

DRAFT REPORT FOR THE
ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

CONGRESSIONAL CONSTITUENT SERVICE INQUIRIES

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This report was prepared for the consideration of the Administrative Conference of the United States. The opinions, views, and recommendations are those of the author and do not necessarily reflect the views of the Conference (including its Council, committees, or members), except where recommendations of the Conference are cited.

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I. Executive Summary [Forthcoming]

II. Project Overview

Congressional constituent service requests are a critical aspect of the relationship between the legislative and executive branches of the federal government. Members of Congress frequently receive requests for assistance from their constituents regarding federal agencies' actions or inactions. These requests can range from resolving relatively straightforward issues related to social security benefits and helping individuals obtain passports to more complex regulatory issues.

Members of Congress rely on federal agencies to respond promptly and effectively to these requests. In fact, since the congressional reforms of 1946, legislative staffs in Washington, D.C., and district offices have expanded greatly, in large part to perform constituent services.¹ Agencies' responses to congressional constituent service requests are essential for ensuring that the government serves the needs of the people it represents. Professor Jack Beermann has noted that helping constituents navigate complex government processes is an informal method of congressional involvement in the administration of law.² While most inquiries are not directly related to an agency's policy making, congressional involvement can pressure the agency to reassess or change policy.³ Constituent service inquiries have become a key tool for congressional oversight available to every member, and not just committee or subcommittee chairs,⁴ granting members and their staff a ground level view into how agencies are administering the programs or systems that affect residents of their state or district.

The Administrative Conference of the United States (ACUS) has identified significant variations among agency procedures regarding constituent service inquiries. This study aims to better understand the current processes agencies use to respond to constituent service inquiries and the effectiveness of the agency responses to such inquiries, identify best practices, and make recommendations for improving agency processes. To achieve this aim, I conducted a series of related research tasks.

¹ As far back as the 1970s, political scientist Morris P. Fiorina noted this trend, which has only grown since then. *See e.g.*, Morris P. Fiorina, *Congress: Keystone of the Washington Establishment* 58 (Yale U. Press, 2nd 1977); Larry Liebert, *Hill's Growth Industry: Constituent Service*, 52 Cong. Q. Wkly. Rep. 1758 (1994) (noting congressional staff assigned to constituent services tripled between 1972 and 1990).

² *See* Jack M. Beermann, *Congressional Administration*, 43 San Diego L. Rev. 61, 138–139 (2006).

³ *Id.*

⁴ *See* Jonathan LeWallen, *Cybersecurity Information Sharing and Congress's Oversight Role*, 67 Wayne L. Rev. 151, 162 (2020).

During the fall of 2023, I surveyed the constituent service staff for several members of Congress⁵ on how various agencies respond when sent constituent service inquiries.⁶ The survey also asked staff what, in their opinion, causes challenges or difficulties for agency personnel when addressing these requests. While this project does not address congressional policies and procedures related to constituent services, it remains important to understand the expectations and experiences of congressional staff when they engage with agencies while assisting constituents.

With the information gleaned through the congressional survey, I interviewed relevant personnel at various agencies about challenges, efficiencies, or best practices they encounter while managing constituent service inquiries and any related agency policies and procedures, including information based on the following questions:

- What processes and procedures do federal agencies currently use to respond to congressional constituent service requests?
- How do federal agencies communicate with congressional offices regarding constituent service requests?
- What are the staffing levels for responding to constituent inquiries and what training do they receive on agency procedures for responding to congressional constituent service requests?
- Are agency procedures for these responses available to the public?
- What metrics do federal agencies use to measure the success of their responses to congressional constituent service requests?⁷

This report presents the information gathered and a set of proposed best practices for federal agencies in responding to constituent service inquiries.

⁵ I reached out to the 15 current members of Congress who have been nominated for the Congressional Management Foundation's (CMF) Constituent Service Award since 2018. That award is presented annually by CMF to members whose offices "demonstrate[] excellence through...specific, methodical, and consistent processes for achieving measurable results in constituent service." See CONGRESSIONAL MANAGEMENT FOUNDATION, CONSTITUENT SERVICES, https://www.congressfoundation.org/index.php?option=com_content&view=category&id=114&layout=blog&Itemid=585 (last visited March 1, 2024).

