

How Congress Governed in a Polarized Era: 2007-2018

Analysis from the Bipartisan Policy Center's Health Congress Index

GOVERNANCE, MARCH 2019

Overview

The U.S. Congress is meant to be where the country's political and policy issues are debated and resolved. In recent years, however, Congress has been stuck at the epicenter of an era of polarized politics. A legislative process that works for almost no one exacerbates real political divisions. As a result, gridlock and dysfunction are the norm.

To restore its ability to effectively legislate and govern, Congress must:

- Spend ample time in Washington on legislative duties;
- Adhere to regular order by allowing (1) a substantial committee process, (2) a robust floor debate, (3) the opportunity for members to offer amendments, and (4) a process for resolving House and Senate differences in conference committees;
- Complete its basic duties to set a budget and fund the government on time; and
- Conduct oversight of federal programs.

This report is based on the Healthy Congress Index's data and spans the 110th through 115th congresses (2007- 2018^a). It also includes a comparison with the 104th Congress (1995-1996), which is notable as an earlier Congress when majority-party control of the chambers flipped.

^a The 115th Congress adjourned sine die on January 3, 2019 and all data in this report is through that date.

The Bipartisan Policy Center created the Healthy Congress Index to give Americans metrics that are crucial to evaluating Congress, holding it accountable, and answering the question: How is Congress governing?

During the period covered in this report, both parties have been in the majority and minority in the House of Representatives and the Senate. In the House, Democrats were in the majority during the 110th and 111th congresses (2007-2011), and Republicans were in the majority from the 112th through 115th congresses (2011-2018). In the Senate, Democrats were in the majority from the 110th through 113th congresses (2007-2015), and Republicans were in the majority during the 114th and 115th congresses (2015-2018).

Specifically, the congresses are evaluated on:

- Working days spent in Washington compared with a five-day workweek;
- Bills reported by committees;
- Ability of members of the House to offer amendments;
- Prevalence of filibusters in the Senate and attempts to end debate;
- Amendments considered in the Senate;
- Use of conference committees to resolve differences between the chambers;
- On-time performance in setting a budget and funding the government; and
- Federal programs for which authorizations have expired.

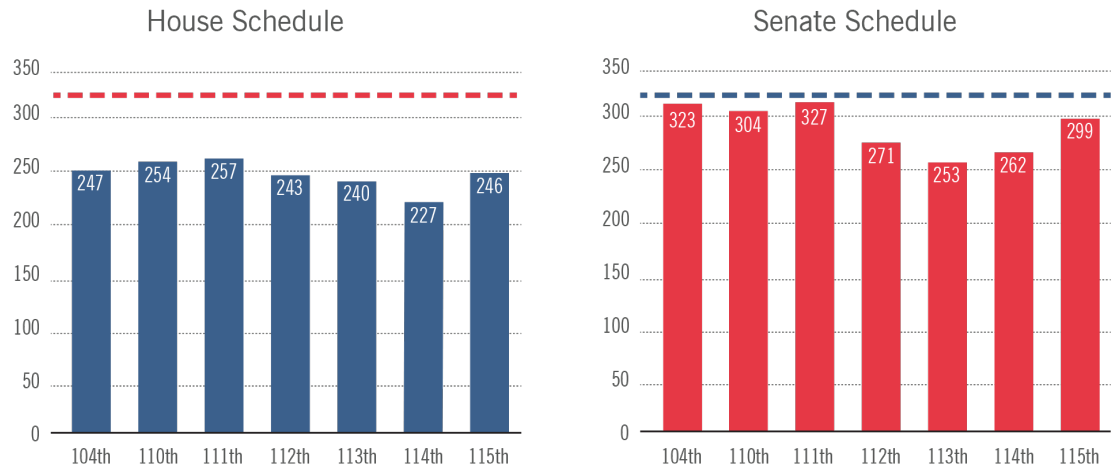
Overall, neither party was successful in all or most of these areas when they served in the majority in either chamber.

Working Days in Washington

Congressional work periods are divided into two types: Congress “in session” means meeting for legislative business in Washington, and Congress “in recess” means members are in their districts or states interacting with constituents.

BPC recommends that Congress be in session conducting legislative business five days a week, for three straight weeks, followed by one week in recess. Adhering to this five-day workweek standard, the House and Senate each should work at least 330 days in a two-year period comprising a single Congress. This assumes Congress observes its traditional month-long recess each August.

