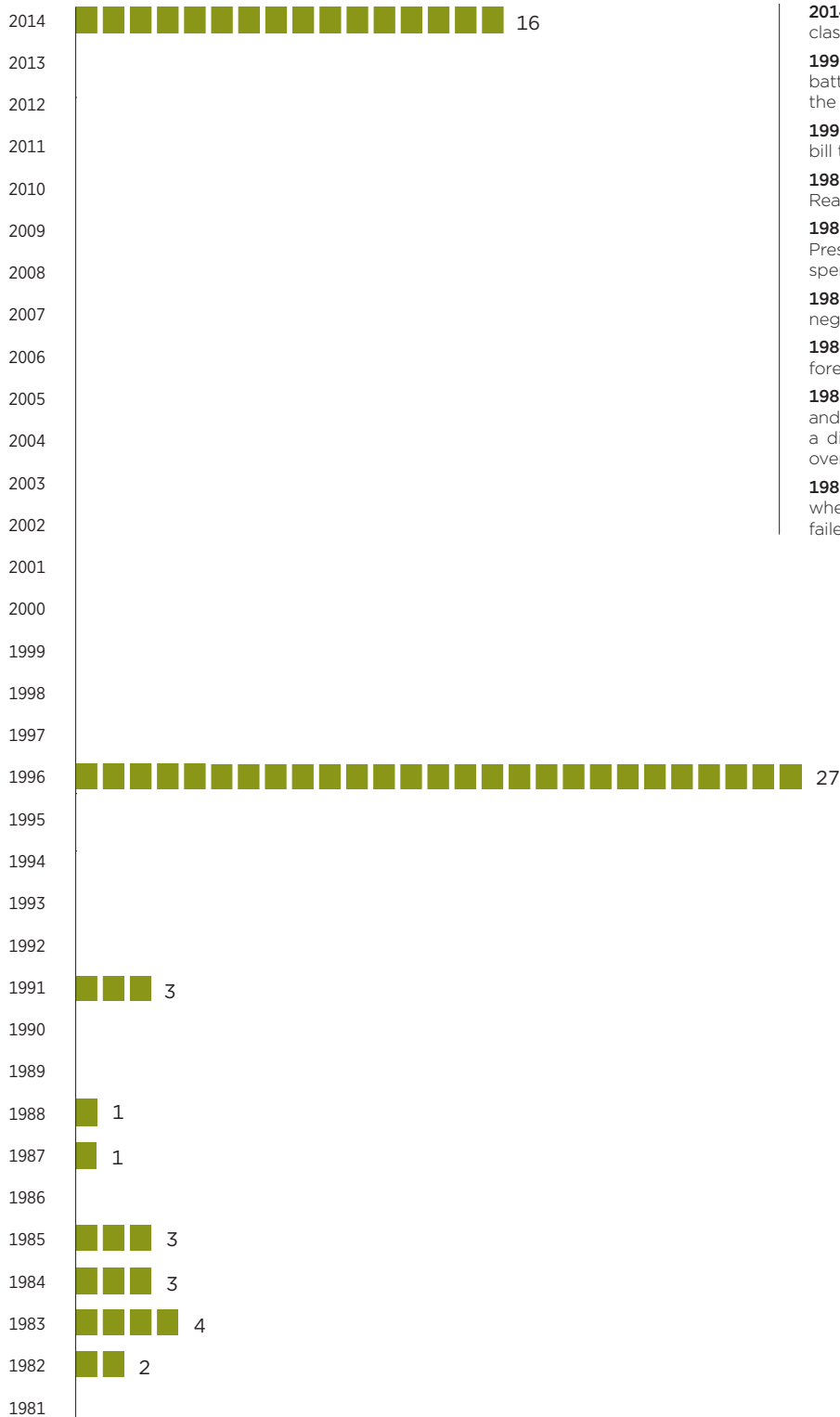
Fiscal 1997 was the last year that all 12 regular appropriations bills to fund the government were completed by the October 1 deadline. This has resulted in numerous temporary spending measures that in some cases lasted for weeks, months or even for a full year. With some frequency, Congress has resorted to passage of omnibus spending packages—the bundling of a broad range of discretionary spending from multiple departments into one huge bill which members generally have no opportunity to read, debate or amend.

There also was a 16-day partial government shutdown in 2013, brinkmanship over extending the government's borrowing powers, and across-the-board spending cuts known as sequestration that were broadly applied for much of fiscal 2013. Few people ever expected the sequester to take effect; it was designed to force bipartisan agreement on spending reductions, not as a thoughtful means to evaluate and target federal spending. However, when no agreement was reached, the cuts in both defense and non-defense discretionary programs were imposed.

In addition, Congress has failed to agree on a budget nine times since the Congressional Budget Act was passed some four decades ago, including the previous five fiscal years preceding the most recent fiscal 2016 budget. The budget sets overall spending limits, but does not decide funding for specific programs.

GOVERNMENT SHUTDOWNS

Days per fiscal year



2014: President Obama and congressional Republicans clashed over funding for the Affordable Care Act.

1996: President Clinton and the Republican Congress battled over domestic funding and a plan to balance the budget.

1991: President George H.W. Bush vetoed a spending bill that did not include a deficit reduction plan.

1988: Congressional Democrats and President Reagan disagreed over foreign military aid funding.

1987: Congress, primarily the Democratic House, and President Reagan could not come to agreement on a spending bill.

1985: President Reagan and Congress ran out of time negotiating spending bills.

1984: Congress and President Reagan disagreed over foreign aid spending.

1983: Congress failed to pass a spending bill on time, and another brief shutdown occurred as a result of a dispute between Congress and President Reagan over defense and domestic spending priorities.

1982: The government shut down for several hours when President Reagan vetoed a spending bill that failed to achieve his desired level of budget cuts.

Source: Dylan Matthews, "Here Is Every Previous Government Shutdown, Why They Happened and How They Ended," The Washington Post, Sept. 25, 2013. (<http://wapo.st/1N7x57H>)

BUDGET PROCESS DYSFUNCTION HAS SIGNIFICANT IMPACT ON AGENCIES AND THE FEDERAL WORKFORCE

Budget process dysfunction has made it difficult for agencies to operate in a prudent, fiscally sound manner, often leaving them unable to plan, to rationally allocate resources and to thoughtfully organize, deploy and train personnel.