⁶ See Appendix A for the congressional staff survey questions.

⁷ See Appendix B for the agency personnel questions.

III. Constituent Service: Background and Case Study

Constituents often expect their members of Congress to provide assistance when dealing with the federal government, especially executive branch agencies.⁸ Constituent service, or “casework,” is closely related to other roles of the member including representation and oversight.⁹ This section examines casework from several angles. First, it will explore the kinds of casework assistance that members of Congress provide to constituents. Next, it will briefly describe the nature and effect of legal and ethical limitations on the assistance that members and agencies can provide in response to a constituent request. Following that review, this section will assess why casework is viewed as important by members of Congress, explore a recent example of congressional intervention precipitated by a member’s constituent service work, and conclude with an exploration of common criticisms of congressional involvement in casework.

Members of Congress help their constituents navigate the sprawling federal bureaucracy, from “simple replacement of lost benefits checks” to more complex problems such as “government approval processes” (e.g., approval or denial of applications for public benefits and licenses).¹⁰ Members field thousands of constituent inquiries a year and may devote years resolving more complex requests. Common casework requests include:

- Applying for or obtaining federal benefits including benefits from the Social Security Administration, Department of Veterans Affairs, or the Department of Education;
- Assistance for persons immigrating to the United States or applying for U.S. citizenship;
- Explaining government activities or decisions;
- Gaining admission to a military service academy; and
- Seeking relief from an adverse decision made by an agency.¹¹

The varied nature of these inquiries requires members and their staff to act as investigators, facilitators, ombudsmen, and, at times, advocates for a wide range of diverse

⁸ See R. ERIC PETERSEN, CONG. RSCH. SERV., RL 33686, ROLES AND DUTIES OF A MEMBER OF CONGRESS: BRIEF OVERVIEW 2 (2022).

⁹ *Id.* at 4 (identifying overlapping roles for members of Congress to include: representation, legislation, constituency service casework, oversight and investigation, advice and consent (senators only), congressional leadership, personal office management, and electoral activity).

¹⁰ Beermann, *supra* note 2, at 138-139. As Rep. Lee Hamilton (D-Indiana) noted, “A large part of my work involves helping Hoosiers who are caught up in federal red tape or who feel lost in trying to deal with the government bureaucracy. Although not the kind of thing that gets a lot of public attention, working daily to help individual Hoosiers is one of my most important roles as a Member of Congress.” 142 CONG. REC. 19015–16 (1996).

¹¹ R. ERIC PETERSEN AND SARAH J. ECKMAN, CONG. RSCH. SERV., RL33209, CASEWORK IN A CONGRESSIONAL OFFICE: BACKGROUND, RULES, LAWS, AND RESOURCES 1 (2023).

stakeholders, from individual constituents and local governments, businesses, and other entities in their state or district regarding the effect of federal legislation or regulation, to nonprofit organizations seeking financial assistance under federal grant programs.¹² Whereas most of the work for individual constituents concerns obtaining affirmative benefits from the federal government, casework undertaken on behalf of local governments and business interests may entail “resisting” agency efforts to enforce regulations or influencing how an agency interprets a statute.¹³ Most casework, however, is mundane, dealing mainly with simple bureaucratic errors and procedures.¹⁴ Although most casework is resolved favorably, in cases that are not, the congressional office typically offers the constituent information about appeal rights or any alternative opportunities for assistance.¹⁵

To accommodate the growing volume of casework, the number of congressional staff dedicated to resolving these requests has increased substantially over the last several decades.¹⁶ These constituent service staffers, often designated as “caseworkers” or “constituent service representatives,” typically have several duties:

- Responding to casework inquiries from constituents;
- Acting as a liaison with federal, state, and/or local agencies on behalf of constituents;
- Responding to casework-related correspondence; and
- Monitoring and updating the member and district or state director on issues within the staffer’s areas of responsibility.¹⁷

These staff members typically act as the liaison between the constituent and agency, learn the laws and regulations affecting the constituent’s case, learn agency operating policies and procedures, and build relationships with relevant federal agency personnel.¹⁸ Staff engaging with constituents must also be prepared to work with people facing significant problems and engage with them on a highly personal and emotional level.¹⁹ Constituent service staff tend to see themselves as aggressive problem solvers and the constituent’s advocate, meaning that the constituent always gets the benefit of the doubt. Further, the caseworkers are advised to be both

¹² Petersen, *supra* note 8, at 3–4. *See also* Petersen & Eckman, *supra* note 11, at 1.