WORKING DAYS



The House kept a work schedule well below the BPC standard. The average number of working days from the 110th to 115th congresses was just 245. This mark is comparable to the 247 days worked during the 104th Congress.

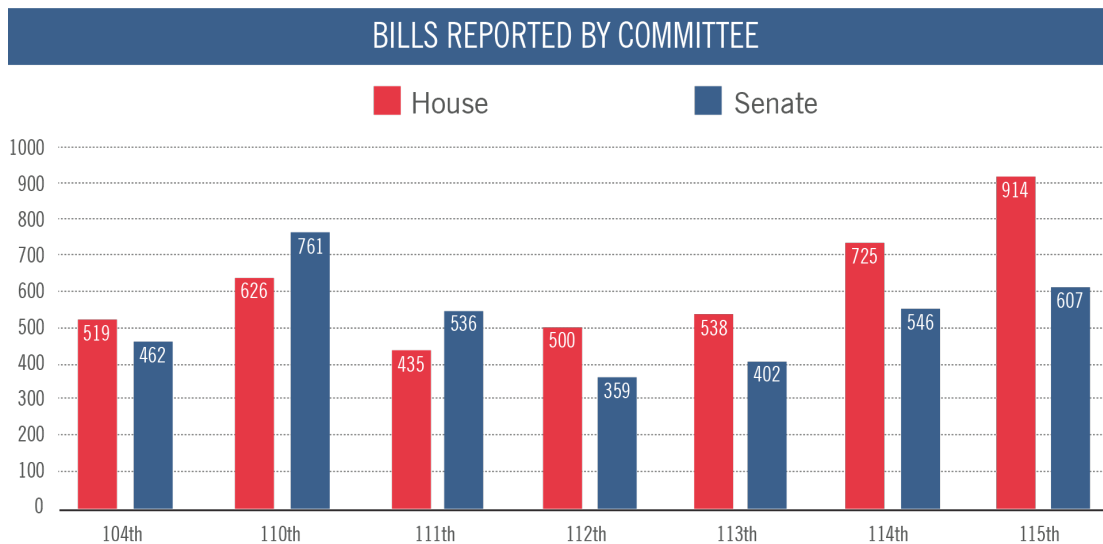
The Senate came nearer in some years to working the equivalent of a five-day workweek in Washington. The 111th Congress holds the high-water mark in the index, as it worked 327 days. The 112th to 114th congresses saw a noticeable dip in days in session, as low as 253 days. The 115th Congress worked 299 days in Washington. Comparatively, the 104th Congress worked for 323 days, which almost met the 330-day standard.

Clearly, in recent years, Congress has kept a suboptimal work schedule in Washington, which provided less time for legislating, reviewing federal programs, and fulfilling its most basic duty: funding the government.

Bills Reported by Committees

Committees are the engine of the legislative process. Ideally, committees are responsible for conducting most of the deliberative work of Congress through hearings, oversight, staff background reports, bill drafting, committee markups, and final report writing. Routinely, though, party leaders circumvent the committee process by assuming responsibility for drafting legislative language and bringing bills to the floor. This intervention frustrates committee chairmen and rank-and-file members of both parties and minimizes their role as representatives of their constituents.

BPC recommends that major legislation be given the benefit of going through a robust committee process before coming to the floor of either chamber.



The number of bills reported by committees from the 110th through 115th congresses saw notable variation. The high level of bills reported in both chambers during the 110th Congress dropped precipitously during the 111th. Reported bills remained low during the 112th and 113th congresses. In the 114th and 115th congresses, reported bills rebounded to and then exceeded to the level seen during the 110th Congress.

