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Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6601

January 15, 2022

The Honorable Zoe Lofgren
Chairperson
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

The Honorable Rodney Davis
Ranking Member
Committee on House Administration
1216 Longworth House Office Building
Washington, DC 20515

Dear Chairperson Lofgren and Ranking Member Davis,

Pursuant to Section 503 of House Resolution 756 from the 116th Congress, I am submitting this annual report about the establishment and maintenance of an up-to-date database of information on the expiration dates of all federal programs.

As I have reported previously, identifying all programs, projects, and activities currently authorized by law and when they expire presents both conceptual and methodological issues, which make it challenging to compile an authoritative list.¹

Both the Congressional Budget Office (CBO) and the Congressional Research Service (CRS) have explored such possibilities and report that there are significant challenges to creating a complete, authoritative list of programs and their expiration dates. These challenges continue and are identified in the attached CRS memorandum on the identification of “appropriations not authorized by law.”

¹https://cha.house.gov/sites/democrats.cha.house.gov/files/InitialReport_HRes756_Section503_Info-ExpirationOfAuthorizationofProgram.pdf.

There is also a partial list, in the form of a report, provided annually by the CBO. This report includes only expired and expiring authorization of appropriation expenditures, not the authorization of the programs themselves. The report for fiscal year 2021 is attached.

We have this item on our backlog of projects and tasks, but, given other priorities that the Committee is aware of, Clerk staff and I are not ready to make recommendations or propose additional work on this matter at this time. We will continue to update the Committee about our discussions, findings, and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl L. Johnson", with a long horizontal flourish extending to the right.

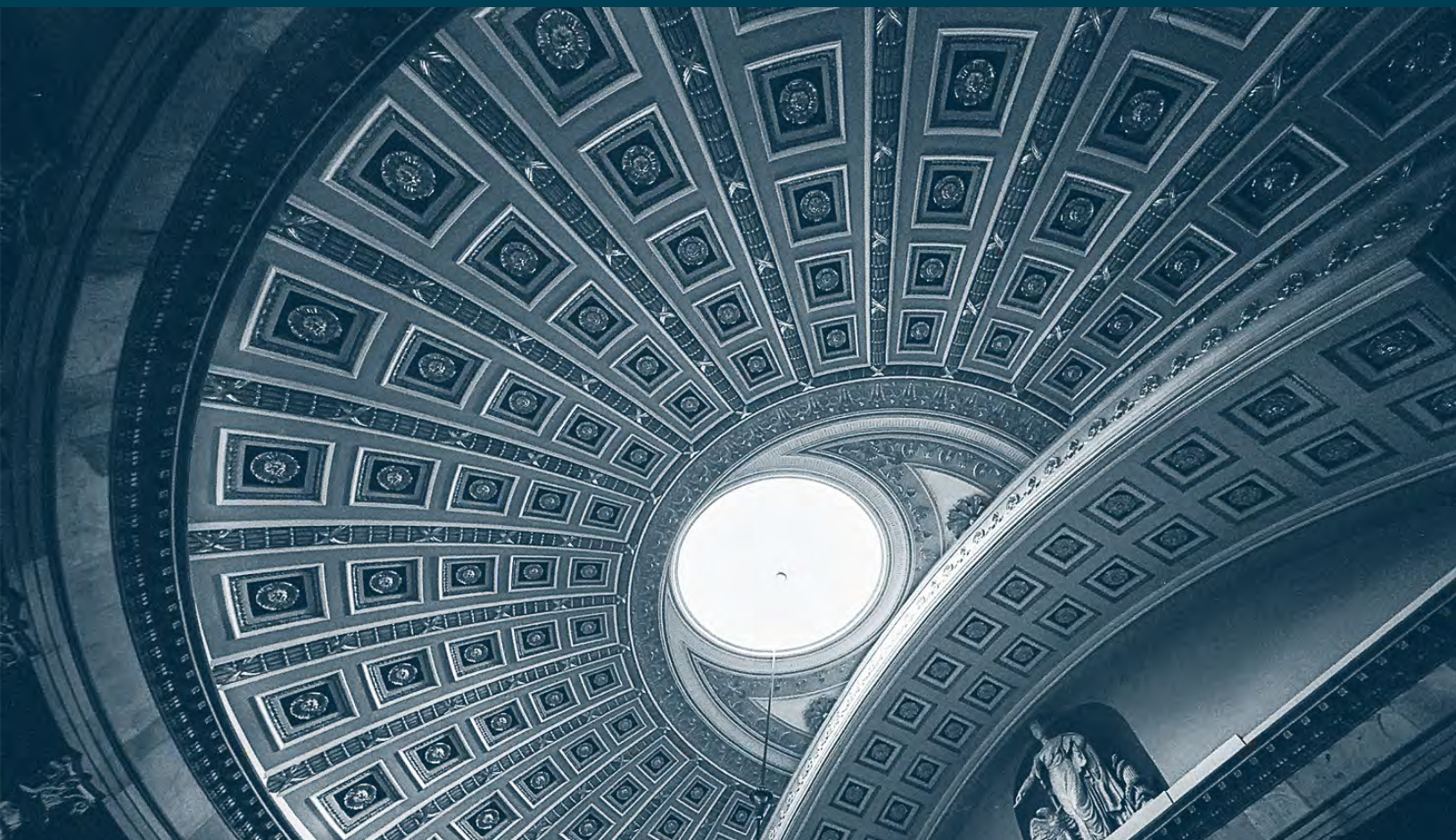
Clerk of the House

Attachments

- Congressional Budget Office Report, “Expired and Expiring Authorizations of Appropriations: Fiscal Year 2021,” May 2021.
- Congressional Research Service Memorandum, “CRS Identification of ‘Appropriations not Authorized by Law,’” November 1, 2016.



Expired and Expiring Authorizations of Appropriations: Fiscal Year 2021



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At a Glance

Some provisions of law authorize the Congress to provide funds through a future appropriation act to carry out a program or function. Such authorizations of appropriations may be set for one year, for more than one year, or in perpetuity. The Congressional Budget Office tracks authorizations of appropriations that have specified expirations and identifies, annually, appropriations that are provided for expired authorizations.

For this report, which is required by law, CBO identified 1,068 authorizations of appropriations that expired before the beginning of fiscal year 2021 and 119 authorizations that were set to expire before the end of the year. CBO also identified \$432 billion in appropriations for 2021 that could be associated with 402 expired authorizations of appropriations.

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Notes

All years referred to in this report are federal fiscal years, which run from October 1 to September 30 and are designated by the calendar year in which they end. All amounts reported are nominal (not adjusted for inflation). Numbers in the text and tables may not add up to totals because of rounding. The term *authorization* refers specifically to an authorization of appropriations.

Expired and Expiring Authorizations of Appropriations: Fiscal Year 2021

Overview

Some provisions of law authorize the Congress to provide funds through a future appropriation act to carry out a program or function. Such *authorizations of appropriations*, which are the subject of this report, differ from other authorizations (sometimes called enabling or organic statutes) that create a federal agency, establish a federal program, prescribe a federal function, or provide for a particular federal obligation or expenditure within a program. *Appropriations* provide funding to agencies to carry out programs and functions.

An authorization of appropriations constitutes guidance to a future Congress about funding that may be necessary to implement an enabling statute, and it may be contained in that enabling statute or enacted separately. Such laws may authorize appropriations for one year, for more than one year, or in perpetuity, and the amounts authorized may be definite or indefinite. Some laws specify the amount of funding that may be provided; others authorize “such sums as may be necessary.” In either case, the Congressional Budget Office refers to those laws as *explicit* authorizations.

Section 202(e)(3) of the Congressional Budget Act of 1974 requires CBO to report annually to the Congress on the following:

- All programs and activities funded for the current fiscal year for which the authorizations of appropriations have expired, and
- All programs and activities for which the authorizations of appropriations expire during the current fiscal year.

This document fulfills CBO’s requirement to report on authorizations of appropriations for 2021. The information summarized here is drawn from the agency’s Legislative Classification System, a database of nonpermanent and explicit authorizations of

appropriations, available on CBO’s website (www.cbo.gov/publication/57023#data).¹ The appendix describes CBO’s methods and discusses uncertainty in the summary information.