¹³ *See* Ronald M. Levin, *Congressional Ethics and Constituent Advocacy in an Age of Mistrust*, 95 Michigan L. Rev. 1, 17 (1996) (noting that typical cases in this category are tax, immigration, and environmental protection issues).

¹⁴ Beermann, *supra* note 2, at 370–371.

¹⁵ 142 CONG. REC. 19015–16 (1996).

¹⁶ Beermann, *supra* note 2, at 370–371. *See also* note 1.

¹⁷ *See* R. ERIC PETERSEN, CONG. RSCH. SERV., R46262, CONGRESSIONAL STAFF: DUTIES, QUALIFICATIONS, AND SKILLS IDENTIFIED BY MEMBERS OF CONGRESS FOR SELECTED POSITIONS (2021).

¹⁸ *Id.*

¹⁹ *Id.*

positive and pragmatic, making it clear to constituents that while they will advocate strongly on their behalf, they cannot guarantee a positive result (i.e., the constituent’s desired outcome).²⁰

Congressional staff and agency personnel typically work well with each other, but “prolonged negotiation, cajolery, and browbeating” are also part of casework.²¹ Members of Congress spend little time contacting the agencies personally, opting instead to facilitate resolution at a staff-to-staff level and regularly monitor the outcomes of their staff’s efforts. However, in some major cases, such as those of interest to multiple constituents or those in which the member’s clout is needed to counteract perceived agency resistance, members themselves may become personally involved.²²

Limitations on Casework

Although casework is a key congressional function, ethical rules and statutes limit what a member of Congress or their staff may do on behalf of constituents.

House and Senate ethics rules limit the scope of permissible congressional casework-related activity.²³ Members may:

- Request information or a status report;
- Urge prompt consideration;
- Arrange for interviews or appointments;
- Express judgments;
- Call for reconsideration of an administrative response that the Member believes is not reasonably supported by statutes, regulations, or considerations of equity or public policy; or

²⁰ See Tom Tillett, *Congressional Casework*, CONGRESSIONAL MANAGEMENT FOUNDATION 13 (Nov. 23, 2016), https://www.congressfoundation.org/storage/documents/Misc/congressional_casework_guide.pdf (last accessed March 21, 2024). Mr. Tillett served for twenty years as District Chief of Staff for Congressman Joe Pitts (PA-16).

²¹ *Id.* (citing Johannes at 101–105).

²² *Id.* (citing Johannes at 153 (noting that the goal of having the member contact the agency directly is to “impress on an administrator that the matter is, in fact, important.”)).

²³ See U.S. Congress, House Committee on Ethics, *House Ethics Manual*, 2022 Print, 117th Cong., 2nd sess., 2022, at 299–322 (<https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf>); Senate Rule XLIII, (<https://www.rules.senate.gov/rules-of-the-senate/#D694623C-BA95-9DAD-5C90-8277B7DD9A9E>); and U.S. Congress, Senate, Select Committee on Ethics, *Senate Ethics Manual*, 108th Cong., 1st Sess., S. Pub. 108-1 (Washington: GPO, 2003), at 177-185 (<http://ethics.senate.gov/downloads/pdf/manual.pdf>).

- Perform any other service of a similar nature consistent with the provisions of the rules of the House or Senate.²⁴

At the same time, Senate rules prohibit casework assistance based on contributions or providing services to organizations in which the senator has a political, personal, or financial interest.²⁵ The House Ethics Manual provides that members should not make prohibited, off the record comments, receive things of value for providing casework assistance, or improperly pressure agency officials.²⁶

A challenge facing congressional offices when performing casework is the common public perception that members of Congress “can initiate a broad array of actions resulting in a speedy, favorable outcome.”²⁷ The ethical rules discussed above, along with federal statutes and regulations, however, curtail this ability.