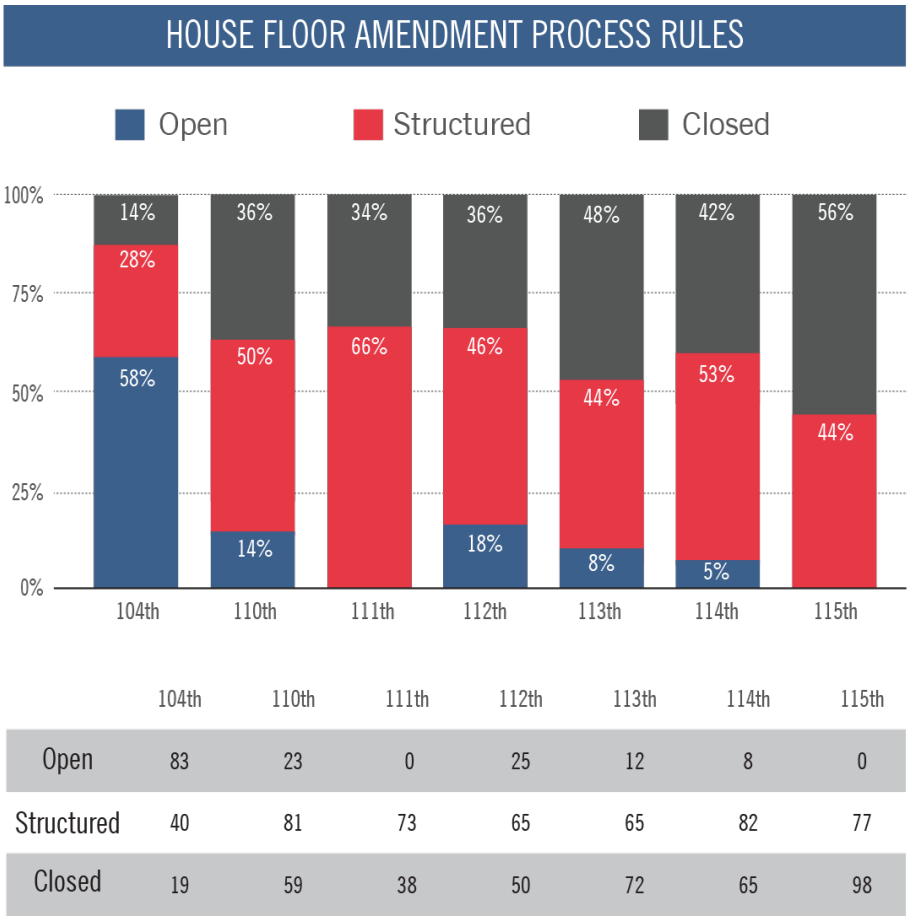
One potential explanation for some of the variation is change in party control of the chambers. The 110th and 114th congresses each enjoyed relatively high numbers of reported bills. Both were congresses where one party regained unified control of the House and Senate—Democrats in the 110th and Republicans in the 114th. Pent-up bills that may have received little attention while in the minority become the priorities of the new majority when moving bills through the legislative process.

Congressional committees should strive to continue reporting healthy numbers of bills comparable to numbers seen in the 110th, 114th, and 115th congresses.

Amendments in the House of Representatives

The consideration of amendments is crucial to regular order. Amendments are meant to be a mechanism for members to improve and influence the development of legislation. They are particularly important for the minority, which typically has less influence in earlier stages of bill drafting. Even rank-and-file members of the majority, though, have bitterly complained about their own ability to offer amendments on legislation supported by their party. A more open process allows ample amendments. A more restricted process allows fewer or no amendments.

The amendment process in the House is typically governed by rules predetermined by the House Rules Committee for each bill. When a measure is considered under an open rule, members may offer unlimited amendments. Under a structured rule, the only amendments that may be offered are those specified by the Rules Committee, which is controlled by the majority. Under a closed rule, no amendments may be offered.



From the 110th through the 115th congresses, open rules became less prevalent and closed rules became more frequent. The effect was a mostly restricted amendment process in the House. Open rules made up the smallest share of the rules in each Congress. During the 111th and 115th congresses, no legislation in the House of Representatives was considered under an open amendment process. Closed rules shifted from making up just over one-third of all rules in the 110th to 113th congresses to more than half of all the rules in the 115th. This means that during the 115th Congress, no amendments were allowed on more than half of the bills that came to the floor.

The House of Representatives needs to return to an amendment process that is more open to amendments. Open rules and structured rules with ample amendments from the minority party should make up most of the rules. The House needs to rely less on closed rules as a mechanism for rushing legislation to a vote.

During this period, both Democratic and Republican leaders pledged at the outset of a new Congress to open the amendment process only to keep that promise for a short period of time before regressing to a more closed process. For instance, during the Democratic-controlled 110th Congress, 14 percent of rules were open, 50 percent were structured, and 36 percent were closed. By the 111th Congress, though, the Democratic House had no open rules at all. Similarly, after regaining the House in the 112th Congress, Republicans presided over an amendment process where 18 percent of rules were open and just 36 percent were closed. The number of open rules shrank over the next three congresses until hitting zero during the 115th Congress. At the same time, closed rules increased to a high of more than 50 percent.