House and Senate rules dating from the 19th century restrict the consideration of an appropriation if it lacks a current authorization.² The determination of whether that is the case and whether an appropriation is in violation of a House or Senate rule is made by the Speaker of the House or the Presiding Officer of the Senate on the basis of advice from the relevant chamber’s Office of the Parliamentarian. Although this report is intended to aid the Congress by identifying explicit authorizations of appropriations that have already expired or will expire this fiscal year, it is not and should not be considered definitive with respect to the application of House or Senate rules.³

For this report, funding for expired authorizations includes only those appropriations that could be identified in legislative text or legislative history; it is possible that additional amounts of funding are available for activities or programs with expired authorizations of appropriations.

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1. This report—and the supplemental data posted with it—supersedes a preliminary version. See Congressional Budget Office, *Expired and Expiring Authorizations of Appropriations for Fiscal Year 2021—Information for Legislation Enacted Through December 23, 2020* (January 2021), www.cbo.gov/publication/56959.
 2. See clause 2(a)(1) of rule XXI, “General Appropriation Bills and Amendments,” of the Rules of the House of Representatives, H.R. Doc. 115-177 (2019), p. 871, <https://go.usa.gov/xHQGA> (PDF, 5 MB); and clause 1 of rule XVI, “Appropriations and Amendments to General Appropriations Bills,” of the Standing Rules of the Senate, S. Doc. 113-18 (January 2013), p. 11, <https://go.usa.gov/xHgBH> (PDF, 362 KB).
 3. CBO consults with Congressional committees when preparing this report, as required by statute.

Authorizations and Appropriations Identified for This Report

CBO identified more than a thousand authorizations of appropriations that expired before the beginning of fiscal year 2021. The last piece of legislation analyzed for this report was Public Law 116-344, an act to authorize the Sergeant at Arms and Doorkeeper of the Senate to delegate authority to approve payroll and personnel actions, enacted on January 13, 2021.⁴ As of that date, 119 authorizations of appropriations were set to expire by the end of fiscal year 2021.

Three general observations apply for this report:

- More than 70 percent of the expired authorizations specified amounts of annual funding that, when combined, totaled \$242 billion for the year when they were last in effect. The remainder authorized indefinite appropriations of amounts needed to carry out particular programs or functions.
- In all, CBO identified \$432 billion in funding contained in appropriation legislation for fiscal year 2021 for which authorizations had expired. That funding can be attributed to 402 expired authorizations contained in 147 laws: \$336 billion is associated with specified authorizations and \$96 billion with indefinite authorizations.
- More than two-thirds of authorizations set to expire during 2021 specify funding amounts that total \$816 billion this year. Most of that funding is for defense activities, which are authorized annually.

Expired Authorizations of Appropriations

CBO identified 1,068 authorizations of appropriations—stemming from 274 laws—that expired before the beginning of fiscal year 2021 and were not reauthorized as of January 13, 2021. (For a summary of authorizations organized by House and Senate authorizing committee, see Table 1; for a summary organized by appropriations subcommittee, see Table 2.) According to CBO's records, roughly 40 percent of those authorizations expired at least a decade ago; the oldest expired in 1980. In all, 761 contained specified authorizations of annual funding that totaled \$242 billion when they were last in effect; the other 307 authorized indefinite amounts.⁵

4. CBO analyzed all legislation that was passed by January 3, 2021, the final day the second session of the 116th Congress. P.L. 116-344 was passed by that Congress but did not become law until the President signed it on January 13, 2021.

5. In this report, the amount of funding authorized by indefinite authorizations of appropriations is recorded as zero.

Expired Authorizations With Identifiable Appropriations

For 2021, CBO identified \$432 billion in appropriations associated with 402 expired authorizations. That amount includes \$336 billion for 274 specified authorizations; when most recently in effect, those authorizations specified annual funding of \$215 billion. CBO associates the remaining \$97 billion in fiscal year 2021 appropriations with 128 indefinite authorizations.

Of the total amount of funding that CBO identified for this report, more than half (\$223 billion) was for 182 authorizations that expired more than a decade ago. That amount includes \$179 billion in appropriations for 133 authorizations that specified \$79 billion when they were most recently in effect.

Expired Authorizations With No Identifiable Appropriations

CBO cannot identify appropriations for fiscal year 2021 for 666 other expired authorizations—that is, clear connections cannot be made between the language of those authorizations and the statutory text and corresponding legislative history of appropriation legislation for 2021.⁶ Of those authorizations, 487 stem from laws that, when most recently in effect, contained specified authorizations of annual appropriations totaling \$27 billion. The other 179 did not specify an amount of authorized annual appropriations. Of the authorizations for which CBO could not identify appropriations, more than one-third (257) expired more than a decade ago; 179 of them specified a total of \$10 billion in authorized appropriations when most recently in effect.

Comparison With Last Year's Report

A comparison of this report with CBO's February 2020 analysis yields several observations.⁷

6. Regardless of whether CBO can identify appropriations for this report, it is possible for a federal agency to determine that funding for 2021 is available for purposes covered by an expired authorization.
7. The amounts from the February 2020 report discussed here reflect updated information stemming from CBO's review of five supplemental appropriation acts that were enacted after the agency finalized the data for that edition of this report. All told, those five acts contained \$78 billion in appropriations that CBO associated with authorizations of appropriations that expired before fiscal year 2020. Additionally, CBO corrected database errors that overstated, by \$2.7 billion, the amount of 2020 appropriations associated with expired authorizations in the 2020 version of this report. See Congressional Budget Office, *Expired and Expiring Authorizations of Appropriations: Fiscal Year 2020* (February 2020), www.cbo.gov/publication/56082.

Table 1.

Summary of 2021 Appropriations With Expired Authorizations, by House and Senate Authorizing Committee

	Expired Authorizations of Appropriations		Expired Authorizations of Appropriations With Identifiable Appropriations	
	Number of Laws	Number of Authorizations	Number of Authorizations	Amount of Appropriation (Millions of dollars)
House Authorizing Committee				
Agriculture	3	3	2	311
Armed Services	1	1	n.a.	n.a.
Education and Labor	22	148	101	95,163
Energy and Commerce	50	265	65	53,840
Financial Services	22	46	23	44,345
Foreign Affairs	30	99	51	39,281
Homeland Security	7	19	6	4,416
House Administration	3	4	4	100
Judiciary	37	142	53	36,564
Natural Resources	60	154	35	3,924
Oversight and Reform	9	15	4	112
Science, Space, and Technology	18	65	23	44,119
Small Business	3	8	5	589
Transportation and Infrastructure	30	74	23	16,929
Veterans' Affairs	13	18	3	92,123
Ways and Means	4	7	4	203
Senate Authorizing Committee				
Agriculture, Nutrition, and Forestry	6	17	5	356
Armed Services	1	1	n.a.	n.a.
Banking, Housing, and Urban Affairs	20	41	19	43,463
Commerce, Science, and Transportation	43	149	52	51,355
Energy and Natural Resources	26	178	18	15,814
Environment and Public Works	40	71	24	3,814
Finance	5	8	5	215
Foreign Relations	29	98	51	39,281
Health, Education, Labor, and Pensions	41	254	138	141,356
Homeland Security and Governmental Affairs	17	35	14	5,988
Indian Affairs	14	39	10	884
Judiciary	41	145	54	36,680
Rules and Administration	3	4	4	100
Small Business and Entrepreneurship	4	10	5	589
Veterans' Affairs	13	18	3	92,123
Total	274^a	1,068	402	432,019

Data source: Congressional Budget Office. See www.cbo.gov/publication/57023#data.

Amounts reflect information related to explicit authorizations of appropriations, for definite or indefinite amounts, that expired on or before September 30, 2020. This table shows only the committees that have jurisdiction over expired authorizations of appropriations in CBO's Legislative Classification System; therefore, not all committees are included.

n.a. = not applicable.

a. The total is less than the sum of the entries because public laws containing authorizations of appropriations that are under the jurisdiction of more than one committee are counted only once.

Table 2.