For example, in formal proceedings, the Administrative Procedure Act prohibits *ex parte* communications by members of Congress and their staff on behalf of their constituents to agency officials on the merits of matters under their formal consideration.²⁸ This statute intends to preserve the due process rights of all parties to administrative proceedings.²⁹ The Act, however, does not affect informal rulemaking proceedings and other agency actions not required to be on the record.³⁰ Further, members of Congress may make status requests and refer constituent correspondence to agencies.³¹ Because even status reports and requests for information may be

²⁴ Petersen & Eckman, *supra* note 11, at 3.

²⁵ *Id.* (citing Senate Rule XLIII).

²⁶ *Id.* (citing U.S. Congress, House Committee on Ethics, *House Ethics Manual*, 2022 Print, 117th Cong., 2nd sess., 2022, at 300–316, (<https://ethics.house.gov/sites/ethics.house.gov/files/documents/2022/House-Ethics-Manual-2022-Print.pdf>)).

²⁷ *Id.* at 2.

²⁸ 5 U.S.C. § 557(d); *see also* U.S. House of Representatives Committee on Ethics, “Off-the-Record Ex Parte Communications” (<https://ethics.house.gov/casework/record-ex-parte-communications>) (last accessed March 13, 2024) (“An *ex parte* communication is an oral or written communication made without proper notice to all parties and not on the public record, from an interested person outside the agency to a member of the agency, an administrative law judge, or an employee involved in the decision-making process.”). Formal proceedings include adjudications and rulemakings that require formal hearings and a decision on the record. *Id.*

²⁹ *Id.*

³⁰ *Id.* (citing Senate Comm. on Gov’t Operations, *Government in the Sunshine Act, Report to Accompany S. 5*, S. Rep. 94-354, 94th Cong., 1st Sess. 35 (1975)); *see also* Government in the Sunshine Act, S. Conf. Rep. 94-1178, 94th Cong., 2d Sess. 29 (1976). The Committee on Ethics offer examples as development of agency policy and establishing budgetary priorities where members of Congress and their staff can offer constituent viewpoints without violating the Act.

³¹ *Id.* citing 5 U.S.C. § 551(14); S. Conf. Rep. 94-1178 at 29 (status requests); House Comm. on Gov’t Operations, *Government in the Sunshine Act*, H. Rep. 94-880, 94th Cong., 2d Sess., pt. I, at 21-22 (1976), “While the prohibitions on *ex parte* communications relative to the merits apply

“an indirect or subtle effort to influence” the outcome of proceedings, the House Ethics Committee recommends that members of Congress put all communications with agencies in writing to be part of the record and available to all interested parties.³²

Congressional members, their staff, and the agencies they engage with must also observe the various privacy laws and regulations that govern what information may be released to a third party. The two most relevant statutes are the Privacy Act of 1974³³ and the Health Insurance Portability and Accountability Act of 1996 (HIPAA).³⁴

The Privacy Act requires agencies that maintain records with a person’s identifiable information obtain a release from that individual to share information with any other entity.³⁵ Agencies, therefore, typically cannot provide information about a constituent’s request without a Privacy Act release signed by the constituent.³⁶ Likewise, HIPAA requires written authorization for a health insurer or providers to use or disclose identifiable information to most individuals or entities.³⁷

Congress attempted to “modernize and simplify” the process of obtaining constituent permission for an agency to disclose information through the Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (CASES Act).³⁸ To achieve these ends, the Act directs the Office of Management and Budget (OMB) to issue guidance that must:

- Require agencies to accept electronic identity proofing and authentication processes for the purpose of allowing individuals to electronically submit their consent to a third party’s accessing their protected information or the disclosure of their records to such a third party;
- Provide a template for electronic consent and access forms and requires agencies to make such forms available on their websites; and

to communications from Members of Congress, they are not intended to prohibit routine inquiries or referrals of constituent correspondence.”