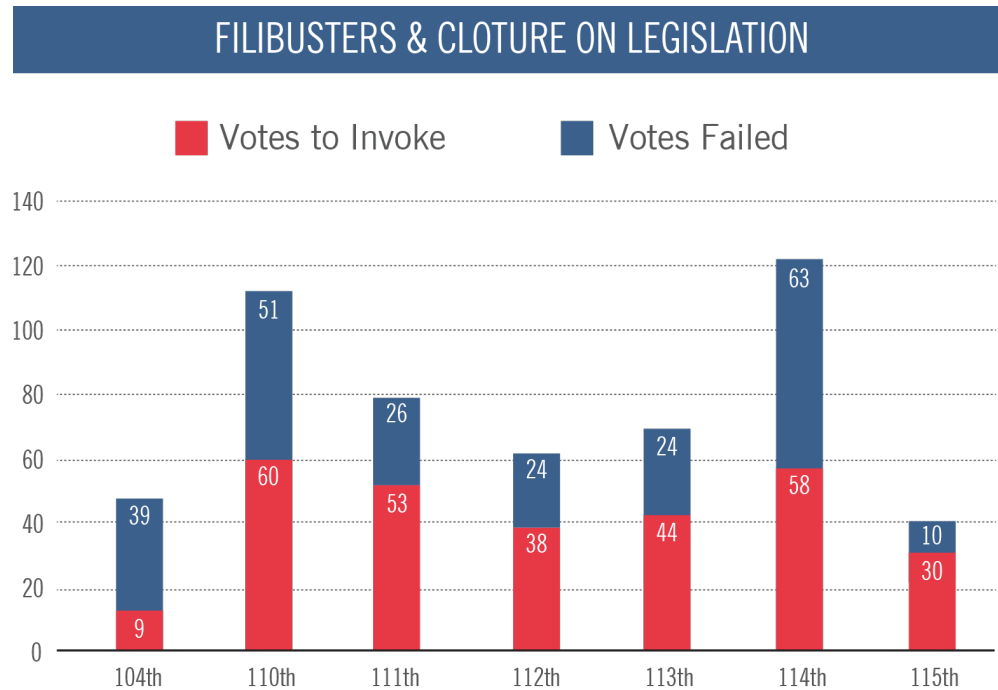
Senate Debate: Amendments, the Filibuster, and Cloture

Deliberation on the Senate floor comprises two traditional prerogatives: extended debate and a full airing of alternatives through a robust amendment process. Historically, the Senate has been relatively open to both. In recent years, however, the majority has regularly used procedural tactics to restrict amendments, and the minority has used extended debate to delay or block matters before the chamber, also known as filibustering. The majority party sees the minority as blocking nominations and legislation, while the minority party views the majority as hostile to the consideration of minority amendments and extended debate.

The Filibuster

The filibuster is an important feature of the Senate that has helped protect the rights of individual senators, particularly in the minority, to ensure all views are heard and understood. At the same time, the filibuster should be used sparingly. It is not a license to obstruct the normal operations of the Senate.

The number of filibusters or attempted filibusters is best measured by the number of votes to invoke cloture. Cloture ends debate and prevents members from filibustering and possibly holding up a measure indefinitely. A supermajority vote of three-fifths of the full Senate is required to invoke cloture on legislation.