Summary of 2021 Appropriations With Expired Authorizations, by Appropriations Subcommittee

Appropriations Subcommittee	Expired Authorizations of Appropriations		Expired Authorizations of Appropriations With Identifiable Appropriations	
	Number of Laws	Number of Authorizations	Number of Authorizations	Amount of Appropriation (Millions of dollars)
Agriculture, Rural Development, FDA, and Related Agencies	6	17	4	353
Commerce, Justice, Science, and Related Agencies	69	226	90	71,948
Defense	2	2	n.a.	n.a.
Energy and Water Development and Related Agencies	19	156	11	10,606
Financial Services and General Government	27	43	18	3,779
Homeland Security	18	48	19	19,407
Interior, Environment, and Related Agencies	65	127	34	5,372
Labor, HHS, Education, and Related Agencies	50	261	148	147,219
Legislative Branch	1	1	n.a.	n.a.
Military Construction, Veterans Affairs, and Related Agencies	13	18	3	92,123
State, Foreign Operations, and Related Programs	31	97	50	39,264
Transportation, HUD, and Related Agencies	29	72	25	41,948
Total	274^a	1,068	402	432,019

Data source: Congressional Budget Office. See www.cbo.gov/publication/57023#data.

Amounts reflect information related to explicit authorizations of appropriations, for definite or indefinite amounts, that expired on or before September 30, 2020. This table shows only the appropriations subcommittees that have jurisdiction over expired authorizations of appropriations in CBO's Legislative Classification System; therefore, not all subcommittees are included.

FDA = Food and Drug Administration; HHS = Health and Human Services; HUD = Housing and Urban Development; n.a. = not applicable.

a. The total is less than the sum of the entries because public laws containing authorizations of appropriations that are under the jurisdiction of more than one subcommittee are counted only once.

Twenty laws were identified as major sources of appropriations for expired authorizations in 2020 or 2021 (see Table 3); 15 of them received appropriations in both years.⁸ Four of those laws, with newly expired authorizations, were identified as major sources of expired authorizations with identifiable appropriations only in 2021. One law was identified as a major source of 2020 appropriations for expired authorizations, but the authorizations contained in that law were reauthorized after the 2020 report and did not contribute to the amounts of 2021 funding identified for this report.

In 2021, funding for expired authorizations continues to be mostly attributable to a small group of expired authorizations. Fewer than half of the expired authorizations were associated with 90 percent of the \$432 billion in fiscal year 2021 appropriations identified for this

report. Similarly, in 2020, 89 percent of the funding for expired authorizations was attributed to 36 percent of the expired authorizations that received funding.

Overall, CBO identified an increase of \$25 billion (or 6 percent) in funding for expired authorizations this year; that funding rose from \$407 billion in 2020 to \$432 billion in 2021. CBO attributes an increase of \$93 billion to authorizations that were newly expired, almost all of them contained in four laws.⁹ That increase is partially offset by a \$68 billion reduction in identified appropriations for authorizations that expired before 2020 and that remain expired for this report. More than three-quarters of that decrease is attributable to the change in funding for administrative activities and disaster loans previously authorized by the

8. For this edition, major sources of appropriations for expired authorizations include laws with more than \$3 billion in identified appropriations in 2020 or 2021.

9. Those laws were the 21st Century Cures Act (P.L. 114-255), the Every Student Succeeds Act (P.L. 114-95), the Child Care and Development Block Grant Act of 2014 (P.L. 113-186), and the Workforce Innovation and Opportunity Act (P.L. 113-128).

Table 3.

Public Laws That Are Major Sources of Expired Authorizations of Appropriations With Identifiable Appropriations in 2020 and 2021

Public Law	Title	2020		2021	
		Number of Authorizations	Amount of Appropriation (Millions of dollars)	Number of Authorizations	Amount of Appropriation (Millions of dollars)
104-262	Veterans' Health Care Eligibility Reform Act of 1996 ^a	1	99,178	1	90,780
114-255	21st Century Cures Act ^b	n.a.	n.a.	1	41,437
109-162	Violence Against Women and Department of Justice Reauthorization Act of 2005 ^a	22	31,402	22	32,506
105-276	Quality Housing and Work Responsibility Act of 1998 ^a	2	31,978	2	30,886
107-228	Foreign Relations Authorization Act, Fiscal Year 2003 ^a	26	26,901	26	26,590
114-95	Every Student Succeeds Act ^b	n.a.	n.a.	26	26,440
115-10	National Aeronautics and Space Administration Transition Authorization Act of 2017 ^a	9	22,689	9	23,271
111-152	Health Care and Education Reconciliation Act of 2010	1	22,475	1	22,475
111-358	America COMPETES Reauthorization Act of 2010 ^a	6	16,879	5	16,547
113-186	Child Care and Development Block Grant Act of 2014 ^b	n.a.	n.a.	1	15,911
115-282	Frank LoBiondo Coast Guard Authorization Act of 2018 ^a	8	10,626	8	11,302
110-134	Improving Head Start for School Readiness Act of 2007 ^a	1	11,363	1	10,748
113-128	Workforce Innovation and Opportunity Act ^b	n.a.	n.a.	15	8,761
99-83	International Security and Development Cooperation Act of 1985 ^a	6	7,137	6	6,864
110-315	Higher Education Opportunity Act ^a	30	6,939	30	6,840
109-58	Energy Policy Act of 2005 ^a	6	6,919	6	6,215
102-550	Housing and Community Development Act of 1992 ^a	6	5,684	6	5,766
110-53	Implementing Recommendations of the 9/11 Commission Act of 2007	6	5,128	6	4,423
112-17	Small Business Additional Temporary Extension Act of 2011 ^a	4	52,822	4	575
114-144	Older Americans Act Reauthorization Act of 2016 ^{a, b}	14	3,042	n.a.	n.a.
Subtotal		148	361,164	176	388,338
Subtotal (Percent)		36	89	44	90
All Other Laws With Identifiable Appropriations		268	46,333	226	43,681
Total		415	407,458	402	432,019

Data source: Congressional Budget Office. See www.cbo.gov/publication/57023#data.

Public laws that are listed are the major statutory sources of expired authorizations of appropriations for which CBO was able to identify appropriations in 2020 and 2021. Major sources are laws with more than \$3 billion in identified appropriations for expired authorizations in either 2020 or 2021.

n.a. = not applicable.

a. Includes updates to the data presented in CBO's 2020 report to account for appropriations provided in five supplemental appropriation acts enacted after the release of that report and to correct database errors that CBO identified while preparing this edition of the report.

b. Laws that were not expired during both the 2020 and 2021 editions of this report but that were identified as major sources of appropriations for expired authorizations for either 2020 or 2021.

Small Business Additional Temporary Extension Act of 2011 (P.L. 112-17). That unusually large amount of funding was made in 2020 in response to the coronavirus pandemic.¹⁰

Authorizations that expired more than a decade before the report year continue to account for the vast majority of funding that exceeds previously authorized amounts. For 2021, CBO identified \$336 billion in appropriations for expired authorizations that specified annual funding; those appropriations exceeded the amounts specifically authorized by \$121 billion. Only \$20 billion of that difference is associated with authorizations that expired between 2011 and 2020; the rest is associated with authorizations that expired before 2011. In the 2020 report, CBO identified appropriations that exceeded expired specified authorizations by \$109 billion. For the authorizations that expired between 2010 and 2019, CBO identified appropriations roughly equal to the total authorized amount.¹¹

Authorizations of Appropriations That Are Set to Expire By the End of Fiscal Year 2021

As of January 13, 2021, 119 authorizations of appropriations (from 26 laws) were scheduled to expire during

2021: Ninety-seven (from 23 laws) are for specific amounts that total \$816 billion in 2021; 22 (from 10 laws) authorize indefinite amounts (see Table 4).

Most of the amounts specified in authorizations that are scheduled to expire during 2021 are contained in the National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283), which authorizes \$742 in funding.¹² The second-largest source is the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159), which includes eight authorizations totaling \$58 billion—mostly for surface transportation programs.

The law containing the largest number of individual authorizations of appropriations scheduled to expire by the end of fiscal year 2021 is the Water Infrastructure Improvements for the Nation Act (P.L. 114-322), which contains 24 authorizations of appropriations. The Consolidated Appropriations Act, 2021 (P.L. 116-260), with 15 authorizations of appropriations, is the next-largest source of individual authorizations of appropriations set to expire by the end of 2021.