³² *Id.*

³³ Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (codified at 5 U.S.C. §552a). Agencies have promulgated regulations concerning the Privacy Act. *See e.g.*, the U.S. Department of the Treasury’s regulations, C.F.R. Title 31, Subtitle A, Part 1 “Disclosure of Records” (amended March 5, 2024) (<https://home.treasury.gov/footer/privacy-act>) (last accessed March 13, 2024).

³⁴ Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 100 Stat. 2548 (codified at 42 U.S.C. §201). There are also agency specific privacy statutes, such as those governing the Internal Revenue Service (*see* 26 U.S. Code §6103).

³⁵ Petersen & Eckman, *supra* note 11, at 4.

³⁶ *Id.*

³⁷ *Id.* (citing 45 C.F.R. Parts 160, 164). Constituents seeking benefits related to Social Security disability, Medicare, disaster relief, workers’ compensation, and immigration, among others, often need to provide HIPAA releases.

³⁸ *Id.* at 5 (citing, P.L. 116-50, codified at 5 U.S. Code §101.) The CASES Act replaced requirements for verbal or email authorizations, or “wet” signatures on paper forms.

- Require that agencies accept these electronic consent and access forms “for the purpose of authorizing disclosure of the individual’s records to another entity, including a congressional office.”³⁹

The Act further provides that all agencies must bring their identity proofing and privacy act waiver procedures into line with the OMB guidance within one year of its issuance.⁴⁰ In November 2020, the OMB issued the required implementing guidance⁴¹ to agencies, which then had until November 21, 2021, to roll out the new authorization policies and systems it mandated. As of 2023, however, agency compliance with the guidance “is questionable,” and “most agencies” are not able “to consistently accept Privacy Act or other privacy releases” in a manner consistent with the CASES Act.⁴² A January 2023 survey of 85 agency websites conducted by the Congressional Research Service shed light on the scope of this problem:

Of the 85 entities assessed, 17 had web addresses that OMB directed as the landing page (www.[agency].gov/privacy) for access to CASES Act-mandated forms. 66 had privacy landing pages available at a wide variety of web addresses. Two entities had no identifiable privacy landing pages. Of the 83 entities with privacy landing pages, none appeared to provide direct access to CASES Act-mandated forms...Ten entities appeared to require paper-only submission for Privacy Act releases at other web addresses. Six entities provide CASES Act-mandated forms or similar templates but require different processes to submit requests; two of those agencies require applicants to provide written signatures, while another responds to all requests via the U.S. Postal Service.⁴³

³⁹ Creating Advanced Streamlined Electronic Services for Constituents (CASES) Act of 2019, Pub. L. 116-50, 133 Stat. 1073, 1074.

⁴⁰ *Id.*

⁴¹ *See* OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, M-21-04, MODERNIZING ACCESS TO AND CONSENT FOR DISCLOSURE OF RECORDS SUBJECT TO THE PRIVACY ACT (2020) (available at <https://www.whitehouse.gov/wp-content/uploads/2020/11/M-21-04.pdf>) (last accessed March 20, 2024).

⁴² *Id.*

⁴³ R. ERIC PETERSEN, CONG. RSCH. SERV., IF12382, THE CASES ACT: IMPLEMENTATION CHALLENGES 1 (April 13, 2023) (available at <https://crsreports.congress.gov/product/pdf/IF/IF12382>) (last accessed March 20, 2024).

Why is casework important to members of Congress?

Some members see casework as integral to their Congressional duties, while others see it as necessary to maintain and build political support. The member's perspective will affect his or her office's "level and intensity of congressional casework."⁴⁴ As Professor Jack Beermann notes, "[t]he primary function of casework is to win loyal voters, sort of pork barrel writ small."⁴⁵ While political considerations are an important factor in the provision of constituent services, other key considerations are giving constituents a voice and advocate when they engage with the sprawling federal bureaucracy.