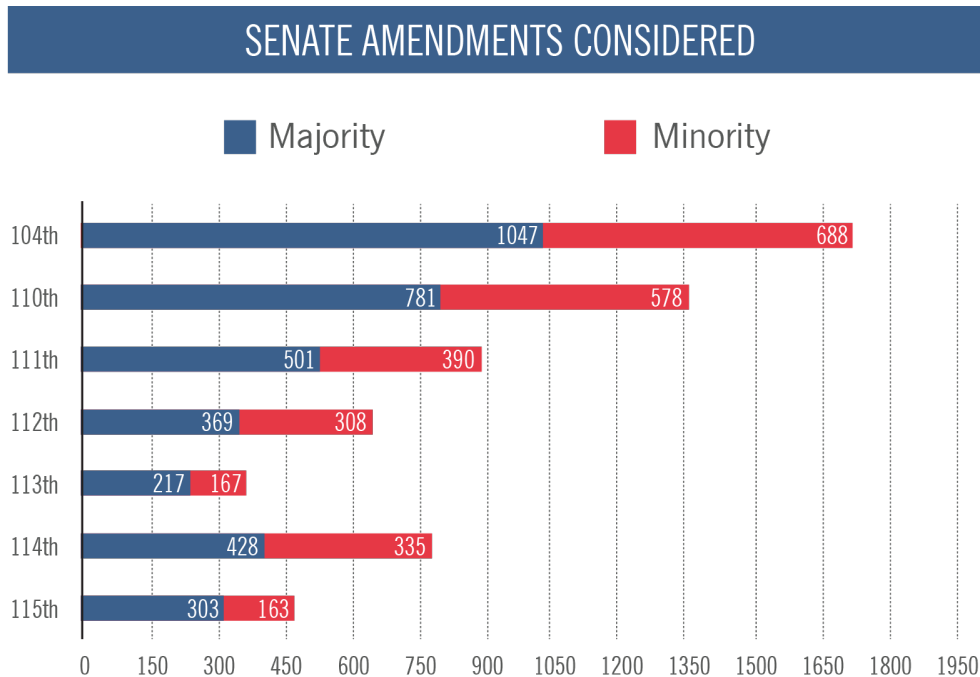


Attempts to filibuster legislation fluctuated between the 110th through the 115th congresses. At the beginning of this period, when Democrats were in the majority and President George W. Bush was in the final two years of his term, there were 111 cloture votes. Cloture votes then dropped to 79 in the 111th, 62 in the 112th, and 68 in the 113th congresses. During these years, the first six of Barack Obama's presidency, Democrats were still in the majority. In the 114th Congress, the last two years of Obama's term, Republicans were in the majority. Cloture votes increased dramatically to 121, which is comparable to the number of cloture votes during the 110th Congress. During the 115th Congress, which coincided with the first two years of Donald Trump's presidency, Republicans were still in the majority. Cloture votes dropped to just 40, the lowest of the period covered by the index.

In each of these congresses—except the 114th—cloture was invoked most of the time, meaning attempts to filibuster were unsuccessful in blocking measures from further consideration.

Amendments

Senators' ability to offer amendments should only be restricted in limited circumstances. For most bills, BPC recommends the Senate give priority consideration to a minimum of 10 relevant amendments offered by members of the minority and majority parties.



The number of amendments considered by the Senate generally declined from the 110th through the 115th congresses. From the 110th to the 113th congresses, when Democrats were in the majority, the number of amendments considered dropped from 1,359 to 384. After Republicans assumed the majority in the 114th Congress, amendments increased to 763, but the number dropped back to 466 during the 115th Congress. Comparatively, in the 104th Congress, the Senate considered 1,753 amendments.

The leadership of the majority party needs to reverse this trend and create more opportunities for members to participate in the legislative process through amendments.

Conference Committees

Conference committees are a mechanism for the House and Senate to reconcile differences between versions of bills. Ideally, after each chamber has passed their version of a bill, a conference committee made up of members from the minority and majority of each chamber will be appointed to negotiate final legislative language for consideration in both chambers. Conference committees put rank-and-file members, committee chairs, and committee ranking members at the center of deliberations rather than relying on party leaders to negotiate a compromise.

BPC recommends that important legislation should have the benefit of conference committees to reconcile differences between the House and Senate.

| CONFERENCE COMMITTEES | | | | | | |
|-----------------------|-------|-------|-------|-------|-------|-------|
| 55 | 14 | 13 | 7 | 3 | 7 | 5 |
| 104th | 110th | 111th | 112th | 113th | 114th | 115th |

Conference committees were not used to their full potential during the 110th through 115th congresses. Over that period, the number of conference committee reports adopted by both chambers dropped from 14 in the 110th to five in the 115th. The 113th Congress used conference committees the least, with just three conference reports adopted.