10. A single \$50 billion appropriation in Additional Emergency Appropriations for Coronavirus Response (division B of P.L. 116-139) accounted for more than 96 percent of the funding for such activities in 2020.

11. Most of the \$20 billion difference between the 2020 report and this report occurs because newly expired authorizations identified in the 2021 report accounted for \$18 billion in appropriations in excess of specified authorized amounts.

12. Typically, the annual National Defense Authorization Act incorporates, by reference, tables including authorizations for projects, programs, and activities to be funded from within broader categories of Department of Defense spending. This report lists the authorizations by major category of spending, fewer than 10 in all, instead of individual projects, programs, and activities, which number in the thousands.

Table 4.

Summary of Authorizations of Appropriations Expiring in 2021, by House and Senate Authorizing Committee and Appropriations Subcommittee

	All Expiring Authorizations of Appropriations		Expiring Authorizations With Definite Amount Authorized in 2021	
	Number of Laws	Number of Authorizations	Number of Authorizations	Authorized Amount (Millions of dollars)
House Authorizing Committee				
Agriculture	3	4	4	127
Armed Services	1	5	5	703,383
Education and Labor	2	5	2	25
Energy and Commerce	9	23	21	29,569
Financial Services	1	1	1	*
Foreign Affairs	4	8	7	122
Homeland Security	2	7	5	19,997
Permanent Select Committee on Intelligence	1	8	2	1,273
Judiciary	7	14	13	223
Natural Resources	7	13	11	307
Oversight and Reform	1	1	1	4
Transportation and Infrastructure	5	22	18	57,859
Veterans' Affairs	2	2	2	407
Ways and Means	3	6	5	2,233
Senate Authorizing Committee				
Agriculture, Nutrition, and Forestry	2	3	3	124
Armed Services	1	14	14	742,158
Commerce, Science, and Transportation	3	9	6	57,600
Energy and Natural Resources	4	7	6	158
Environment and Public Works	4	29	26	2,587
Finance	2	5	4	913
Foreign Relations	3	7	6	120
Health, Education, Labor, and Pensions	7	14	10	1,895
Homeland Security and Governmental Affairs	4	9	7	8,079
Select Committee on Intelligence	1	8	2	1,273
Judiciary	6	12	11	212
Veterans' Affairs	2	2	2	407
Appropriations Subcommittee				
Agriculture, Rural Development, FDA, and Related Agencies	4	5	5	130
Commerce, Justice, Science, and Related Agencies	10	22	20	1,128
Defense	2	4	3	695,650
Energy and Water Development and Related Agencies	5	13	10	27,238
Financial Services and General Government	2	3	2	4
Homeland Security	6	11	8	20,014
Interior, Environment, and Related Agencies	4	23	21	2,439
Labor, HHS, Education, and Related Agencies	9	17	13	2,800
Military Construction, Veterans Affairs, and Related Agencies	3	4	4	8,541
State, Foreign Operations, and Related Programs	5	10	7	120
Transportation, HUD, and Related Agencies	2	7	4	57,465
Total	26^a	119	97	815,527

Data source: Congressional Budget Office. See www.cbo.gov/publication/57023#data.

Amounts reflect information related to explicit authorizations of appropriations that expire in fiscal year 2021. This table shows only the committees and subcommittees that have jurisdiction over expired authorizations of appropriations in CBO's Legislative Classification System; therefore, not all are included.

FDA = Food and Drug Administration; HHS = Health and Human Services; HUD = Department of Housing and Urban Development; * = between zero and \$500,000.

a. The total is less than the sum of the entries because public laws containing authorizations of appropriations that are under the jurisdiction of more than one committee or subcommittee are counted only once.

Appendix: Methods Used for CBO’s Annual Report on Expired and Expiring Authorizations of Appropriations

The Congressional Budget Office assembles information for its annual report on expired and expiring authorizations of appropriations in three phases: First is a review of newly enacted laws to identify provisions that establish or modify explicit, time-limited authorizations of appropriations. Next comes cataloging of information about those authorizations in the Legislative Classification System (LCS)—the database that underlies the report. Finally, CBO reviews appropriations enacted for the current fiscal year to assess whether they provide funding for expired authorizations.¹

The process prioritizes lawmakers’ need for detailed information about individual explicit authorizations of appropriations but results in some uncertainty in the aggregated information presented in the report.²

Phase 1: Review Authorizations

CBO reviews the text of newly enacted legislation to identify provisions that create new authorizations of appropriations or that amend, extend, or repeal existing ones. To be included, each authorization must meet three criteria:

- *It Authorizes an Appropriation Explicitly.* Many activities of the government are governed by an enabling authorization (such as an organic statute that outlines an agency’s mission and authorities) and by an explicit authorization of appropriation; others might not have an authorization of appropriation. This report considers explicit authorizations only. A key determinant for inclusion is the text of the law,

1. As it does for other legislation, CBO reviews appropriation acts for explicit authorizations of appropriations and updates the LCS accordingly.

2. CBO’s catalog of authorizations as compiled from the LCS is published with each edition of the report. See Congressional Budget Office, “Expired and Expiring Authorizations of Appropriations,” <https://go.usa.gov/xnp7r>.

which often includes the words “authorization of appropriation.”

- *An Appropriation Act Would Provide Funding.* This report focuses on authorizations for funding that CBO expects would be provided in legislation under the jurisdiction of the House or Senate Committee on Appropriations.
- *An Expiration Date Is Specified.* Authorizations of appropriations do not fit within the scope of this report if they are permanent or lack an end date.³ Because the report excludes explicit authorizations that do not expire, it cannot be considered an exhaustive list of enacted authorizations of appropriations.

Phase 2: Catalog Authorizations

Next, CBO updates the LCS—the database of non-permanent and explicit authorizations of appropriations—recording new authorizations as well as repeals, modifications, and extensions. The LCS contains information about each authorization: the committees of jurisdiction, references to a public law or section of the U.S. Code that contains the authorization, the expiration date, and the amount authorized to be appropriated in the authorization’s final year. If the authorized amount is indefinite, the LCS shows a zero.

To ensure the reliability of data cataloged during the second phase, CBO is required by statute to consult with key staff of Congressional committees. CBO shares a preliminary version of the data for the upcoming report and asks staff members to review items within each committee’s jurisdiction. That process helps CBO to identify and correct errors in the LCS, particularly related to committee jurisdiction and the status of authorizations.

3. If an authorization does not specify a particular expiration date, but includes the entire fiscal year, September 30—the last day of the fiscal year—is used as the expiration date.

The goal of phase 2 is to ensure that the data related to authorizations are entered into the LCS in a way that helps analysts identify subsequent appropriations for those authorizations. In some cases, authorizations are combined to facilitate the identification of appropriations for the program or activity. For example, large authorization bills—such as the annual National Defense Authorization Act and the biennial Water Resources Development Act—can contain hundreds of discrete authorizations of appropriations for a broad range of activities of a federal department or agency. CBO consolidates many of those authorizations within the LCS to be consistent with the way such appropriations typically are provided. As a result, the number of expired or expiring authorizations carried in the LCS can be smaller than the actual number of discrete authorizations contained in those laws.

By contrast, if there is ambiguity about the ways two authorizations of appropriations may interact or overlap, both are carried in the LCS. That provides the most useful information to the Congress because each explicit authorization is cataloged as closely as possible to the way it appears in the law. However, the result may be double counting of amounts authorized to be appropriated. If an explicit authorization of appropriations for a series of grant programs is in place and a new law establishes an explicit authorization for a specific type of grant, for example, it may be unclear whether the new authorization is meant to be additional to or derived from the existing authorization. In that case, CBO catalogs both the new authorization and the existing one in the LCS.

Phase 3: Identify Appropriations for Expired Authorizations

CBO begins the third phase by assessing the list of authorizations that were expired at the start of the fiscal year. Then, CBO reviews appropriation legislation that provides funding for that year. Specifically, the 12 annual appropriation bills are reviewed, as are any supplemental appropriations enacted for the year and any advance appropriations already in place.⁴ CBO

4. When a supplemental appropriation is enacted after CBO publishes the report for a fiscal year, CBO updates the LCS to reflect changes to funding for expired authorizations. CBO does not revise the report, but it provides details in the next report on the amount of supplemental appropriations that were identified and associated with authorizations that were expired at the time of the previous report.

also consults detailed tables provided by the House and Senate Committees on Appropriations and the Joint Explanatory Statement of Conferees.

