

## A U.S. Congress Assessment Project Study

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### CONGRESS'S BILLION DOLLAR SLUSH FUND

#### INTRODUCTION

The debilitating scandals and public outrage of recent years have not deterred Congress from finding new ways to tap the federal Treasury for its own perks and expenses. A close look at how funding to run Congress is approved shows that money for operating the legislative branch has been turned into a shadowy slush fund under the control of congressional leaders.

The Legislative Branch Appropriations bill is, according to some Members of Congress, "more convoluted...and deliberately concealing than any of the others."<sup>1</sup> Illinois Republican Representative John Porter, a long-time member of the Appropriations Legislative Subcommittee, which has jurisdiction over the bill, confessed, "I don't know anything about it... When you get educated, let me know." Subcommittee Chairman Vic Fazio, a California Democrat, admits that the bill is sometimes used to "do quietly what cannot be done openly."

**Hard to Track Money.** In 1989 the House of Representatives altered the way money is transferred among House accounts, making it easier to use money for new purposes once it has been appropriated—and more difficult to track its uses. Then, in the Fiscal Year (FY) 1991 Legislative Branch Appropriations bill, Congress changed funding for House and Senate operations from annual or multi-year accounts to so-called "no-year" accounts. Rather than being returned to the Treasury after a specified time, unspent funds in these accounts remain available indefinitely, effectively creating a "slush fund" of unused money for Congress.

These changes in legislative branch funding further obscure the already murky ledgers of congressional finances. The 1989 and 1991 changes make it more difficult for the public to know how Congress spends money on itself. They also give increased power and latitude in spending those funds to party and committee leaders rather than to the full House and Senate.

1 All quotes from *Congressional Quarterly* Special Report, "Where the Money Goes," December 7, 1991, pp. 111, 112.

Given the recent history of congressional scandals, these trends toward greater secrecy and concentration of spending authority are unacceptable. The 1989 and 1991 changes should be reversed, and the House and Senate should order complete and independent audits, to be released to the public, of all funding for congressional operations.

## POT O' GOLD

Prior to the FY 1989 Legislative Branch Appropriations bill, there were six separate House accounts<sup>2</sup> and statutory authorization was required to move funds among them. The 1989 bill created a single account called "Salaries and Expenses."<sup>3</sup> Authority to move money around within that unified account resides with the Legislative Subcommittee of the House Appropriations Committee, and as a practical matter, funds appropriated for one purpose can be used for entirely different expenses upon the approval of Subcommittee Chairman Fazio alone. The new accounting method turned House appropriations into a pool of money, giving House Leaders nearly unlimited discretion in its use. While the Senate retains several separate accounts, Senators and Senate officials have wide latitude to move funds among those accounts.

Then in the FY 1991 appropriations bill, House and Senate funding was modified to continue indefinitely by making the funds "no-year" accounts. Prior to that year most appropriations for congressional expenses were returned to the Treasury if not spent after three years.<sup>4</sup> Beginning in 1991, the funds of House and Senate accounts became "available until expended."<sup>5</sup> This caused funds to "roll over," or remain available to Congress in perpetuity, if not spent in the year for which they were appropriated. After three years, these funds are no longer available directly to the accounts for which they were appropriated, due to authorization restrictions. But the money is available indefinitely to be disposed of by the Appropriations Committees.

**Keeping Back Millions.** In FY 1989, only \$27 million in legislative branch funding was in no-year accounts. In FY 1991, all House accounts and the vast majority of Senate funding, nearly \$1.1 billion in all, was accorded no-year status. As a result, Congress stopped returning unused funds to the Treasury. In 1989 at least \$16 million in unspent congressional funds was returned, and over \$12 million was sent back in 1990. As a result of the changes, no money was returned to the Treasury in 1991.

Exactly how much money would have been returned to the Treasury is difficult to determine. At the end of fiscal 1991 about \$46 million in House funding out of an original \$647 million appropriation remained unexpended. Much of this remaining funding is "obligated," meaning that Congress has entered into contracts for goods or services not yet paid for. In the Senate, \$423 million was placed in no-year accounts in 1991. The amount remaining at the end of the fiscal year, however, cannot be ascertained.

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- 2 The six accounts, covering all House legislative operations are: House Leadership Offices; Members' Clerk Hire; Committee Employees; Contingent Expenses of the House (standing committees, special and select); Contingent Expenses of the House (allowances and expenses); and Salaries, Officers and Employees.
  - 3 Legislative Branch Appropriations for FY 1989, sec. 101.
  - 4 31 U.S.C., Sec. 1502.
  - 5 Legislative Branch Appropriations for FY 1991.

The Clerk of the Senate Legislative Branch Subcommittee overseeing these funds directed the Supervisor of Accounting in the Senate Disbursing Office and Senate Budget Officer not to disclose any information regarding these funds.

What is certain is that the appropriations for both House and Senate continue to grow at a rate well above that of inflation, despite the surplus funds left over at the end of each fiscal year. For example, the FY 1991 appropriation for House postage was \$59 million. The House used about \$32 million of that during the fiscal year, leaving an unexpended balance of about \$27 million, \$20 million of which was later rescinded. Instead of trimming next year's appropriation to match actual usage, the House appropriated \$80 million for FY 1992, a 35 percent increase. The request for House mail for 1993 exceeds \$92 million.