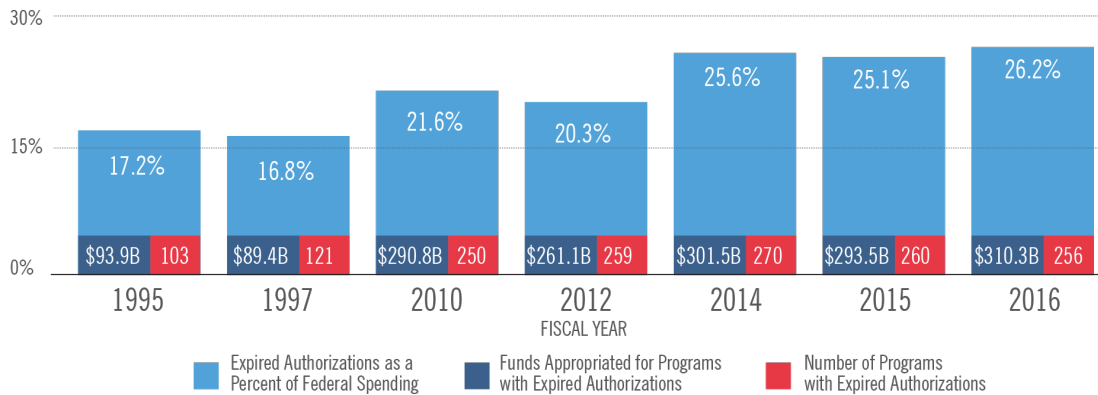
Conference committees should play a greater role in facilitating agreements between the House and Senate on legislation.

Congressional Oversight

One of Congress’s chief oversight duties is to review government programs and renew, adjust, or eliminate their statutory authorizations. BPC recommends that committee chairs take a greater lead in passing authorization bills after thorough oversight hearings and full committee deliberations.

Congress’s progress on conducting this essential oversight can be measured by identifying federal programs that continue to be funded even though their underlying authorization has expired.

APPROPRIATIONS WITH EXPIRED AUTHORIZATIONS



Congress has neglected its duty to review and reauthorize federal programs in recent years. The number of expired authorizations ranged from 250 to 270 during the period covered by the index. Perhaps more concerning, these programs grew as a percent of overall spending, meaning that a larger share of federal funding was going to programs that had not been recently reviewed by Congress.

Budget and Appropriations Process

Fundamental to Congress is the power of the purse. With that power comes the basic duty to set a budget and fund the federal government. To do so, Congress and the president must take certain actions within statutory deadlines.

The process should begin when, by law, the president submits a budget proposal to Congress by the first Monday in February. Congress is then expected to adopt a budget resolution by April 15, which sets overall spending limits for government programs for the following fiscal year. Congress then starts writing 12 appropriations bills to approve spending for various government agencies and programs. Those bills should be passed and signed into law by September 30 to avoid a gap in funding or a government shutdown.

When these deadlines are not met, Congress often takes stopgap measures, such as combining all or several of the 12 appropriations bills into one piece of legislation, often called an “omnibus” bill. Another option is to pass a continuing resolution to temporarily fund the government until a later specified date.