The goal of phase 3 is to connect appropriations with expired authorizations on the basis of the appropriation acts' text and the corresponding legislative history. The ability to make such connections is limited by the amount of detail provided in those laws and in related materials. Without a clear link, CBO is not always able to associate an expired authorization with an appropriation—even if a federal agency could determine subsequently that appropriations are available for purposes covered by an expired authorization. In such cases, CBO might not identify those amounts in the LCS if the language of the authorization and the appropriation do not align. If authorizations overlap or interact, CBO tries to identify an appropriation for each authorization.

CBO's goal is to ensure consistency in the LCS's records of appropriations for expired authorizations. When more than one appropriation is identified for a single expired authorization, the amounts are consolidated and attributed to that authorization for that year. If an appropriation can be associated with more than one authorization in the LCS, CBO associates that appropriation with just one authorization—usually, the one most recently in effect.

Uncertainty in Summary Information

Because cataloging authorizations and identifying appropriations involves judgment, the report's summary statistics are subject to uncertainty. Under- or overstating the number of authorizations can result in underestimating or double counting both the number of expired authorizations with identified funding and the dollar amounts of appropriations provided for expired authorizations shown in the tables and totals presented in this report. Thus, the report should not be construed as providing precise information about the current state of explicit authorizations and related appropriations. Rather, the report's supplemental data file provides detailed information about the status of individual explicit authorizations of appropriation, and comparisons of data between one report and another may indicate overall trends.

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About This Document

This annual report of the Congressional Budget Office satisfies the requirements of section 202(e)(3) of the Congressional Budget Act of 1974, as amended. The report is intended to assist the Congress by identifying authorizations of appropriations that have expired or will expire in the current fiscal year. Previous editions, until 2016 titled *Unauthorized Appropriations and Expiring Authorizations*, are available from CBO's web page for major recurring reports, "Expired and Expiring Authorizations of Appropriations," <https://go.usa.gov/xnp7r>.

The information presented in this report was prepared by Joanna Capps, Fiona Forrester, Madeleine Fox, Sofia Guo, Arin Kerstein, Rachel Matthews, George McArdle, Justin Riordan, Mark Sanford, Esther Steinbock, J'nell Blanco Suchy, and Olivia Yang. Justin Riordan wrote the report with guidance from Megan Carroll, Theresa Gullo, and Esther Steinbock. Olivia Yang fact-checked it. Shane Beaulieu and Patt Watson of CBO and many staff members of Congressional committees provided assistance.

Mark Hadley and Robert Sunshine reviewed the report, Kate Kelly was the editor, and Casey Labrack was the graphics editor.

This report is available on CBO's website (www.cbo.gov/publication/57023).

CBO seeks feedback to make its work as useful as possible. Please send comments to communications@cbo.gov.



Phillip L. Swagel
Director
May 2021

MEMORANDUM

November 1, 2016

Subject: CRS Identification of “Appropriations not Authorized by Law”

From: James V. Saturno
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This memorandum responds to multiple requests for CRS to identify either statutes authorizing appropriations or those appropriations that are not authorized by law. The rules of the House and Senate generally require that appropriations be for programs and activities previously authorized by law.¹ Identifying all programs and activities currently authorized by law, however, presents both conceptual and methodological issues which prevent CRS from compiling an authoritative list. These issues are discussed below. There are resources, however, that address issues and questions associated with appropriations for purposes that may not be authorized by law. This memorandum includes a description of these resources: the annual Congressional Budget Office (CBO) report on unauthorized appropriations and expiring authorizations, and the House and Senate Appropriations committee reports accompanying each annual appropriations bill.²

For general information on procedural and legal issues related to the authorization of appropriations, see also CRS Report R42098, *Authorization of Appropriations: Procedural and Legal Issues*, by James V. Saturno and Brian T. Yeh.

Although the U.S. Constitution grants Congress the “power of the purse” by prohibiting expenditures “but in Consequence of Appropriations made by Law,”³ it does not prescribe specific practices or procedures to carry this out. As a result, the manner in which the House and Senate have chosen to exercise this authority is a construct of congressional rules and practices, which have evolved pursuant to the

¹ House Rule XXI, clause (2)(a)(1) and Senate Rule XVI(5).

² Section 202(e)(3) of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344) requires that the CBO provide an annual report listing “(A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and (B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.” House Rule XIII, clause (3)(f)(1) requires each Appropriations committee report on a general appropriations bill list “all appropriations contained in the bill for expenditures not currently authorized by law for the period concerned...” Senate Rule XVI(7) requires each Appropriations committee report on a general appropriations bill list for each recommended amendment each proposed “item of appropriations which is not made to carry out the provisions of an existing law, treaty stipulation, or an act or resolution previously passed by the Senate during that session.” These are discussed further in the “Resources” section of this memorandum.

³ Article 1, Section 9.

constitutional authority of each chamber to “determine the Rules of its Proceedings.”⁴ One way that both chambers have chosen to exercise this authority is to adopt rules and practices that generally limit appropriations to purposes previously authorized by law. This requirement allows Congress to distinguish between legislation that addresses questions of policy and that which addresses questions of funding, and to provide for their separate consideration. In common usage, the terms used to describe these types of measures are *authorizations* and *appropriations*, respectively.

- An *authorization* may generally be described as any statutory provision that defines the authority of the government to act. It can establish or continue a federal agency, program, policy, project, or activity. Further, it may establish policies and restrictions and deal with organizational and administrative matters. It may also, explicitly or implicitly, authorize subsequent congressional action to provide appropriations. By itself, however, an authorization does not provide funding for government activities.
- An *appropriation* may generally be described as a statutory provision that provides budget authority, thus permitting a federal agency to incur obligations and make payments from the Treasury for specified purposes, usually during a specified period of time.

It is therefore important to note that the concept of “unauthorized appropriations” is a procedural construct rather than a legal one because it reflects the procedural status of an appropriation in relation to other statutes and not the legality of either the appropriation or the associated federal activities. As a result, it is House and Senate rules, practices, and precedents that guide its interpretation and application. Furthermore, it has evolved over the years, so that the two chambers have developed divergent understandings in a number of significant respects regarding what constitutes “authorized by law.”

One area of difference is under what circumstances appropriations may be considered to be for purposes not authorized by law, and therefore, prohibited. The House prohibition in Rule XXI, clause (2)(a)(1) broadly applies to provisions in any general appropriations bill or amendment thereto. The Senate prohibition in Rule XVI(1) is comparatively more narrow. Because it is framed in terms of amendments that would increase the amount for an item in the bill or add a new item, it does not apply to House passed language, measures originated by the Senate Appropriations Committee, amendments to a House-passed bill reported by the committee, or amendments offered by direction of the authorizing committee with relevant jurisdiction, which have been reported and referred to the Committee on Appropriations at least one day before consideration.⁵ In other words, the Senate prohibition applies most significantly to amendments offered by individual Senators during floor consideration of a general appropriations bill.

A second area of difference is the timing of when a program or activity may be considered authorized by law. In the House, Rule XXI, clause (2)(a)(1) requires that an authorization be *enacted* prior to consideration of the relevant general appropriations bill⁶ in order to be considered authorized.⁷ In the Senate, Rule XVI(1) requires an authorization to have been *passed by the Senate* during the current

⁴ Article 1, Section 5.

⁵ Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101st Cong., 2nd sess., S. Doc. 101-28 (Washington: GPO, 1992), [Hereafter *Riddick's Senate Procedure*], pp. 171, 189.

⁶ In the House, “general appropriations bills” are the annual appropriations acts (or any combination thereof) and any supplemental appropriations acts that cover more than one agency. Continuing resolutions are not considered to be general appropriations bills. See W[illiam] Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice: A Guide to the Rules, Precedents and Procedures of the House*, 112th Cong., 1st sess., (Washington: GPO, 2011), [Hereafter *House Practice*], chapter 4, section 3, p. 73.