Prior to the government shutdown in October 2013, federal managers spent thousands of hours trying to figure out how to triage critical functions from those that are simply important and how to close down much of government with the least disruption and harm to the public, all the while being sidetracked from the day-to-day missions of their agencies. The shutdown resulted in the furlough of 800,000 federal employees and affected a wide array of services, from denying the entry of seriously ill patients to National Institutes of Health clinical trials to putting constraints on environmental protection, food safety, public health, small business loans, and nuclear and chemical plant safety.¹³

Months before the shutdown, sequestration had a significant impact across the federal landscape. The Government Accountability Office, for example, reviewed operations at 23 major agencies, finding that 19 curtailed hiring, 16 modified or delayed contracts and grants for core mission activities, 19 reduced employee training and 20 reduced employee travel. In addition, the GAO said agencies reported that sequestration resulted in reduced assistance for education, housing, nutrition and health and science research.¹⁴

Former agency executives said the repeated failure of Congress to meet yearly funding deadlines and turn instead to short-term appropriations bills has hampered their ability to engage in near- and long-term planning, enter into new private-sector contracts or terminate unnecessary activities. They said it has resulted in lost productivity, delays in new programs and projects, and lapses in the delivery of grants to states, localities and organizations.

In addition, they said the lack of reliable and stable funding has led to hiring freezes for critical positions, problems with recruitment and the morale of federal employees, and a host of other problems.

Dan Glickman, who served 18 years in the House as a congressman from Kansas and was the secretary of agriculture under President Clinton, said, “Shutdowns contribute to the belief that the system of government isn’t working, and that’s really harmful.”

Former Democratic Sen. Byron Dorgan of North Dakota said members of Congress understand that the failure to pass a budget or to meet appropriations deadlines has adverse consequences for agencies. But given the strong feelings on both sides of the aisle regarding spending and the role of government, he said, some members “just don’t care” about the effect on agency operations.

Congress also can be inconsistent on spending issues, reducing appropriations, criticizing inefficiencies and then thwarting agency efforts to save money. In a candid passage from his memoir, former Secretary of Defense Robert Gates said, “I suppose I should have known better going in, but I was constantly amazed and infuriated at the hypocrisy of those who most stridently attacked the Defense Department for being inefficient and wasteful, but

would fight tooth and nail to prevent any reduction in defense activities in their home state or district no matter how inefficient or wasteful.”¹⁵

Such behavior was on display in October 2013 when a U.S. representative who supported the government shutdown to stop “run-away spending” angrily berated a U.S. Park Service ranger for keeping tourists out of the World War II Memorial in Washington, D.C., which was closed to all except World War II veterans because of the congressional funding lapse. The congressman subsequently apologized to the park ranger.

“Shutdowns contribute to the belief that the system of government isn’t working, and that’s really harmful.”

DAN GLICKMAN
FORMER SECRETARY OF AGRICULTURE

13 Executive Office of the President, “Impacts and Costs of the October 2013 Federal Government Shutdown,” November 2013. <http://1.usa.gov/1TTLSXB>

14 Government Accountability Office, “2013 Sequestration: Agencies Reduced Some Services and Investments, While Taking Certain Actions to Mitigate Effects,” March 6, 2014. <http://1.usa.gov/1HWk0WA>

15 Robert M. Gates, *Duty: Memoir of a Secretary at War* (New York: Alfred A. Knopf, 2014), 580

BUDGET RESOLUTION CONFERENCE AGREEMENTS

By fiscal year

Since the passage of the Congressional Budget and Impoundment Control Act of 1974, Congress has failed to pass a budget nine times, including in each of the past 5 years.

Passed Didn't pass

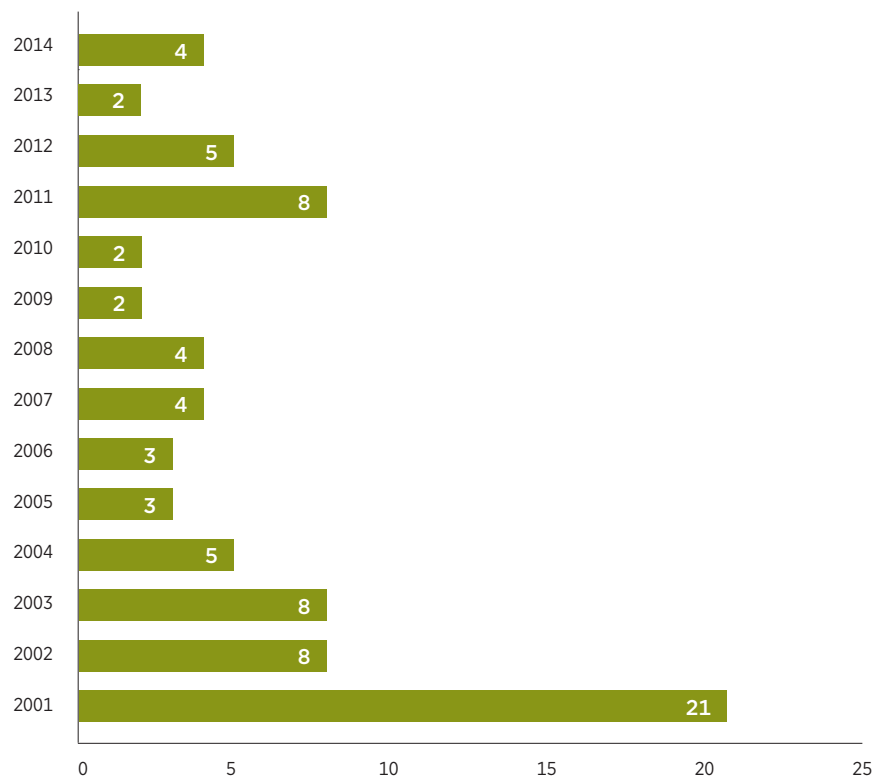


Source: Bipartisan Policy Center, "Proposal for Improving the Congressional Budget Process" (<http://bit.ly/1U315pk>)

NUMBER OF CONTINUING RESOLUTIONS

By fiscal year since 2001

Congress' inability to pass funding bills on time has led to a reliance on continuing resolutions (CRs) to keep agencies funded. The last time Congress passed all necessary appropriations bills on time was 1997.



Source: Congressional Research Service, "Continuing Resolutions: Overview of Components and Recent Practices" (<http://bit.ly/1Kg8Xh2>)

UNCERTAIN FUNDING WASTES MONEY AND LEAVES AGENCIES IN LIMBO

A number of former agency executives said the erratic nature of the appropriations process created inefficiencies and great uncertainty.

David Kappos, former undersecretary of commerce and director of the U.S. Patent and Trademark Office, said in the face of ambiguity over funding, “you do nothing new. You’re on life support. You do not innovate at all. You do not create at all. You do not initiate at all.”