BUDGET AND APPROPRIATIONS TIMELINE

| | 104th Congress (Clinton) | | 110th Congress (Bush) | | 111th Congress (Obama) | | 112th Congress (Obama) | | 113th Congress (Obama) | | 114th Congress (Obama) | | 115th Congress (Trump) | | |
|---|--------------------------|--------------|-----------------------|-------|------------------------|-------|------------------------|-------------|------------------------|--------------|------------------------|-------------|------------------------|----------------|-------------|
| Fiscal Year | 1996 | 1997 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2017 | 2018 | 2019 |
| President Submits Budget by First Monday in February | Yes | 43 Days Late | Yes | Yes | 94 Days Late* | Yes | 7 Days Late | 7 Days Late | 65 Days Late | 30 Days Late | Yes | 9 Days Late | - | 107 Days Late | 7 Days Late |
| Congress Adopts Budget Resolution by April 15 | Jun 29 | Jun 13 | May 17 | Jun 5 | Apr 29 | X | X | X | X | X | May 5 | X | Jan 13 ** | Oct 26 | X |
| House Committee Action on Appropriations Bills by Start of Fiscal Year | 12/13 | 13/13 | 12/12 | 5/12 | 12/12 | 2/12 | 9/12 | 11/12 | 10/12 | 10/12 | 12/12 | 12/12 | - | 12/12 | 12/12 |
| House Floor Action on Appropriations Bills by Start of Fiscal Year | 13/13 | 13/13 | 11/12 | 0/12 | 12/12 | 2/12 | 6/12 | 7/12 | 4/12 | 7/12 | 6/12 | 6/12 | - | 0/12 | 9/12 |
| Senate Committee Action on Appropriations Bills by Start of Fiscal Year | 13/13 | 13/13 | 12/12 | 9/12 | 12/12 | 11/12 | 11/12 | 11/12 | 11/12 | 9/12 | 12/12 | 12/12 | - | 8/12 | 12/12 |
| Senate Floor Action on Appropriations Bills by Start of Fiscal Year | 12/12 | 9/13 | 7/12 | 0/12 | 9/12 | 0/12 | 1/12 | 0/12 | 0/12 | 0/12 | 1/12 | 4/12 | - | 0/12 | 9/12 |
| Regular Appropriations Bills Enacted by Start of Fiscal Year | 0/13 | 13/13 | 0/12 | 3/12 | 1/12 | 0/12 | 0/12 | 0/12 | 0/12 | 0/12 | 0/12 | 0/12 | 0/12 | 0/12 | 5/12 |
| Number of Continuing Resolutions to Prevent Funding Gap | 13 | 0 | 4 | 3 | 2 | 8 | 5 | 2 | 4 | 5 | 3 | 2 | 1 | 5 | 2 |
| Days Spent in Gov't Shutdown / with Funding Gap | 5 Days; 21 Days | - | - | - | - | - | - | - | 16 Days | - | - | - | - | <1 Day; 3 Days | 13 Days |
| Enacted as Stand Alone Measures | 8 | 7 | 1 | 0 | 6 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Enacted in Consolidated Measure(s) or Continuing Resoluion | 5 | 6 | 11 | 12 | 6 | 12 | 12 | 12 | 12 | 11 | 12 | 1 | 11 | 12 | 12 |

*Transition year where the outgoing president had not submitted a budget resolution for the upcoming fiscal year.

**Of the following year.

X - Not adopted

Budget

Of the 12 fiscal years that took place between the 110th and 115th congresses, the president submitted the administration's budget proposal on time in just four of them. For its part, Congress never adopted its budget resolution on time in any of these 12 fiscal years. For more than half of the fiscal years in the index, no budget resolution was adopted at all.

Appropriations

The first step in the appropriations process requires the House and Senate appropriations committees to report bills that fund various areas of government. There are currently 12 separate bills. These should be adopted in advance of the start of the fiscal year and with enough time for them to be enacted before September 30. The House Appropriations Committee did so for six of the 12 fiscal years and the Senate Appropriations Committee did so for five.

The second step is for the House and Senate to each pass the 12 appropriations bills before the start of the fiscal year. The Senate did not accomplish this in any of the 12 recent fiscal years covered by the index, and in six of the fiscal years, the Senate failed to pass any of the 12 standalone appropriations bills at all. The House only passed all 12 bills once during this period. For two fiscal years, it passed none of the 12 appropriations bills.

The third and final step in the regular appropriations process is for both chambers to enact final versions of the 12 bills before the September 30 start of the fiscal year. Congress did not achieve this in any of these years. Instead of enacting the 12 bills individually, Congress sometimes took a shortcut and consolidated all 12 into a single omnibus bill or into a series of smaller bills. This was a regular practice from the 110th through the 115th congresses.

When Congress does not enact all 12 bills on time, it typically passes a continuing resolution to temporarily fund the government. Congress had to do this at least once for each fiscal year in this period. A lapse in funding—also called a “shutdown”—takes place when a continuing resolution cannot be agreed to before the previous fiscal year's appropriation expires. This happened four times in the last 12 fiscal years.

The budget and appropriations processes completely broke down in recent years. Congress needs to dedicate more of its attention to these duties. BPC also recommends that Congress move to a biennial schedule for these processes rather than attempting to complete them each year.

Conclusion

The 110th through 115th congresses (2007-2018) were marked by light work schedules in Washington, a lack of regular order in the legislative process, and neglect of Congress's most basic duties to oversee and fund the government. Both Democrats and Republicans are responsible for this dysfunction. In pursuit of their agendas while in the majority, both parties circumvented the committee process and restricted the minority's ability to debate and amend legislation. In the minority, both parties focused their attention more on obstruction than on cooperation and compromise. Under these conditions and with little time spent in the Capitol, it is no wonder Congress could not carry out even its fundamental spending and oversight responsibilities.

It's time for Congress and its leaders to commit to running the institution better and to reviving Congress's position as the first branch of the U.S. government.

Notes

Notes



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