Beyond serving political and public service imperatives, constituent casework also provides Congress with an important method of "micro-level" oversight over the programs administered by executive branch agencies.⁴⁶ Through constituent service work, members and their staffs gain insight into how government programs are working and how agencies are applying statutes, and perhaps identify larger problems that should be addressed by more formal oversight or future legislation.⁴⁷ Casework may give members "early warning about whether an agency or program is functioning as Congress intended and which programs or policies might warrant additional institutional oversight or further legislative consideration."⁴⁸

A member of Congress who ignores constituent casework does so at their political peril. Members can win votes from not only people they have helped, but also from the friends and

⁴⁴ Petersen & Eckman, *supra* note 11, at 1.

⁴⁵ Beermann, *supra* note 2, at 370.

⁴⁶ SARAH J. ECKMAN & R. ERIC PETERSEN, CONG. RSCH. SERV., R44696, CASEWORK IN CONGRESSIONAL OFFICES: FREQUENTLY ASKED QUESTIONS 6 (2021)

⁴⁷ *Id.* at 2. Although most formal oversight of the executive branch is carried out by the various Congressional committees, individual members can gain valuable insights into the workings of the federal agencies and the application of the laws through providing constituent services. Members and their staff aides are "mindful of the relationship between casework and the oversight function." Casework might become legislative initiatives to resolve problems faced by many constituents and caseworkers may reach out to subcommittees and committees staff about problems with the agency or program in question, leading to more formal oversight. See Ben Wilhelm et al., CONG. RSCH. SERV., RL30240, CONGRESSIONAL OVERSIGHT MANUAL 15–16 (2022) (available at <https://crsreports.congress.gov/product/pdf/RL/RL30240>). See also Beermann, *supra* note 2, at 370–371.

⁴⁸ Ben Wilhelm et al., CONG. RSCH. SERV., RL30240, CONGRESSIONAL OVERSIGHT MANUAL 77–78 (2022) (available at <https://crsreports.congress.gov/product/pdf/RL/RL30240>). Rep. Lee Hamilton stated, "For instance, farmer contacts about crop insurance regulations led to my pushing a measure which changed the law to allow individual waivers. Many programs, ranging from veterans benefits to regulatory policy, have been amended by Congress because of problems first brought to our attention by constituents asking for help." 142 Cong. Rec. 19015–16 (July 24, 1996). Hamilton, "Casework," Congressional Record, vol. 142, (July 24, 1996), pp. 19015–19016.

relatives of those constituents.⁴⁹ There is little question that politics affects not just whether a member engages in casework, but how vigorously they do so.⁵⁰ In a Machiavellian interpretation of casework, Professor Beermann writes, “[r]ather than appropriate sufficient funds for agencies to deal with their own problems or avoid them in the first place, Congress redirects funding to their own offices and then helps the squeaky wheel get the grease by acting when a constituent complains.”⁵¹

Members also see constituent service as key part of their job representing constituents in Congress, one that is directly tied to the constitutional right to petition Congress for redress of grievances.⁵² Former House Speaker Jim Wright (D-Texas) stated:

We can disparage the ombudsman function [of the congressman] if we will, but I am absolutely convinced that it is an altogether honorable function. For many millions of private citizens, their elected representative is the only person whom they remotely know in the federal government. He is their only intercessor when they encounter difficulties. This particular relationship between a congressman and the individual constituent, struggling for opportunity, is a very sacred one, not

⁴⁹ Beermann, *supra* note 2, at 371 (noting that “[a]gency errors are a good thing for members of Congress because they provide them with a way to win voter loyalty.”).

⁵⁰ See Tillett, *supra* note 20, at 12. Mr. Tillett suggests that new staff find the Cook Political Report Partisan Voting Index (PVI) for their member’s district or state. The PVI measures how partisan a district or a state is compared to the nation as a whole. For example, a PVI score of D+2 means that in the 2016 and 2020 presidential elections, that district or state was an average of two points more Democratic than the nation. Tillett states that members of Congress representing districts or states with a low PVI tend to have a more aggressive casework operation and those with a high PVI may have a less aggressive and more relaxed attitude toward casework. *Id.*

⁵¹ Beermann, *supra* note 2, at 139.