He said that one of the reasons so many IT projects fail or result in massive cost overruns is the “whipsawing effect” that comes from not knowing when funding will be available or at what level.

“You start the procurement process on important IT projects and just as the procurement process is ending and people are getting selected, you have to stop it because funding is getting cut and we’re going to have a continuing resolution,” Kappos said. “You lose all momentum. You statutorily have to restart the process all over again from scratch, months later. And years and years go by and nothing actually gets done because the office of the agency chief information officer is just stopping, starting, stopping, starting.”

Rafael Borrás, the former undersecretary for management at the Department of Homeland Security, said it was hard for DHS to plan on everything from purchasing ships to making decisions on personnel and protecting government computer networks from malicious attacks.

“Take cybersecurity as an example. There have been frequent and significant breaches all over the federal government,” said Borrás. “The federal government had plans for investments in cybersecurity and we could not roll them all out on a consistent basis with all of these continuing resolutions.”

Bob Perciasepe, the former deputy administrator of the Environ-

mental Protection Agency, said the funding and budget problems were quite disruptive to carrying out the agency’s missions.

“I don’t want to make it sound like nothing gets done. A lot of work is being done. But the atmosphere is not conducive to innovation and management. It’s debilitating,” said Perciasepe.

Numerous agencies, for example, had to perform a variety of administrative tasks multiple times because of the temporary spending measures, from adjusting contract and grant awards to issuing guidance for various programs and offices that cost extra time and money.

This was the case at the Department of Labor, where Edward Hugler, the deputy assistant secretary for operations, said, “From where we sit in agencies, temporary funding bills are frustrating because they can lead to inefficiencies. Short-term CRs require repeated, incremental procurement actions to avoid interruptions essential to continuity of agency operations. And this repeated work

costs money—to the tune of hundreds of thousands of budget dollars.”

As for government shutdowns, Hugler said, “The resumption of operations is the hard part. Everybody thinks, ‘Good, that’s over.’ Well, not exactly because all of this is stopped and now you have to bring it back up.”

Despite such disruptions, one interviewee observed that the two government shutdowns in 1995 and early 1996 during the Clinton administration led to a balanced budget agreement.

“We get focused on the shutdowns and what it means, but at the end of the day, I don’t know if that in and of itself is such a big deal,” said William Moschella, a former Capitol Hill aide who later worked at the Justice Department during the George W. Bush administration. “It’s bad in the short term. National parks are not opened and people who are considered essential have to come to work and not necessarily get paid. It’s no way to run a government, but if significant reform results, a shutdown might be a catalyst for positive change.”

“You do nothing new. You’re on life support. You do not innovate at all. You do not create at all.”

DAVID KAPPOS

FORMER UNDERSECRETARY OF COMMERCE AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

THE DISRUPTION AFFECTS THE PRIVATE SECTOR AND HAS A RIPPLE EFFECT ABROAD

The disruption is not limited to the federal government's operations. One former official said the inability of Congress to appropriate funds on time and in a predictable fashion causes huge amounts of uncertainty among companies that deal with the government. "It's hard for businesses to plan," he said, noting that "there's a national embarrassment factor."

Sean O'Keefe, the former NASA administrator during the George W. Bush administration and later the chief executive of Airbus Group's North American unit, said that the sequester in 2013 and repeated temporary funding measures adversely affected the defense industry, and have resulted in extra expense for the government.

"I was chairman of the National Defense Association at the time sequestration was triggered in 2013. The industry witnessed several exits of the second- and third-tier government suppliers because they had the option to get out of the business," he said. "It was too disruptive, uncertain and time-consuming. They chose not to wait around to find out if or when the government would have the authority to buy something."

"Now you have fewer suppliers," he added. "With fewer suppliers, costs go up, competition goes down and quality takes a dive. This was evident across the industry providing products and services to the government. For the prime contractors looking for cost-effective suppliers, that's a profoundly serious challenge."

The funding dysfunction also has other unintended consequences.

David Sedney, who has served as a deputy assistant secretary of defense, said delays in funding on one occasion caused his colleagues to cancel an important interaction with the Chinese military.

"When they told the Chinese military they had to cancel this

because the Congress wouldn't give them money, it reinforced the Chinese narrative that the U.S. is a declining power and China is an ascending power," said Sedney.

"After I resigned from the Department of Defense, I was traveling in Asia during the summer of 2013 when DOD employees were on furlough," Sedney said. "I heard from people in Japan, in Singapore, Indonesia and Taiwan that sequestration helped convince them that they need to start adjusting their strategic perspective to accommodate a rise of China because apparently the U.S. has a dysfunctional system and they can't even pay their government employees."

"With fewer suppliers, costs go up, competition goes down and quality takes a dive."

SEAN O'KEEFE
FORMER NASA ADMINISTRATOR

RECOMMENDATIONS

To reduce the disruptions in federal agency operations that stem from the dysfunctional budget and appropriations processes, Congress should adopt a biennial budget and appropriations cycle, increase collaboration between and within the branches, and address overlap, duplication and cross-agency challenges.

The following measures would improve the budget and appropriations climate:

- Congress should adopt a biennial budgeting process to give agencies a higher degree of budget certainty.
- When they are not writing and passing appropriations bills, the subcommittees of the House and Senate Appropriations Committees should hold joint oversight hearings with the authorizing committees to gain a better understanding of cross-agency operational challenges such as information technology, cybersecurity, acquisition, human capital and customer service, among others. They should also address areas of overlap and duplication, and focus on the agency and program areas identified by the Government Accountability Office as being at “high risk” for fraud, waste, abuse and mismanagement or most in need of broad reform.¹⁶
- Members of the appropriations committees should also serve on the authorizing committees for the agencies under their jurisdiction to ensure that programmatic priorities or new legislation are informed by funding decisions and vice versa.
- The House and Senate Appropriations Committees, as well as authorizing committees, should take advantage of the performance metrics mandated by the Government Performance and Results Modernization Act and created by agencies to ensure that funding decisions are driven to the maximum extent possible by data on program effectiveness.
- Rather than mandating across-the-board cuts, Congress should set cost-reduction targets and give agencies flexibility in meeting those targets, allowing the Office of Management and Budget to work with agencies to identify how best to realize savings based on strategic plans, agency priority goals, program effectiveness and transparency regarding the criteria and decision-making process.

¹⁶ Government Accountability Office, “High Risk Series, an Update,” February 2015. <http://1.usa.gov/1EiTM5A>

The lengthy confirmation process often leaves key leadership voids and discourages top talent from government service

Long delays in the nomination and confirmation of many senior presidential appointees have been a source of consternation for a number of years, with both Republicans and Democrats politicizing the process. This has undermined government performance by leaving critical positions vacant for extended periods of time, including highly sensitive vacancies dealing with public safety as well as economic and national security.