The other accounts have similar excess funds. The House contingent fund, administered by the House Administration Committee<sup>6</sup> (and sometimes known as the Speaker's fund) was \$270 million in 1991, of which about \$21 million remained unexpended at the end of the fiscal year. Yet the request for FY 1993 has increased 79 percent to \$342 million.

Though the funds that will roll over in these accounts represent only a small portion of the congressional budget, they will never expire. Thus, these snowballing accounts will continue to grow by millions of dollars annually. This cache of taxpayer cash constitutes a "black budget" for congressional leaders, which soon could total in the hundreds of millions.

## FLEXIBLE FINANCING

The precise uses for which this hoard is intended can only be guessed at. According to the Finance Office in the House, the funds are to provide "flexibility" for shortfalls in accounts due to sequesters and unforeseen expenses. That it does. The ability to divert funds for purposes other than those originally intended, quietly and without a vote, makes Congress completely unaccountable for the money it spends. The no-year slush fund could allow Congress to escape the effects of a sequester, such as those under the Gramm-Rudman deficit reduction law, without the public embarrassment of having to exempt itself. In the late 1980s Congress cried "scandal" when the Air Force was using a similar system—the "M. Account"—to spend unused money on new projects. Congress should hold itself to the same standards it applies to other agencies.

Congress already has the power to appropriate more money if necessary for a legitimate purpose. Yet now Congress will keep an extra stash of tax cash on hand instead. Projects that might have caused public uproar if funded through the regular process can be excused more easily if Congress utilizes "extra" money that it "saved." The rolled over money can actually make a vice look like a virtue. And rather than having to stick to a budget like other Americans, Congress, true to form, finds the "more money" solution to legislative branch budgeting more amenable than restraints on spending.

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<sup>6</sup> *Rules of the House of Representatives*, Rule X, Clause 1, Sec. 680a.



**“Reprogramming” or Redecorating?** Requests for “reprogramming”—transferring money—among almost all House and Senate accounts, for virtually any purpose, can now be made by legislative branch offices or agencies through the Clerk of the House or Secretary of the Senate, for approval by the Appropriations Subcommittees. One example of such a reprogramming request was a \$314,000 line item to “Renovate Vacated Space, Capitol Building.”<sup>7</sup> This money was used to create a “Democratic Policy” office, complete with kitchen, at the behest of the Speaker’s Chief of Staff and wife, Heather Foley. The coveted space was vacated by moving the House Document Room out of the Capitol to a House Annex building.

Most reprogramming requests are not so easily unraveled. Without independent information on activities requiring funding, there is no way to determine the precise uses to which most reprogrammed money is put. An August 15, 1991 request from the House Clerk to reprogram \$500,000 dollars from the “Office Equipment” subhead of the catchall “Allowances and Expenses” category to “Furniture and Furnishings” is one example.<sup>8</sup> A transfer request letter from Clerk of the House Donald K. Anderson states that the transfer is required to “replenish necessary furniture and furnishings (such as file cabinets, carpeting, lamps etc.) now.” All that was required for approval was the signature of the chairman of the Legislative subcommittee, Vic Fazio. No line-item information is available. How many of what items were purchased? How much did they cost? Who received the new equipment?

The ready availability of undesignated funds to be reprogrammed by the chairmen of congressional subcommittees also raises fears that the money could be used for partisan political purposes, particularly in the supercharged political atmosphere that now exists in the House of Representatives. Republican Representative Robert McEwen of Ohio expressed concern, for instance, that undesignated funds might be used by Democrats, who control the expenditures, to investigate “October Surprise” allegations (claims that the Reagan campaign made a deal with Iran to keep American hostages in captivity until after the 1980 election) outside the strictures of House rules.<sup>9</sup> In fact, the legislative history of the resolution to authorize funding for the October Surprise investigation confirms this. Amendments to place a limit on the amount that can be spent, and to require that spending be authorized by the ranking (Republican) member of the committee as well as the Chairman were defeated when the bill was considered in the House Administration Committee.

**Audit Required, Not Performed.** There are indications of unaccountable spending on the Senate side, also. Despite a \$16 million budget, the Capitol Preservation Commission, created to make improvements and acquisitions for the U.S. Capitol, has not spent one cent on improvements or acquisitions in over three years of operations. “[T]here is no public source of information about commission operations or finances,” which are apparently under the direction of Senate President Pro Tem Robert Byrd, a West Virginia Democrat. “In fact, a required GAO audit has yet to be performed on the commission, and provisions requiring the disclosure of commission financial activ-

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7 *Congressional Record*, February 5, 1992, p. H 324.

8 *Ibid.*, p. H 323.