⁵² *Id.* The right to petition is found in U.S. Const. Amendment I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”). Until the middle of the 20th Century, the petition process was the way individuals, and particularly those with little or no political power, participated in the lawmaking process. Petitioning was a formal process and helped develop the modern administrative state. See Maggie McKinley, *Petitioning and the Making of the Administrative State*, 127 Yale L.J. 1538 (2018). Petersen & Eckman note that congressional intervention as a form of constituents petitioning the government goes back to the beginning of Congress. Rep. John Quincy Adams (Whig-Mass), for example, recorded providing constituent services such as corrections of the date on a military pension certificate and seeking the appointment of a constituents as Post Office officials and as a tax collector. Petersen & Eckman, *supra* note 11, at 1 (citing Leonard D. White, *The Jacksonians: A Study in Administrative History 1829-1861*, (New York: The MacMillan Company, 1954), at 143–145)). Rep. James A. Garfield (R-Ohio), worked on constituent “requests to search for a miscarried letter, to secure favorable action on pension claims, to get a decision allowing a patent extension, to obtain payment of a claim ... and to write a book review.” *Id.*

to be despised. It is, in fact, essential if we are to keep government accessible and to keep government human.⁵³

Having a member of Congress advocate for a constituent “humanizes” government and gives citizens a champion in the face of an “occasionally arrogant bureaucracy.”⁵⁴

Congressional casework is also an acknowledgement that agencies can make mistakes.⁵⁵ Even when unsuccessful, congressional casework has positive outcomes in that the process both gives the constituent a sense that someone has worked on their behalf and keeps members and their staff aware of their constituents’ concerns.⁵⁶

An example of how constituent service affects congressional oversight of agencies came in late 2023 at the Bemidji Minnesota Post Office. The Bemidji Post Office, like an increasing number of rural USPS branches, began delivering⁵⁷ Amazon packages, which has overwhelmed staff and lead to delivery delays of regular mail.⁵⁸ Mail carriers who might have delivered dozens of small parcels in a day now had to deliver between 300 and 500 boxes in addition to the regular mail. After Bemidji mail carriers were allegedly instructed to deliver packages before the mail, residents started complaining about late and missing mail, including tax rebates, credit card

⁵³ Levin, *supra* note 13, at 19 (citing, Colloquy, *Incumbency Advantage and Accountability: The Question of Campaign Finance, Congressional Perquisites, and Constituent Service*, 23 *Cumb. L. Rev.* 61, 67–69 (1993) (remarks of former Speaker of the House Jim Wright)). Professor Levin also states that this is a common sentiment of members and scholars. *Id.* at 19–20.

⁵⁴ *Id.* at 20. As Rep. Lee Hamilton (D-Indiana) noted, “Casework is important, first, because people need help dealing with the large government bureaucracy. The ways the government affects citizens—both favorably and unfavorably—are numerous. Many of the cases brought to my attention are severe. Casework is crucial because it addresses the real needs of people.” 142 *Cong. Rec.* 19015-16 (July 24, 1996).

⁵⁵ *Id.* (“A few years ago, for example, I helped an older man who needed kidney dialysis, but whose Medicare coverage was being cut off because the Social Security Administration thought he was dead.”).

⁵⁶ *Id.* (“Casework helps reduce the frustration people feel toward what appears to be a massive, impersonal government.”).

⁵⁷ The United States Postal Service (USPS) has had a contract with Amazon since 2013, when it started delivering packages for the e-commerce giant on Sundays. The strain on rural mail carriers has increased dramatically with the increase in Amazon “last-mile” deliveries in out of the way locations. See Nicole Ronchetti, *Senate staff host listening session on Bemidji mail delivery delays*, Bemidji Pioneer, December 05, 2023 (available at <https://www.bemidjipioneer.com/news/local/live-at-3-p-m-senate-to-host-listening-session-on-bemidji-mail-delivery-delays>).