⁷ See *House Practice*, chapter 4, section 10, for a further discussion of this requirement.

session of Congress prior to consideration of the relevant general appropriations bill⁸ in order to be considered authorized.⁹

A third area of difference is the types of projects and activities for which the rules provide an exception and thereby allow an appropriation to be in order, even in the absence of prior legislation providing for an authorization. For example, House Rule XXI, clause (2)(a)(1) contains a provision that excepts appropriations that would continue “public works and objects already in progress” from the prohibition on unauthorized appropriations. The Senate rule provides no such exception. Senate Rule XVI(1), however, allows appropriations for projects and activities “proposed in pursuance of an estimate submitted in accordance with law.”¹⁰ Such estimates can be provided in the President’s annual budget request, as required by 31 U.S.C. §§ 1105(a) and 1107, or through deficiency and supplemental appropriations requests made after the President’s budget request has been submitted to Congress.¹¹ The House has no such exception.

A fourth area of difference arises because each chamber necessarily relies on a different body of precedents, and uses different practices in applying those precedents.¹² As a result, an appropriation that is for a purpose considered authorized by law within the meaning applied in one chamber might not be considered as such by the other.

These differences in definitions and conceptions prevent compilation of a list of appropriations authorized by law that would be definitive.

Methodological Issues

The primary purpose of authorization statutes or provisions is to provide authority for an agency to administer a program or engage in an activity. These are sometimes referred to as “organic” or “enabling” authorizations. It is generally understood that such statutory authority to administer a program or engage in an activity also provides an *implicit* authorization for Congress to appropriate for such program or activity. Appropriations may also be authorized *explicitly* for definite or indefinite amounts (i.e., “such sums as may be necessary”), either through separate legislation or as part of an organic statute. These are sometimes referred to as “authorizations of appropriations.” If such an authorization is present, it may expire even though the underlying authority in the organic statute to administer such a program or engage in such an activity does not.

In most cases, the purpose of an appropriation is said to be authorized when there is explicit language defining the legal authority for a federal agency, program, policy, project, or activity that will be applicable in the same fiscal year for which the appropriation is to be enacted. In contrast, the purpose of an appropriation is said to be unauthorized when no such authority has been enacted or, if previously enacted, has terminated or expired. The application of this principle to specific items, however, may depend on additional distinctions, including whether appropriations for the program are implicitly

⁸ In the Senate, “general appropriations bills” are the annual appropriations acts (or any combination thereof) and any supplemental or continuing appropriations acts that cover more than one agency or purpose. See *Riddick’s Senate Procedure*, p. 159.

⁹ *Riddick’s Senate Procedure*, p. 187.

¹⁰ *Ibid.*, p. 180.

¹¹ *Ibid.*, p. 155.

¹² In the House, see, for example, *House Manual* sections 1045-1051; *House Practice*, chapter 4, sections 10-26; and Lewis Deschler, *Deschler’s Precedents of the U.S. House of Representatives*, 94th Cong., 1st sess., H.Doc. 94-661 (Washington: GPO, 1977-1991), vol. 8, chapter 26, sections 7-21. In the Senate, see, for example, *Riddick’s Senate Procedure*, pp. 155-156, 178-182, 187-189, 191-192, 194, 210-212.

authorized through an organic statute, or explicitly through an authorization of appropriations. In instances where an explicit authorization of appropriations has expired or terminated, subsequent appropriations for such a program or activity may be regarded as “unauthorized” under House and Senate rules,¹³ despite the fact that the underlying legal authority for a project or activity in the organic statute remains, and carries with it implicit legal authority to appropriate.¹⁴

The interaction between authorizations and appropriations can also be affected by how specific or general an authorization is. For example, some statutes that provide an explicit authorization of appropriations place a limit on the amount that is authorized, either generally for a class of “programs, projects, or activities” (PPAs), or for a more specifically designated PPA. In these instances, appropriations in excess of such limits are generally considered to be unauthorized. Appropriations that address only some of the PPAs framed more generally in the authorization of appropriation, or do so in more specific terms, however, are said to be authorized, as long as the budget authority that is provided falls within any limits prescribed by the authorization.¹⁵

A significant methodological challenge in determining whether the purpose of an appropriation is authorized by law stems from the fact that the authority for individual accounts or PPAs is often provided in more than one authorization law. For example, while the United States Geological Survey’s (USGS) operating expenses are currently provided in a single appropriations account (“United States Geological Survey—“surveys, investigations, and research,” Title I of Division G, P.L. 114-113), its website lists over 100 separate statutes governing USGS activities.¹⁶ Because the authority for most governmental PPAs stems from this type of “patchwork” of laws, determining which authorizations apply to the particular PPAs in an appropriations account may require complex, and often case-by-case, legal determinations. In many instances, the volume of laws authorizing one or more aspects of a PPA or account may be more than could be reasonably compiled, preventing the making of such determinations.

An additional difficulty in compiling a list associating appropriations with the laws that authorize those purposes stems from the fact that authorization laws may evolve after they are initially enacted through further revision by subsequent statutes. Because the explicit authorization of appropriations is not generally the primary purpose of authorization laws, many such laws do not contain provisions explicitly

¹³ In the House, implicit authority in an organic statute is considered sufficient to meet the requirement that appropriations be for purposes authorized by law unless a periodic scheme of authorization has been enacted or at some point in time “occupied the field” (*House Manual*, section 1045). In these instances, if an authorization is of limited duration and not reauthorized when it expired, subsequent appropriations would not be considered to be for a purpose “authorized by law” (*House Practice*, chapter 4, section 38). While the Senate recognizes the distinction between the implicit authority to appropriate in an organic statute and an explicit authorization of appropriations (*Riddick’s Senate Procedure*, p. 179), the organic statute may not be superseded by a periodic authorization of appropriations in every circumstance.

¹⁴ From a legal perspective, however, GAO guidance states that “the existence of a statute (organic legislation) imposing substantive functions upon an agency that require funding for their performance is itself sufficient legal authorization for the necessary appropriations, regardless of whether the statute addresses the question of subsequent appropriations.” If an authorization of appropriations expires, Congress may still choose to appropriate money to fund a particular program, agency, or activity; and that enactment of an appropriation would provide a “sufficient legal basis to continue the program during that period of availability, absent indication of contrary congressional intent.” (Government Accountability Office, Office of the General Counsel, *Principles of Federal Appropriations Law*, Volume I, at 2-41, 2-69 [3d ed. 2004]).

¹⁵ Note, however, that an appropriations act generally carries with it a legal authority to engage in the activities funded therein. “Where authorizations are not required by law, Congress may, subject to a possible point of order, appropriate funds for a program or object that has not been previously authorized or which exceeds the scope of a prior authorization, in which event the enacted appropriation, in effect, carries its own authorization and is available to the agency for obligation and expenditure (GAO Red Book, at 2-69, citing Matter of: Department Justice - Bureau of Justice Assistance - Project Authorized by Appropriation Act, 67 Comp. Gen. 401 (1988); see also 36 Comp. Gen. 240, 242 (1956)).

¹⁶ United States Geological Service, “Laws and Regulations Governing USGS Activities: Authorizations,” <http://www.usgs.gov/laws/index.html> lists. This may not be all of the laws that govern USGS activities.

authorizing appropriations, although they might still provide sufficient implicit authorization. As authorization laws generally do not correspond to the appropriations account structure, and the language and form of these laws changes over time, there is no single or systematic methodology available to compile and associate them with the relevant PPA or appropriations account.

Appropriations for the Department of Treasury are illustrative of these methodological issues. The Act of September 2, 1789 is the organic authorization that created the Department of Treasury. Since that time, some of the provisions in this Act have been amended by more specific laws (including those listed below), while other parts remain in effect today.¹⁷

- Act of March 3, 1791;
- Act of May 8, 1792;
- Act of March 3, 1809, chap.28;
- Act of November 22, 1814;
- Act of March 3, 1817, chap.45;
- Act of February 24, 1819, chap. 43;
- Act of May 1, 1820, chap. 50; and
- Act of May 15, 1820, chap. 107.

The Department of Treasury is currently divided into nine offices that conduct a variety of programs and activities. While some of these projects and activities may be generally authorized by the revised Act of September 2, 1789, others may be more specifically addressed in separate statutes. While appropriated funding for these programs and activities is currently provided in a single appropriations account (See, for example, Department of Treasury—Departmental Offices—“salaries and expenses,” in Title I of Division E, P.L. 114-113, providing funds for FY2012, below), this account contains a number of line items related to specific programs and activities.