9 *Ibid.*, p. H 324.

ity were gutted last May in a provision inserted in a Dire Emergency Supplemental Appropriation bill.... 'What it looks like to me is a little \$40 million slush fund that Senators can play with.' says former Rep. Bill Frenzel."<sup>10</sup>

## WHO GUARDS THE GUARDIANS?

The General Accounting Office (GAO) is the auditing arm of Congress. It is unclear, however, whether or how carefully the GAO audits House and Senate operating accounts. The GAO itself will not say. Various House and Senate staffers have expressed doubts that there has ever been an audit of some accounts. And whatever audits have been done by GAO, say the staffers, appear to be "financial" audits only rather than more detailed "performance" audits with itemized breakdowns and review of supporting documentation. In other words, the columns in the accounts add up, but the veracity of expenses is not verified. While vouchers are required for each expense in the House and Senate, there is no way to discover fraud or losses due to sloppy procedures if no one reviews the vouchers.

According to Senate rules, "No payment shall be made from the contingent fund of the Senate unless sanctioned by the Committee on Rules and Administration of the Senate."<sup>11</sup> Yet when asked about the Senate contingent fund, a senior staff member on the Rules Committee said "It's some amorphous thing over in the Capitol in the hands of the Leader. Its one thing on paper, but another one in reality." In fact, Senate rules also allow the Rules Committee to delegate much of its funding oversight authority to various Senate staffers.<sup>12</sup>

It is clear that if audits are done, they are kept secret. Yet Congress owes American taxpayers answers as to how Congress itself spends public money. Is the GAO supposed to audit congressional accounts? Are Generally Accepted Accounting Practices (GAAP) used? If so, what kind of authority do they have to obtain documentation? What kind of record-keeping is in effect for House and Senate accounts, particularly the rolled over funds? What financial management controls exist, and what oversight practices are in effect over these funds? Until these questions can be answered, Congress remains unaccountable for the funds it appropriates for itself.

**Easy to Abuse.** In truth, there is almost no way for those outside a very select group in Congress to know how congressional funds are or will be used. That itself is scandal enough. The rollover of undesignated funding, coupled with the absence of independent auditing, lack of detail, and overall complexity or secrecy of the funding processes presents a situation ripe for abuse.

The periodic reports required by law of the Secretary of the Senate and the Clerk of the House are detailed enough that a general audit of legislative branch finances is possible, despite the absence of any record of accruals and other accounting deficiencies. These reports are supposed to contain statements of accountability and supporting

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<sup>10</sup> *Roll Call*, April 8, 1991, p. 3.

<sup>11</sup> *Senate Manual*, 1989 edition, p. 285.

<sup>12</sup> *Ibid.*, 270.1 § 68-1. Any staffer on the Rules Committee can be designated.

vouchers submitted to the GAO, which should be responsible for such audits. However, there is not sufficient information to determine all appropriations and expenditures by account in the reports themselves. Without real audits, Congress is effectively left on an honor system for legislative branch funds.

The mismanagement of the House Bank and Post Office indicate the urgent need for tight controls and accounting of all financial activity in the House. In the wake of these scandals, the House passed H. Res. 423 reforming House finances and creating a new Inspector General to audit the Officers and Agencies of the House. The Resolution does not, however, allow the Inspector General to examine accounts controlled by Members, Committees, or Subcommittees, including the House contingent fund. Even when the House is called to account, its leadership attempts to keep as much funding as possible free from investigation.

It is left to House and Senate members to have full authority to verify expenses. Irregularities at the House bank discovered by the GAO were covered over for years. Because of the inherent conflict of interest that comes from auditing its own supervisor and source of funding, the GAO cannot, even under the best circumstances, conduct a truly independent audit of Congress. But the failure to have any audit, much less an annual and independent one, fails government standards of accounting.

## **TIME TO CLEAN HOUSE**

Strong steps are needed immediately to restore accountability to congressional finances.

### **Dump no-year funding.**

There is no excuse for rolling over funding indefinitely. Congress should be able to determine its funding needs and work within a reasonable budget. The accumulated no-year accounts already have created a huge, undesignated slush fund, accessible to a few congressional leaders, and ripe for abuse. No-year accounts should be limited to the few specific accounts which merit them, such as some projects of the Architect of the Capitol that may extend over an indefinite time. Congress should be able to operate within its generous budget. If it cannot, it has the authority to appropriate more funding. But it must do so openly, with its votes on the public record

### **Commission a truly independent audit of all congressional accounts.**

No reform of congressional finances is possible until there is information on what money is in what account, for what purpose, and for how long. There will be no way to determine that until the accounts are opened up to a professional, non-political audit, using Generally Accepted Accounting Practices. Only after such an audit can the rules that govern funding be revamped.

### **Full disclosure of legislative branch funding.**

All information regarding the funding of Congress should be available to Americans. But Congress exempts itself from the Freedom of Information Act (FOIA). The comprehensive audit of Congress's finances should be available to the public and Congress should end its exemption from the FOIA.

**Time for Honest Budgeting.** Recent scandals show that Congress cannot be trusted to manage taxpayer funds without full disclosure and independent oversight. Yet the funding process for Congress has been evolving toward greater secrecy, less accountability, and more control by a few top leaders. Congress must reverse those trends, institute honest budgeting, make spending records available to the public, and authorize independent audits of all congressional accounts.

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