These frequent and lengthy delays, often caused by issues unrelated to a nominee's qualifications or by intentional efforts to embarrass and impede an administration, have been compounded by the onerous vetting process carried out separately by the White House and by Congress. The vetting includes extensive disclosure of financial, personal and business information, often in multiple formats, and can require nominees to spend thousands of dollars for legal and accounting services to meet the requirements.

The combination of the vetting process and lengthy delays has become a disincentive for many qualified individuals to serve in high government positions, and has caused hardship for some who must put their personal and professional lives on hold waiting for a Senate hearing and confirmation.

For President Obama, it took until the end of April 2009, or about three months into his first term, to get all 15 of his Cabinet secretaries confirmed, and until August 7, some six months into his term, for all departments to have deputy secretaries confirmed.¹⁷

The situation was particularly acute at the Department of the Treasury, where Secretary Timothy Geithner was operating in the early months of the administration with a skeleton crew of unofficial senior advisers in the midst of the worst financial crisis since the Great Depression. Most recently, Loretta Lynch had to wait more than five months to be confirmed as attorney general because of a dispute between Republicans and the president over immigration policy.

More than 1,000 jobs are subject to presidential nomination and Senate confirmation at the start of a new administration, and as people leave over time, new individuals must be nominated and confirmed, creating an ongoing cycle of vacancies.

17 Anne O'Connell, "Waiting for Leadership: President Obama's Record in Staffing Key Agency Positions and How to Improve the Appointments Process," Center for American Progress, April 2010. <http://bit.ly/1hMIEUt>

OBAMA'S SENATE CONFIRMATIONS LAGGED BEHIND PREVIOUS ADMINISTRATIONS

After one year in office, the Obama administration had only 64.4 percent of Senate-confirmed executive agency nominees in place, compared to 86.4 percent for the Reagan administration, 80.1 percent for the George H.W. Bush administration, 73.8 percent for the George W. Bush administration and 69.8 percent for the Clinton administration. The Senate took an average of 60.8 days to confirm President Obama's nominees in the administration's first year, compared to 48.9 days for President Clinton, 51.5 days for President George H.W. Bush, and 57.9 for President George W. Bush.¹⁸

Congress took an important step toward improving this process in

2011 with the enactment of the Presidential Appointment Efficiency and Streamlining Act and Senate Resolution 116. Combined, these measures eliminated the requirement for approximately 163 positions to be Senate confirmed, and changed Senate rules in an attempt to expedite consideration of another 272 positions.¹⁹

These reforms were an improvement in the system and allowed for certain positions, like the Treasury's assistant secretary for management, to be filled by the president without Senate confirmation. But the overall system is far from fixed.

¹⁹ "Presidential Appointment Efficiency and Streamlining Act of 2011," Public Law 112-166, 112th Congress, 2nd session, Aug. 10, 2012. <http://1.usa.gov/1MDzSoQ>

For example, Nani Coloretti was appointed by the president as Treasury's assistant secretary for management, a position no longer requiring Senate confirmation, on Nov. 15, 2012, and she was sworn in just one day later. Coloretti was nominated on March 6, 2014, to serve as the deputy secretary of the Department of Housing and Urban Development, a position that still requires Senate confirmation. The confirmation process took nine months and she was not confirmed until Dec. 2, 2014.

¹⁸ Ibid., 2

CONFIRMATION PROCESS HAS BECOME INCREASINGLY DYSFUNCTIONAL

Senate Historian Don Ritchie said there have been conflicts between the branches over political appointees since the founding of the nation. He pointed out that even George Washington had his nominees for the Supreme Court and a port commission blocked by the Senate.

While the confirmation process has not always been smooth, Ritchie said, it has become "dysfunctional" and "bogged down."

"Part of this is that members use nominations as a device to get agencies to do things that they want them to do. They hold a nominee hostage and they do so individually or collectively," Ritchie said. "They make all sorts of demands on them. They won't approve anyone to head a particular agency until that agency agrees to do such and such. That's the nature of the struggle between the independent legislature and the independent executive."

Ted Kaufman, a former Democratic senator from Delaware, said the heightened partisan environment has made the confirmation process difficult. "People have been held up forever. It's gotten completely over the top," said Kaufman, who authored the Presidential Appointment Efficiency and Streamlining Act.

Former NASA Administrator Sean O'Keefe said the Senate has the right to pass judgment on nominees, but to "hold a nominee hostage over the president's policies unrelated to the nominee's potential portfolio or the person's qualifications is a total distortion of the 'advise and consent' clause."

"The confirmation process has become a political weapon of the Congress against the president to influence policy or issues they want to see resolved that are completely unrelated to the nomination," said O'Keefe. "Dysfunctional is a minor term for what this is. The consequences are severe when governance processes break down."