For necessary expenses of the Departmental Offices including operation and maintenance of the Treasury Building and Annex; hire of passenger motor vehicles; maintenance, repairs, and improvements of, and purchase of commercial insurance policies for, real properties leased or owned overseas, when necessary for the performance of official business; executive direction program activities; international affairs and economic policy activities; domestic finance and tax policy activities, including technical assistance to Puerto Rico; and Treasury-wide management policies and programs activities, \$222,500,000: Provided, That of the amount appropriated under this heading—

- (1) not to exceed \$350,000 is for official reception and representation expenses;
- (2) not to exceed \$258,000 is for unforeseen emergencies of a confidential nature to be allocated and expended under the direction of the Secretary of the Treasury and to be accounted for solely on the Secretary’s certificate; and
- (3) not to exceed \$22,200,000 shall remain available until September 30, 2017, for—
 - (A) the Treasury-wide Financial Statement Audit and Internal Control Program;
 - (B) information technology modernization requirements;
 - (C) the audit, oversight, and administration of the Gulf Coast Restoration Trust Fund; and
 - (D) the development and implementation of programs within the Office of Critical Infrastructure Protection and Compliance Policy, including entering into cooperative agreements.

¹⁷ This list is drawn from the Department of Treasury website (<http://www.treasury.gov/about/history/Pages/act-congress.aspx#a>). It may not be a complete list of all revisions to the Act of September 2, 1789.

To evaluate under which laws appropriations for these programs and activities are authorized, each PPA in this account would need to be assessed separately to determine if it is authorized under the original organic statute, generally through a different authorization statute, or explicitly through an authorization of appropriations.

In addition to the programs and activities undertaken by the nine departmental offices, the Department of the Treasury also oversees twelve bureaus, nine of which are funded through annual appropriations (below):¹⁸

- The Alcohol and Tobacco Tax and Trade Bureau;
- The Bureau of the Public Debt;
- The Community Development Financial Institution Fund;
- The Financial Crimes Enforcement Network;
- The Financial Management Service;
- The Inspector General;
- The Treasury Inspector General for Tax Administration;
- The Internal Revenue Service; and
- The U.S. Mint.

In many instances, the authority and activities of these bureaus are addressed more specifically in other statutes, rather than in the revised Act of September 2, 1789 directly. In addition, these bureaus are currently funded in at least thirteen different appropriations accounts, which do not always correspond to the administrative structure outlined above. For example, funding for the Internal Revenue Service is provided in at least four accounts.

The lack of direct correspondence between the fourteen Department of Treasury appropriations accounts and relevant authorization laws for each PPA presents significant methodological challenges. At a government-wide level, there likely would be many instances where compiling all of the laws that correspond to an individual PPA, and subsequently determining if a PPA was authorized, would be impractical.

Resources

While there is no practical way in which all possible authorizing statutes can be identified for every appropriation, there are at least three generally available resources that address the issue of appropriations and their authorizations: an annual CBO report on unauthorized appropriations and expiring authorizations, and the reports from the House and Senate Appropriations committees that accompany each annual appropriations bill.

Congressional Budget Office—*Unauthorized Appropriations and Expiring Authorizations*

Section 202(e)(3) of the Congressional Budget and Impoundment Control Act of 1974 requires that CBO provide an annual report on unauthorized appropriations and expiring authorizations.¹⁹ The report lists

¹⁸ The Bureau of Engraving and Printing, The Office of the Comptroller of the Currency, and the Office of Thrift Supervision are funded through sources other than annual appropriations.

¹⁹ This report is due on or before January 15 of each year.

“all programs funded through the annual appropriation process that at one time had an explicit authorization of appropriations that has expired ... or that will expire this year.”²⁰ To assemble this report, CBO tracks provisions that explicitly authorize appropriations for a specified time period. The information in the report appendices is provided in three forms, identifying such provisions categorized by:

- House authorization committee of origin
- Senate authorization committee of origin
- Appropriations subcommittee

The attached example is the list from the January 2016 edition of the report listing programs under the jurisdiction of the Military Construction, Veterans’ Affairs and Related Agencies subcommittee with expired authorizations that were funded for FY2016, as well as those with authorizations expiring during FY2016.

CBO is able to track the status of authorizations of appropriations with a specified duration because such provisions constitute positive law of a limited life span. The CBO report does not cover explicit authorizations of appropriations that are not about to expire or do not expire, appropriations implicitly authorized by organic statutes, or appropriations for purposes that have never been covered by an authorization statute. As a result, limited conclusions can be drawn from the CBO report beyond which explicit authorizations of appropriations have expired or are about to expire. It is not intended to comprehensively identify all cases of appropriations that would be considered to be for purposes not authorized by law under House and Senate rules.²¹

Appropriations Committee Reports

House Rule XIII, clause (3)(f)(1) requires that reports from the Appropriations Committee on general appropriations bills include:

a list of all appropriations contained in the bill for expenditures not currently authorized by law for the period concerned (excepting classified intelligence or national security programs, projects, or activities), along with a statement of the last year for which such expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures for that year, and the level of appropriations in the bill for such expenditures.

The House Appropriations Committee currently includes this information in a report section entitled “Appropriations not Authorized by Law.” The determination as to what is included in this list is made by the Committee. The example below is the list in the committee report accompanying the FY2017 Agriculture appropriations bill (H.R. 5054, H.Rept. 114-531, p. 171).

²⁰ Congressional Budget Office, *Unauthorized Appropriations and Expiring Authorizations*, January 2016, p. 2, available at <https://www.cbo.gov/publication/51131>. Reports from earlier years are also available on the CBO website.

²¹ *Ibid*, p. 1.

APPROPRIATIONS NOT AUTHORIZED BY LAW

Pursuant to clause 3(f)(1)(B) of rule XIII of the Rules of the House of Representatives, the following table lists the appropriations in the accompanying bill which are not authorized by law for the period concerned:

Agency/Program	Last year of authorization	Authorization level	Appropriation in last year of authorization	Appropriations in this bill
CFTC	2013	Such sums	205,000,000	250,000,000
Food and Nutrition Service: Farmers' Market Nutrition Program:	2015	Such sums	16,548,000	18,548,000
State Administrative Expenses	2015	Such sums	263,686,000	279,058,000
Summer Food Service Program	2015	Such sums	495,521,000	628,484,000
WIC	2015	Such sums	6,623,000,000	6,350,000,000

Similarly, Senate Rule XVI(7) requires that reports from the Appropriations Committee on general appropriations bills identify:

each recommended amendment which proposes an item of appropriation which is not made to carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previous passed by the Senate during that session.

The Senate Appropriations Committee currently includes this information in the report section "Compliance with Paragraph 7, Rule XVI of the Standing Rules of the Senate." The determination as to what is included in this list is made by the Committee. The example below is from the committee report accompanying the FY2017 Agriculture appropriations bill (S. 2956, S.Rept. 114-259, pp. 97-98).

COMPLIANCE WITH PARAGRAPH 7, RULE XVI OF THE STANDING RULES OF THE SENATE

Paragraph 7 of rule XVI requires that Committee reports accompanying general appropriations bills identify each recommended amendment which proposes an item of appropriation which is not made to carry out the provisions of an existing law, a treaty stipulation, or an act or resolution previously passed by the Senate during that session.

The Committee is filing an original bill, which is not covered under this rule, but reports this information in the spirit of full disclosure.

The Committee recommends funding for the following programs or activities which currently lack authorization for fiscal year 2017:

- Child Nutrition Program State Administrative Expenses
- Farmers Market Nutrition Program
- Grain Inspection Service
- Multi-family Housing Revitalization Program
- Special Supplemental Nutrition Program for Women, Infants and Children
- Summer Food Service Program

In addition to those items not authorized by law identified in the reports of the Appropriations Committees, unauthorized appropriations may be identified through points of order raised during consideration on the House or Senate floor. While such points of order would indicate whether a particular appropriation is considered out of order as being for a purpose not considered authorized by law under the rules and precedents of the respective chamber, because such points of order are not often raised, they would not likely add a significant number of cases beyond those listed in the reports. If a point of order is not raised in a timely fashion, however, the House or Senate may consider and agree to an appropriation, regardless of whether it might otherwise be considered out of order.

