

## CHAPTER ELEVEN



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# Congress

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# CONGRESS

*By Richard B. Beutel*

The genius of the American political system lies in its separation of powers—the core constitutional principle of checks and balances regulating the governance of the American people. Appointees in a new administration will naturally initially be focused upon the many operational challenges confronting their agencies. However, new officials must nonetheless be sensitive to the role of Congress in the American system of government. Managing the agency's relationship with Congress requires thought, care, and patience.

The inevitable tension between Congress and the executive branch often creates inter-branch conflict. It is imperative to manage this tension. It is best to think of Congress as a difficult in-law—one whose goodwill and cooperation is essential to a happy marriage. Successfully navigating this relationship is essential to the agency's mission success.

The power of Congress over an executive branch agency stems from three discrete responsibilities rooted in the Constitution:

- **Authorization:** Congress creates agencies and revises programs through the authorization and reauthorization process.
- **Appropriations:** Congress enacts the budgets necessary for agencies to operate through the appropriations process.
- **Oversight:** Congress monitors how agencies spend taxpayer money through its oversight process.

Each of these responsibilities must be accommodated under our system of government because only Congress has the authority to appropriate budget dollars to federal agencies, and Congress plays a key role in overseeing the agencies in terms of day-to-day operational effectiveness.

It is these multiple roles—authorization, appropriations, and oversight—that create the imperative that senior agency executives develop and maintain an effective relationship with Congress.

## What Motivates Congress?

In approaching Congress, it is helpful to know what motivates individual members of Congress. They appear to be primarily driven by a combination of constituent concerns and reelection. Remember that representatives in the House are reelected every two years, while reelections occur every six years in the Senate. House members, accordingly, are in constant reelection mode because of their election cycle short tenure. As a result, House hearings often tend to be politically charged, superficial, and headline-focused. In terms of the agencies, most “gotcha” style hearings happen in the House.

The Senate is very different from the House. The Senate plays the role of the deliberative body, and it is intended to be a counterweight to the populist currents that flow through the House. As a result, Senate hearings usually tend to be more deliberative, substantive, and in-depth.

## **The Importance of Fostering Openness and Transparency with Congress**

Nothing will draw unwelcome congressional attention faster than appearing to stonewall legitimate congressional inquiries. Therefore, it is common sense to develop open and transparent communications with Congress. Senior agency officials must ensure that agency staff are honest, transparent, and responsive to congressional inquiries.

Each agency has an Office of Legislative Affairs. This office is responsible for day-to-day interactions with Congress. The office is an essential stakeholder in the agency's relationship with Congress. Over time, however, legislative staff may begin to view their jobs in adversarial terms with Congress. This can lead to staffers obstructing or hampering legitimate congressional inquiries. Agency executives must ensure that their legislative office understands that the job is to facilitate transparent, open communications and not to appear to obstruct congressional oversight, however unfair that perception may be for the legislative affairs staff.

Agency executives are responsible for ensuring that congressional inquiries are answered in a full and timely fashion. While congressional inquiries can become onerous and expensive, timely and complete responses are essential to preserve the trusting relationship. Don't resort to cheap tricks, such as dumping heavily redacted documents on congressional staffers on a Friday at 5 p.m. or before a major holiday. Don't redact documents in an unjustifiable fashion. Provide the responses fully, completely, on time, and in digital form, if at all possible.

If the response to a congressional inquiry is delayed, agency leadership should take the lead to proactively explain why the delay has occurred and offer a credible timeframe for a full response. If critical information is omitted, explain why it is omitted in a complete and transparent fashion.

Agency officials should note that the courts interpret attempts to withhold agency documents and information on the grounds of attorney-client privilege and executive deliberative privilege in a very stringent fashion. Congress also views them as attempts to stonewall or obstruct congressional oversight. Take care when relying upon such arguments as the basis to withhold information from Congress.

## **Interacting with Authorizing Committees**

Most congressional committees are authorizing committees. These committees have jurisdiction over the legislation that created your agency and its

programs. These committees typically have more in-depth understanding of how your agency works and have a longer-term view of issues.

Many programs are authorized for a time-limited period as a way of ensuring a look back at how programs are managed and how effective they are. When you begin work at your agency, find out the timeframes for various programs' reauthorizations; oftentimes these will frame your action timetable. See if your agency has program evaluations underway on the effectiveness of existing programs; these can be useful foundations for reauthorizing programs or reframing them in order to be more effective in the future.

Authorizing committees also conduct oversight hearings on the ongoing operations of programs, not just when they are scheduled to be reauthorized.

## **Interacting with Appropriations Committees**

The congressional appropriations process creates many challenges for the executive branch agencies. Along with oversight responsibilities, Congress also holds the "power of the purse strings" for each federal agency. This constitutionally-mandated prerogative is closely guarded by the various appropriations subcommittees that have jurisdiction over your agency's programs. Therefore, a smart agency executive will take pains to develop individual relationships with the appropriations committee congressmen (and their staffers) that govern the agency budget. Don't wait for a budget crisis or funding challenge to cultivate these relationships. It is essential to establish an open and transparent line of communication with agency appropriators.

In addition, keep in mind that the worst thing an agency executive can allow is for the appropriators to be surprised or blindsided by bad news. It is always better to meet proactively, in regular dialogue, and to carefully honor a relationship of trust and transparency with congressional appropriators. Only in this fashion can agencies ensure that they receive the necessary resources to successfully achieve their missions.

## **Interacting with Oversight Committees**

Ensuring that your congressional communications are transparent, credible, and complete in response to congressional inquiries does not end with the congressional oversight committees. Other oversight stakeholders, such as GAO, act as the research arm of the legislative branch. GAO should also be extended full and transparent cooperation by agency officials, as cooperation with its staff is essential for open and transparent congressional relationships.

When it comes to congressional oversight, agencies should not regard Congress as an adversary. Constitutionally, Congress and the executive branch have a joint responsibility to deliver services to the American people. When Congress comes calling, they are just doing their jobs.

## Other Congressional Dynamics

Congress is not a unified entity any more than the executive branch or an administration. You need to be sensitive to such dynamics in order to be effective. For example:

- **There are well-known differences between Democrats and Republicans.** Sometimes, however, the two sides will join forces on issues when there are House vs. Senate prerogatives at stake, or when committee jurisdiction over an issue, program, or agency is in contention. These are not uncommon.
- **Agencies often have to deal with different committees on various issues.** Issues that fall into the bounds of authorization, appropriation, and oversight committees are more common. But for many agencies, there are oftentimes multiple authorization committees and several different appropriation subcommittees involved. Some agencies have a large number of committees with jurisdiction over the agency or programs. For example, 77 different committees or subcommittees reportedly oversee the Environmental Protection Agency, and the Department of Homeland Security reports to 108 committees and subcommittees. The committees have different agendas and priorities and they typically do not coordinate with each other, leaving your agency to navigate issues.
- **There are also differences between committee staffs and the staffs of individual members of Congress.** Oftentimes, the committee staffs have more subject matter expertise. Generally, members' staffs are calling about individual constituent issues. Knowing the differences in who is calling can help prioritize and frame any responses.

In general, as noted earlier, your legislative affairs office can help you navigate the eccentricities of the congressional process.

Finally, if not properly handled, congressional relations can greatly hamper the effective operation of a federal agency. Poor communications, distrust, and acrimony with members of Congress and their staff can result in lost funding, onerous and lengthy oversight, and the agency's failure to achieve its goals and aspirations. Agency and congressional relationships are an area fraught with challenges that must be carefully managed.

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