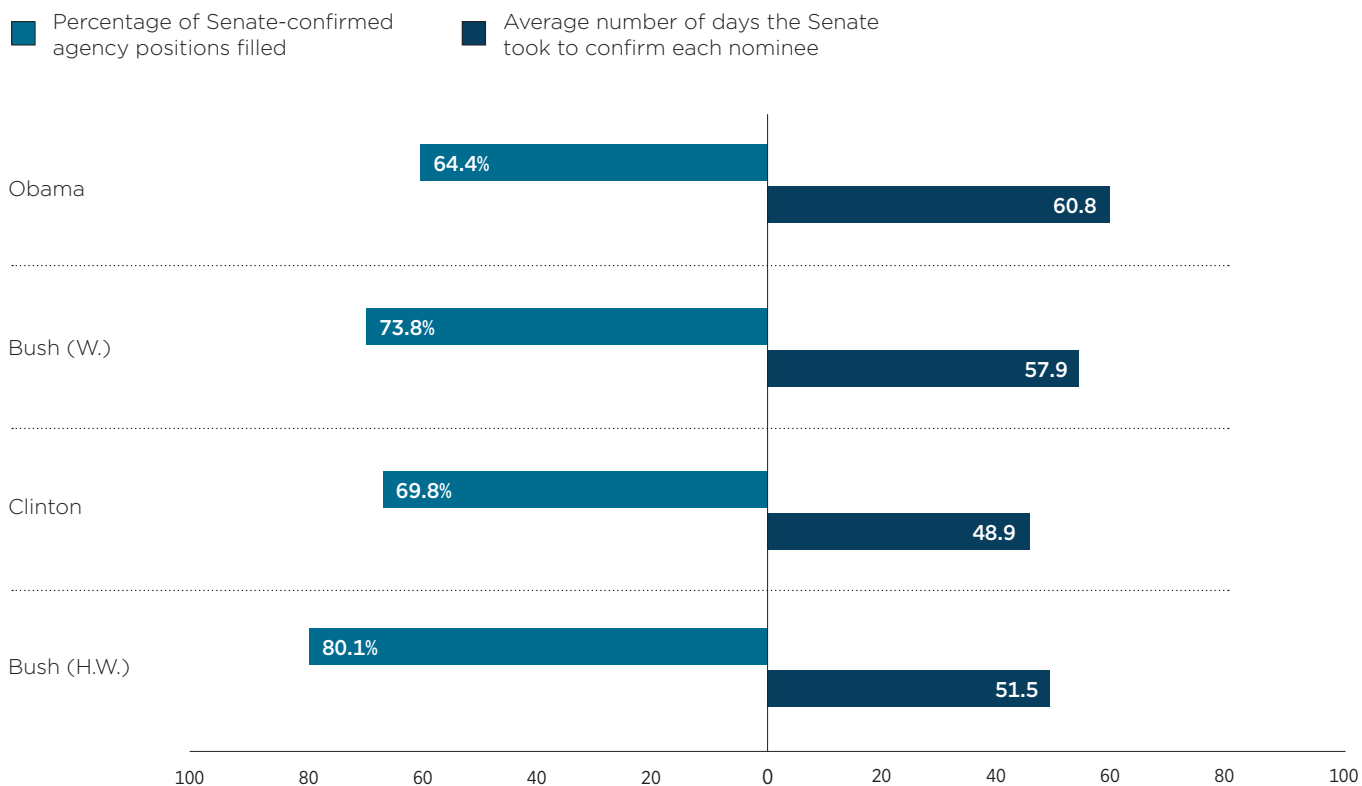
"Members use nominations as a device to get agencies to do things that they want them to do."

DON RITCHIE
SENATE HISTORIAN

SENATE-CONFIRMED EXECUTIVE AGENCY POSITIONS

After one year in office

It is critical that a new president have his team in place as quickly as possible so that the administration is prepared to act and handle any crises that arise. Due to the length and complexity of the vetting process, the speed with which these positions are filled has decreased.



Source: Center for American Progress, "Waiting for Leadership: President Obama's Record in Staffing Key Agency Positions and How to Improve the Appointments Process" (<http://bit.ly/1hMIEUt>)

LONGSTANDING VACANCIES STYMIE DECISION-MAKING

The delays in filling high-level vacancies have consequences for the agencies, slowing decision-making and ultimately diluting agencies' ability to best serve the public interest.

Scott Gould, a former deputy secretary of the Department of Veterans Affairs, said his successor was confirmed nine months after he left office. "For nearly a year, a Fortune 100-size organization had no chief operating officer," said Gould.

Bob Perciasepe, nominated in 2009 to be deputy administrator of the Environmental Protection Agency, said he appeared in July of that year before a Senate committee, which quickly approved his nomination. But he was not confirmed until Christmas Eve because of a hold placed on his nomination by a senator upset with the administration's climate change policies.

During the interim period, Perciasepe said, he was able to function in a senior advisory position and sat in on policy meetings, but "I couldn't go and give speeches, I couldn't go to the White House, I couldn't go and participate in the deputy's group, I couldn't be forcefully trying to do anything."

Thad Allen, the former commandant of the Coast Guard, said when there is a vacancy, "people who are in an acting capacity feel they do not have the power to make long-term changes and do what they need to do." Another executive added that when there are vacancies in high-level political positions, there is "more emphasis on process rather than results" and no one is looking "at the big picture."

David Sedney, who served in both the Departments of State and Defense, said agencies are thrust into a neutral gear when there are vacancies in top politically appointed jobs because important decisions or plans for the future cannot be made. He said those serving in an acting

capacity usually "don't do anything or take the path of least resistance."

"So if you need a 'go' on an initiative or need to respond in a different way than you've done in the past to a national security problem that has come up, you are going to be less effective," said Sedney.

In a July 2014 opinion article in *Politico*, Secretary of State John Kerry wrote that "the United States continues to operate without a complete diplomatic toolbox to exert our leadership and advance our security and economic interests across the globe, because a broken Senate confirmation process has left us without permanent ambassadors in 40 countries."²⁰

²⁰ John Kerry, "Why Is the Senate Hobbling American Diplomacy?" "In the Arena" section, *Politico*, July 8, 2014. <http://politi.co/1JKxh5O>

"Make no mistake: Vacancies in so many world capitals send a dangerous message to allies and adversaries alike about America's engagement," Kerry wrote. "This perception makes it much more difficult to do the nonpartisan work at the heart of U.S. foreign policy—defending the security of our nation, promoting our values and helping our businesses compete to create American jobs back home. The length and number of these vacancies compromise U.S. national security."

"Make no mistake: Vacancies in so many world capitals send a dangerous message to allies and adversaries alike about America's engagement."

JOHN KERRY
SECRETARY OF STATE

EXTENSIVE PAPERWORK AND DISCLOSURE BURDENS NOMINEES AND LENGTHENS THE PROCESS

Many of those interviewed criticized the arduous, time-consuming vetting process that sometimes requires hiring outside counsel at a considerable personal expense for nominees.

A recent report by Business Executives for National Security found that the cost and complexity of the financial disclosure process was a major disincentive for prospective nominees.²¹ The Public Financial Disclosure Report, which every nominee is required to complete, is 19 pages long and can ultimately cost tens of thousands of dollars to prepare.

According to Steven Preston, the former head of the Small Business Administration and later the Department of Housing and Urban Development, “The paperwork is overwhelming. I did most of it myself for the SBA position, but when I was nominated for HUD, I needed to do a refresh on my paperwork. I went to a law firm and it was over \$17,000 simply to update my previous filing. It’s very expensive and keeps a lot of people away.”

The multitude of questions emanating from both the executive and legislative branches also were described by some as so overwhelming as to dissuade individuals from accepting a nomination in the first place. Even among those appointees who experienced minor delays and controversy, the paperwork was still described as burdensome.²²

Many nominees, in anticipation of being confirmed, also must limit their range of work (both private and public sector), their public profile and investment opportunities so as to avoid potential conflicts.

While this situation is tolerable for a short period of time, many of those interviewed said it becomes more difficult with each passing day. Professionally, these individuals are forced into neutral, a mode that can be both costly and frustrating. Some nominees have withdrawn their nominations in the midst of such delays, requiring the White House to go back to the drawing board and start the entire process all over again.