The House and Senate have specific procedures for handling points of order raised against appropriations for not being in compliance with their respective chamber's rule concerning authorization. In the House, if a point of order is raised against a provision of an appropriations bill as being for a purpose not authorized by law, the burden of proof would be on the manager (normally the chair or ranking member of the committee that reported the measure) to identify the provision of law under which the appropriation is authorized. If a point of order is raised against a provision in an amendment, the burden of proof would be on the Member who offered the amendment.²² Likewise, in practice, the burden of proof in the Senate is on the Member who offered the amendment to identify the provision of law under which the appropriation is authorized.

In the House, the prohibitions against appropriations for purposes not authorized by law may be waived by unanimous consent, suspension of the rules, or special rule. In the Senate, these prohibitions may be waived by unanimous consent or suspension of the rules. Provisions specifically identified in one of these actions would, in most cases, also be identified in the Appropriations Committee reports, and therefore not add to their number.

²² *House Manual* section 1044a.



Unauthorized Appropriations and Expiring Authorizations

EXCERPT

(In This Version, Appendix Material Is Sorted by
Appropriations Subcommittee)

Appendix A:
List of Programs Funded in Fiscal Year 2016 With
Expired Authorizations of Appropriations

**Programs Funded in FY 2016
With Expired Authorizations of Appropriations**

Military Construction, Veterans Affairs, and Related Agencies Subcommittee

P.L. 113-59 VA Expiring Authorities Extension Act of 2013

- * Monthly assistance allowance for disabled veterans selected for or invited to compete for a slot on the U.S. Paralympics team, for any month the veteran is in training or competing in a sanctioned event (sec. 4(a))

FY 2015 Appropriation Authorized:	2,000,000
Unauthorized FY 2016 Appropriations:	Not Available

P.L. 112-56 VOW to Hire Heroes Act of 2011

- * Grants for collaborative training, mentoring, and placement of veterans

FY 2013 Appropriation Authorized:	4,500,000
Unauthorized FY 2016 Appropriations:	Not Available

P.L. 112-37 Veterans Health Care Facilities Capital Improvement Act of 2011

- * Grants program to train and provide technical assistance to participating eligible entities in the planning, development, and provision of supportive services to very-low-income veteran families occupying permanent housing (sec. 604(e)(3))

FY 2012 Appropriation Authorized:	1,000,000
Unauthorized FY 2016 Appropriations:	Not Available

P.L. 111-275 Veterans' Benefits Act of 2010

- * Veterans Energy-Related Employment Program pilot

FY 2014 Appropriation Authorized:	1,500,000
Unauthorized FY 2016 Appropriations:	Not Available

P.L. 111-163 Caregivers and Veterans Omnibus Health Services Act of 2010

- * For the purposes of improving how the Department of Veterans Affairs measures quality in individual facilities, to develop an aggregate quality metric from existing sources of data, to ensure that existing measures of quality are monitored and analyzed routinely and thoroughly, and to encourage research and development in the area of quality metrics (sec. 505)

FY 2012 Appropriation Authorized:	25,000,000
Unauthorized FY 2016 Appropriations:	Not Available

**Programs Funded in FY 2016
With Expired Authorizations of Appropriations**

Military Construction, Veterans Affairs, and Related Agencies Subcommittee

P.L. 110-387	Veterans' Mental Health and Other Care Improvements Act of 2008
	* Pilot program for Internet-based substance use disorder treatment for veterans of Operation Iraqi Freedom and Operation Enduring Freedom
	FY 2011 Appropriation Authorized: 1,500,000
	Unauthorized FY 2016 Appropriations: Not Available
	* Research program on comorbid post-traumatic stress disorder and substance use disorders
	FY 2012 Appropriation Authorized: 2,000,000
	Unauthorized FY 2016 Appropriations: Not Available
	* Pilot program on provision of readjustment and transition assistance to veterans and their families in cooperation with Veterans' Centers
	FY 2011 Appropriation Authorized: 1,000,000
	Unauthorized FY 2016 Appropriations: Not Available
P.L. 109-461	Veterans Benefits, Health Care, and Information Technology Act of 2006
	* Blind rehabilitation outpatient specialists
	FY 2012 Appropriation Authorized: 3,500,000
	Unauthorized FY 2016 Appropriations: Not Available
	* Readjustment counseling and related mental health services through centers under section 1712A, Title 38, United States Code
	FY 2007 Appropriation Authorized: 180,000,000
	Unauthorized FY 2016 Appropriations: 258,000,000
P.L. 108-422	Veterans Health Programs Improvement Act of 2004
	* Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries (sec. 302)
	FY 2008 Appropriation Authorized: 8,000,000
	Unauthorized FY 2016 Appropriations: Not Available
	* Enhancement of medical preparedness of Department of Veterans Affairs: medical preparedness centers authorization (sec. 303)
	FY 2007 Appropriation Authorized: 10,000,000
	Unauthorized FY 2016 Appropriations: Not Available
P.L. 108-183	The Veterans Benefits Act of 2003
	* Veterans Advisory Committee on Education (sec. 307)
	FY 2009 Appropriation Authorized: Indefinite
	Unauthorized FY 2016 Appropriations: Not Available

**Programs Funded in FY 2016
With Expired Authorizations of Appropriations**

Military Construction, Veterans Affairs, and Related Agencies Subcommittee

P.L. 107-287 Department of Veterans Affairs Emergency Preparedness Act of 2002

- * Department of Veterans Affairs: medical emergency preparedness centers

FY 2007 Appropriation Authorized:	20,000,000
Unauthorized FY 2016 Appropriations:	Not Available

P.L. 104-262 Veterans' Health Care Eligibility Reform Act of 1996

- * Veterans' medical care: hospital care and medical services; authorizing committee states that the language was intended only to cap the program in fiscal years 1997 and 1998

FY 1998 Appropriation Authorized:	17,900,000,000
Unauthorized FY 2016 Appropriations:	61,136,492,000

- * Centers for Mental Illness Research, Education, and Clinical Activities

FY 2001 Appropriation Authorized:	6,250,000
Unauthorized FY 2016 Appropriations:	Not Available

Appendix B:
List of Authorizations of Appropriations
Expiring During Fiscal Year 2016

Military Construction, Veterans Affairs, and Related Agencies Subcommittee

P.L. 114-92 National Defense Authorization Act for Fiscal Year 2016

- * Military construction and family housing

FY 2016 Appropriations Authorized: 8,404,610,000
Expiration Date: 09/30/2016

- * Armed Forces Retirement Home

FY 2016 Appropriations Authorized: 64,300,000
Expiration Date: 09/30/2016

Military Construction, Veterans Affairs, and Related Agencies Subcommittee

P.L. 114-58 Department of Veterans Affairs Expiring Authorities Act of 2015

- * Comprehensive assistance for family caregivers and general caregiver support services (sec. 103)

FY 2016 Appropriations Authorized: 625,000,000
Expiration Date: 09/30/2016
- * Pilot program on assistance for child care for certain veterans receiving health care

FY 2016 Appropriations Authorized: 1,500,000
Expiration Date: 09/30/2016
- * Pilot program on counseling in retreat settings for women veterans newly separated from service in the armed forces

FY 2016 Appropriations Authorized: 2,000,000
Expiration Date: 09/30/2016
- * Grants for adaptive sports programs for disabled veterans and members of the Armed Forces

FY 2016 Appropriations Authorized: 8,000,000
Expiration Date: 09/30/2016
- * Grants for veterans service organizations to provide transportation for veterans living in highly rural areas

FY 2016 Appropriations Authorized: 3,000,000
Expiration Date: 09/30/2016
- * Reintegration programs for homeless veterans

FY 2016 Appropriations Authorized: 50,000,000
Expiration Date: 09/30/2016
- * Financial assistance for supportive services for very-low-income veteran families in permanent housing

FY 2016 Appropriations Authorized: 300,000,000
Expiration Date: 09/30/2016
- * Reintegration grant program for homeless women veterans and homeless veterans with children

FY 2016 Appropriations Authorized: 1,000,000
Expiration Date: 09/30/2016