Washington attorneys Robert Rizzi and Dianna Muth, both of whom have counseled individuals nominated to executive branch positions, have written that delays greatly affect the personal lives of those nominated.

“Nominees often describe their status between being tapped for a position and finally taking office as being on hold. Some nominees are actually instructed by the White House not to acquire any new investments for the entire period of their nomination,” the two lawyers wrote. “Private sector jobs are at risk because normal employment related activity is constrained ... Great damage can be done to one’s career during this period, even if employers are sympathetic and cooperate, which is often but not always the case.”²³

Former Department of Veterans Affairs Deputy Secretary Scott Gould said he literally had “dozens of people excited and interested in serving in government, and then the other shoe drops when they confront requirements for financial disclosure, divestment and future employment restrictions.”

Despite the privilege of serving in public office, “you lose these people because of the loss of privacy, the ex-

tent to which they are put through the hoops before they even get in front of their respective committee, and the economic sacrifice that they have to make to serve,” said Gould. “They become demoralized and drop from consideration.”

It is an irony that some positions suffering from widespread and chronic vacancies, like agency chief financial officers, are the same positions that many in Congress believe need the perceived stature of being Senate confirmed. The version of the Presidential Appointment Efficiency and Streamlining Act of 2011 initially introduced in the Senate would have removed chief financial officers from the list of positions requiring Senate confirmation. But Congress decided to keep CFOs as Senate-confirmed appointments.²⁴

As of July 2015, only 11 of 17 Senate-confirmed CFO positions were filled.

21 Business Executives for National Security, “Making Senior Government Service More Attractive,” May 2015. <http://bit.ly/1JvRqgE>

22 Public Law 112-166 established the Working Group on Streamlining Paperwork for Executive Nominations. The report and recommendations of the working group can be found here: <http://1.usa.gov/1UTqe2D>

23 Robert Rizzi and Dianna Muth, “Delays in presidential appointments damage vetting system,” *The Hill*, Dec. 10, 2014. <http://bit.ly/1JJQ9Gd>

24 Congressional Record, June 22, 2011, 4016-17

RECOMMENDATIONS

To streamline the confirmation process, the Senate should reduce the number of presidential appointments subject to confirmation, streamline the paperwork requirements and improve coordination with the executive branch.

Opportunities for improvement include:

- Convert select management and non-policymaking positions to career status with fixed terms and performance contracts.
- Build off the success of the Presidential Appointment Efficiency and Streamlining Act of 2011 (P.L. 112-166) to eliminate more positions from the list of those requiring Senate confirmation, starting with chief financial officers and other key management positions.
- The Senate and the executive branch should work together to create a set of standard questions for all nominees and a single “smart form” used by both the executive and legislative branches to simplify the nomination and confirmation process. This work should build off the recommendations of the bipartisan Working Group on Streamlining Paperwork for Executive Nominations (established by P.L. 112-166), which have been partially but not fully implemented.
- Senate committees should be prepared for a surge in nominations at the beginning of a president’s term in office, and should work with the new administration to ensure that the 100 most critical Senate-confirmed positions are filled by May 1 and that the the top 400 Senate-confirmed positions are filled by the August congressional recess.
- In order to meet an ambitious confirmation timetable, the transition teams for each presidential candidate should organize early to identify and vet candidates for these positions so the new president can submit nominations as soon as possible after the inauguration.
- Congress should pass legislation pending in the House (S. 1172) to smooth presidential transitions and ensure training is available to senior political appointees so they are prepared to lead and manage successfully in the federal environment.
- The Senate should evaluate senior nominees with responsibility for large teams or organizations based in part on whether they have the leadership skills and management experience necessary for their jobs, not just on their policy expertise.

Executive branch agencies are buffeted by legislative headwinds and unintended consequences

Federal agencies are subject to the direction and the whims of Congress when it comes to implementing policies and managing programs, sometimes with positive outcomes and at other times resulting in negative, unintended consequences.

In response to the 2008 financial crisis, for example, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 with provisions giving the Commodities Futures Trading Commission new regulatory authority over the \$400 trillion swaps market, which involves customized contracts traded in the over-the-counter market between private parties.

This new responsibility swamped the small agency. The CFTC was given no new resources or staff to deal with the increased obligation to monitor a large, complex market and issue some 60 new regulations. Many of the new rules had to be delayed because of the work overload, and a year after reporting requirements kicked in, the data submissions required of the industry swamped the commission's computers.²⁵

In addition, compensation levels for CFTC employees did not keep pace with other financial regulatory agencies. The problems encountered by the undermanned and underfinanced agency not only resulted in complaints from those being regulated, but it caused the CFTC's 2014 *Best Places to Work in the Federal Government*[®] ranking to plummet as a result of declining job and workplace satisfaction, requiring managers to cope with the fallout from low employee morale.²⁶

Another example of well-intentioned legislation having potentially serious consequences for agency operations centers on the congressional response to egregious mismanagement and misconduct at the Department of Veterans Affairs, with the House and Senate having advanced bills in 2015 to make it easier for the VA secretary to fire employees. While designed to shake up the VA and improve health services for veterans, the legislation could adversely affect the operation of the Merit Systems Protection Board, a small agency that has little to do with the quality of care for veterans.

The MSPB and its 200 staff members are responsible for ensuring that federal employment is based on merit and free from prohibited personnel practices, like

25 Alex Paterson, "Underfunded and Overwhelmed Swaps Regulator Devising New Plan for Data Reporting," Berkeley Law, University of California, March 19, 2014. <http://bit.ly/1Myc9ox>

26 Partnership for Public Service, "Best Places to Work in the Federal Government[®], Agencies Falling Behind: Profile of Commodities Futures Trading Commission." <http://bit.ly/1LB1wCJ>

hiring or firing a civil servant based on political affiliation. In fiscal 2014, MSPB administrative law judges adjudicated 16,354 appeals from federal employees who were the subject of an adverse action.²⁷

The MSPB said VA legislation pending in the Senate could add 190,000 new employees to its juris-

27 Written statement of Susan Tsui Grundmann, Chairman, Merit Systems Protection Board, to the U.S. Senate Committee on Veterans' Affairs, June 24, 2015. <http://1.usa.gov/1K6BaH2>

diction and some 4,000 new appeals a year to its docket if just 2 percent of VA civil servants were fired and appealed. The agency said the legislation also would mandate decisions in a very short time frame. The bill passed in the House differs slightly, but would likely have the same impact. Yet neither of the pending bills provide MSPB with the resources to meet this potential surge in appeals for an agency that is already struggling to keep up with thousands of cases that were filed by employees

furloughed due to the 2013 sequester.

In June 2015 testimony submitted to the Senate Committee on Veterans Affairs, MSPB's chair warned, "With existing resources and staffing, it is difficult to imagine how MSPB administrative judges could process and adjudicate these appeals in the time frame provided without placing most other appeals filed by (non-VA) employees on hold."²⁸

28 Ibid.

LACK OF REAUTHORIZING LEGISLATION HANDICAPS AGENCIES

The failure of Congress to pass legislation reauthorizing scores of agency functions, programs and policies is well known, but the impact on agencies is poorly understood.

Operating on a long-term basis without a reauthorization bill means that agencies lose an opportunity to obtain legislative changes addressing policy and programmatic challenges or to make adjustments to operate more effectively. Absent a reauthorization bill, the most viable option for agencies seeking changes in programs or policies is to get provisions attached to yearly spending bills.

Literally hundreds of programs and agency functions have been funded but not reauthorized for years. The Congressional Budget Office reported that lawmakers appropriated about \$294 billion for fiscal 2015 for programs and activities whose authorizations of appropriations had expired, or just over 24 percent of all discretionary spending.²⁹

This included the Department of Homeland Security, a \$60-billion-a-year operation with 180,000 employ-

ees that was created in 2002 with the merger of 22 agencies. DHS has not been reauthorized since its creation. Also on the list was the Justice Department, which has not had a formal reauthorization bill approved in 13 years.

Thad Allen, the former commandant of the Coast Guard, said, "Routine legislative changes needed to effectively execute missions and manage a larger organization are backlogged, sometimes for years, due to the inability of the Congress to pass authorizing legislation."

Allen said this forces critical authorizing issues to be addressed in appropriations bills which have to be passed at some point. "As a case in point, critical changes to the Stafford Act to empower the Federal Emergency Management Agency to improve service to the public following a disaster—normally an authorizing function—were embedded in the Hurricane Sandy emergency supplemental appropriations bill," said Allen.³⁰

"Routine legislative changes needed to effectively execute missions and manage a larger organization are backlogged."

THAD ALLEN

FORMER COMMANDANT OF THE COAST GUARD

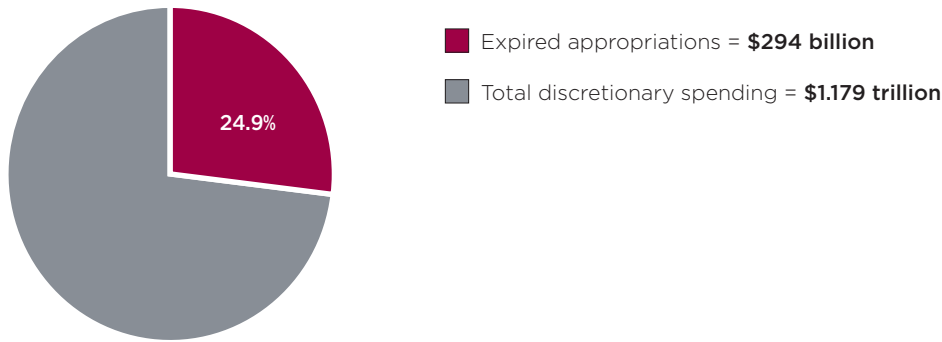
29 Congressional Budget Office, "Unauthorized Appropriations and Expiring Authorizations," January 15, 2015. <http://1.usa.gov/1E4Cidv>

30 "Sandy Recovery Improvement Act of 2013," Public Law 113-2, 113th Congress, 1st session, January 29, 2013. <http://1.usa.gov/1FgRZcp>

APPROPRIATED MONEY FOR PROGRAMS WHOSE AUTHORIZATIONS HAVE EXPIRED

Fiscal 2015

The authorization process provides Congress and agencies with regular opportunities to update, reform and streamline agency operations. However, many large agencies and programs have been operating for long periods of time with expired authorizations. This includes the Department of Homeland Security, the Department of Justice, the National Institutes of Health and NASA.



Source: Congressional Research Service, "Congressional Action on FY2016 Appropriation Measures" (<http://bit.ly/1fC8ybS>)

CONGRESS OFTEN CONTRADICTS ITSELF WHEN IMPOSING AGENCY MANDATES

Congress is perennially concerned about the burden of federal regulation but seldom acknowledges its own contribution to the number of rules on the books. For example, the House Committee on Small Business held a hearing on May 8, 2013, titled "Retrospective Review: Have Existing Regulatory Burdens on Small Businesses Been Reduced?" that was described by the committee chairman as an effort to "examine the results of a government-wide initiative to review existing red tape."

Polly Trottenberg, then undersecretary for policy at the Department of Transportation, testified that this "red tape" is often mandated by Congress or recommended by congressionally established oversight bodies.

In her written statement, Trottenberg testified, "Congress itself plays a very large role in the regulatory area. While all of DOT's regulatory agenda is authorized by statute, a large portion of it is not self-generated, but is either specifically

statutorily mandated by Congress or in direct response to recommendations of the National Transportation Safety Board (NTSB), the Government Accountability Office (GAO) or the Inspector General (IG). The vast majority of statutorily mandated regulations originate from regular authorizing legislation for our operating administrations."

Trottenberg added, "For example, last summer Congress reauthorized our nation's highway and transit programs in the Moving Ahead for Progress in the 21st Century Act or MAP-21. The bill, which passed with strong bipartisan support, contained approximately 100 statutory mandates for DOT, which we estimate will result in 50 to 60 separate rulemakings in a two-year period."³¹

³¹ Statement of Polly Trottenberg to the House Committee on Small Business, "Agency Progress Implementing Executive Order..." 113th Congress, 1st session, May 8, 2013. <http://1.usa.gov/1LlkOff>

On a positive note, Congress does at times recognize an opportunity to relieve some of these statutory mandates on federal agencies. For example, the Government Reports Elimination Act of 2014 was bipartisan, bicameral legislation enacted to eliminate 48 duplicative or unnecessary reports to Congress and streamline an additional five reports.³²

³² Public Law 113-188, 114th Congress, 2nd session, Nov. 26, 2014. <http://1.usa.gov/1UkA80p>

BREAKDOWN OF REGULAR ORDER AFFECTS THE ABILITY OF CONGRESS TO WORK WITH AGENCIES

The House and Senate are governed by a series of rules, precedents and customs designed to create a deliberative and orderly policymaking process.³³ In recent years, many of these procedures, commonly referred to as regular order, have been set aside, resulting in major changes in the way the two chambers operate.

Regular order means using the congressional committee process, which includes hearings for lawmakers to become familiar with issues and agency roles and responsibilities, legislative markups with an open amendment process, and then an open floor debate. Regular order allows for an open and full bipartisan vetting of legislation, including examining the purpose, exploring options and helping to avoid unintended consequences. If major legislation passes both the House and Senate, a bicameral, bipartisan conference committee is formed to reconcile differences.

Use of regular order also includes passage of yearly appropriations bills by the October 1 deadline of each year and authorization legislation that formally creates, extends or modifies agency programs and activities, all of which can help executive branch agencies plan and function more effectively.

A number of individuals interviewed said that polarization and gridlock in Congress have led to a breakdown in the system by which even routine authorization and spending laws are passed.

In many cases, the House and Senate leadership intentionally bypass longstanding rules and procedures to maintain a tight control over the agenda, or to sidestep policy debates that could jeopardize the re-election of vulnerable members.

“They don’t go to committees because committees don’t do anything.”

JOHN LAWRENCE

FORMER CHIEF OF STAFF TO HOUSE MINORITY LEADER NANCY PELOSI

Sometimes regular order is circumvented to put legislation on a fast track in order to meet a deadline.

Many of those interviewed said that regular order is key to a well-functioning Congress and serves to provide all members the opportunity to have a voice in understanding and helping to craft legislation. But as it currently stands, they said the lack of substantive legislation coming out of committees in recent years is a disincentive for members to become knowledgeable, active participants.

“I think committees are still attempting to do their jobs even though they are discouraged by the fact that the party leadership has really taken over the legislative agenda and even the details of the legislation,” said Donald Wolfensberger, a former staff director of the House Rules Committee and a resident scholar with the Bipartisan Policy Center.

John Lawrence, a former chief of staff to House Minority Leader Nancy Pelosi, said some members get discouraged, don’t go to committee hearings and don’t play an active role in the legislative process because of the abandonment of the regular order.

“They don’t go to committees because committees don’t do anything,” said Lawrence. “Members allocate their time where it’s most valuable, and the hearings aren’t producing anything.”

Bob Livingston, the former House Appropriations Committee chairman, noted that many of the normal rules and procedures have been abandoned for some time, and with turnover in Congress, “many members haven’t served under regular order and don’t know anything about it.”

Livingston’s point about the experience of current members is salient; nearly half of House members serving in the 114th Congress are in their first, second or third term, and 42 percent of current senators are in their first term (see graph on page 9).³⁴

In the Senate, a few or even one member can delay or shut down the legislative process, which is why regular order may not be followed.

Former Democratic Sen. Byron Dorgan of North Dakota said “peer pressure” used to keep senators from offering an excessive number of amendments to impede or derail the process, but no longer.

“Back then, members had to be seen not to object to everything so they could get the things for their state and maintain relationships with other members,” said Dorgan. “But now some five to 10 senators don’t want anything from other senators.”

33 Don Wolfensberger, “Regular Order Is a Political Rorschach,” Roll Call, May 7, 2013. <http://bit.ly/1TWdEgL>

34 Congressional Research Service, “Membership of the 114th Congress: A Profile,” June 11, 2015. <http://bit.ly/1K96hDj>

RECOMMENDATIONS

To improve legislative outcomes, congressional leaders should work with all members to help them develop better knowledge of the legislative process and also work effectively with federal agency executives to understand the effect of legislation on agency operations and programs.

To improve legislative outcomes and policymaking, we recommend:

- Congressional leaders, committee chairs and ranking members should provide the training and mentorship necessary for new members to gain hands-on experience with the legislative process, including how to work effectively with people on the other side of the aisle and in the executive branch.
- Committee chairmen and ranking members should actively recruit new members who have a personal, professional or district-level connection to the committee's jurisdiction, and Congress should re-evaluate the criteria for committee assignments to ensure that members are assigned to a manageable number of committees and subcommittees, and able to contribute as active committee members.
- Committee chairmen and ranking members should meet at the beginning of each Congress to identify the agencies and programs in need of reauthorization and determine a set number of priority reauthorizations which the committee can approach on a bipartisan basis, and in consultation with federal agencies.
- Congressional committees should work with each other and with federal agencies to identify and address cross-agency, enterprise-wide issues, including operational challenges such as information technology, cybersecurity, acquisition, human capital, customer service, and duplication or overlap in programs performed by more than one agency. Many of these issues have been identified in the Government Accountability Office's high-risk list and duplication and overlap reports.
- Committee leaders should improve their access to expertise on highly complex or technical issues by adding nonpartisan professional staff from federal agencies and congressional support agencies on a temporary basis, and should ensure this expertise is available to educate and inform rank-and-file committee members and their staffs on a bipartisan basis.

CONCLUSION

Throughout our history, there has been a natural tension between Congress and the executive branch, including heated political battles over the size and role of government, federal spending, the direction and the priorities for domestic and foreign policy, and the qualifications of presidential appointees.

Today we live in an era of intense partisanship, deep ideological division and coarsened political debate that has taken the normal conflicts to an extreme. The result has been legislative gridlock regarding many basic congressional responsibilities, including a failure to meet established deadlines for funding our government, long delays in confirming political appointees, a dearth of constructive oversight of federal agencies and their work, and an inability or unwillingness to approve basic legislation to renew and revise programs and policies important to the nation.

The end result has been a disservice to the American people, leaving federal agencies to cope with leadership vacuums that impede decision-making as well as funding uncertainties that disrupt services for the public, create inefficiencies, increase costs and make it difficult to plan and innovate. The current climate also has often left federal leaders without constructive congressional partners to oversee their work or provide legislative authority to change or drop underperforming programs or embark on new initiatives.

There are no easy solutions to the current state of affairs, but it is incumbent on leaders in both branches of government to return to a more civil discourse and work at strengthening rather than diminishing our government.

APPENDIX ONE

METHODOLOGY

The Partnership for Public Service examined the relationship between Congress and the executive branch, and how the rise in partisanship and the resulting legislative gridlock has affected the management and operation of federal agencies, the implementation of domestic and foreign policies, and the delivery of services to the American people. We focused attention on the key interactions between these branches of government: oversight, appropriations, the confirmation of political appointees and legislative authorization of programs and policies.

We completed an extensive review of relevant government documents, books about Congress, articles in the press and congressional testimony. We interviewed former high-level political appointees and career executives from every Cabinet agency who served in either the Clinton, Bush or Obama administrations, as well as former representatives, senators and seasoned Capitol Hill aides from both the House and Senate. We also talked to outside experts who closely observe Congress and the executive branch agencies. Many of those who were interviewed agreed to be quoted by name. Others asked to remain anonymous or offered background information to provide context and deepen our understanding.

APPENDIX TWO

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