⁵⁸ See Caroline O'Donovan & Jacob Bogage, *A rural post office was told to prioritize Amazon packages. Chaos ensued*, Washington Post, Nov. 28, 2023 (available at <https://www.washingtonpost.com/technology/2023/11/28/amazon-missed-mail-rural-towns/>); Caroline O'Donovan, *Rural mail carriers warned not to blame mail delays on Amazon*, Washington Post, December 5, 2023 (available at <https://www.washingtonpost.com/technology/2023/12/05/amazon-postal-service-delay-minnesota/>).

statements, and medications.⁵⁹ Postal employees claimed they were required to work seven days a week delivering mail and packages on routes that now take up to 12 hours to complete.⁶⁰ In November, the postal workers staged a symbolic strike outside the post office, while others quit or took early retirement.⁶¹

These complaints soon came to the attention of Minnesota’s congressional delegation, mainly as a result of constituents contacting their members of Congress. As a result, Senator Amy Klobuchar (D-Minn.) sent a formal inquiry to Postmaster General DeJoy calling the delivery issues in Bemidji “unacceptable” and urging him “to take the steps necessary to support our postal workers and ensure the timely delivery of mail.”⁶² Staff representing Senator Tina Smith (D-Minn.), Senator Klobuchar, and Representative Pete Stauber (R-Minn.) later met with residents to discuss the issues at the post office.⁶³ Sara Silvernail, the state director for Sen. Smith, told the community meeting, “[t]his meeting matters, and you’re being heard.” After the meeting, Senator Smith told the local newspaper she was looking for firsthand reports so she could go to the “powers that be in Washington, D.C., and let them know exactly what we hear is happening and demand some accountability.”⁶⁴

Sen. Smith and Sen. Klobuchar sponsored the Postal Delivery Accountability Act, which would require the USPS to improve tracking and reporting of delayed and undelivered mail nationally.⁶⁵ They also called on the USPS Office of the Inspector General’s Office to conduct an audit of the Minnesota-North Dakota Postal District.⁶⁶ In late January 2024, the Inspector General’s Office announced it would conduct the audit into the postal service’s processing,

⁵⁹ See Ronchetti, *supra* note 57.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Senator Klobuchar asked the USPS to respond to several questions by December 15, 2023: “Will you commit to ensuring all postal customers receive equal service and that corporate customers like Amazon are not prioritized over local businesses and residents? What steps is the U.S. Postal Service taking to ensure that rural routes allow for the delivery of mail in a timely fashion given the spike in package deliveries? How has Amazon’s contract with USPS affected the ability to deliver other packages and mail? What additional flexibilities can USPS provide post offices to address staffing shortages? What steps is USPS taking to improve its hiring process, and how have these efforts reflected feedback from postal workers? What is your plan to ensure Minnesota post offices reach full staffing levels, and when do you anticipate achieving this goal?” *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ S. 3391, 118th Cong. (2023).

⁶⁶ Ronchetti, *supra* note 57.

logistics and delivery networks.⁶⁷ A former postal carrier reacted to the audit by stating, “We needed public officials to get involved with this” to get the attention of the Inspector General.⁶⁸

The Minnesota congressional delegation certainly had a political interest in being involved with this case. Other congressional priorities are also present: hearing constituents, humanizing the government, petitioning the government for better services and working conditions, identifying improvements to agency procedures, providing agency oversight on a timely issue, and developing new legislation. Casework may have several purposes, and each member may emphasize a different aspect. Regardless of motivation, casework is one of the most important aspects of the congressional member’s role as an elected official.

Criticisms of Casework

Some commentators have criticized casework as a waste of legislators’ time and a “clumsy and haphazard approach” to improving an agency’s delivery of services.⁶⁹ While the constituent may see a positive result, the agency’s overall delivery of services to the public is not improved, and congressional intervention may have delayed processing other deserving cases.⁷⁰ Further, the agency may favor cases in which Congress intervenes, undermining the “evenhandedness of the particular agency’s system.”⁷¹ Legal scholar Walter Gellhorn argued that legislators should “concentrate on getting agencies to do their work right the first time, or to fix problems themselves when the need arises.”⁷² Further, Professor Ronald Levin points to some agency officials’ opinions that casework hinders their work and amounted to “legislative

⁶⁷ *Id.* The Inspector General’s report is expected to include a list of issues and recommendations, and the USPS district management will have a chance to respond to the recommendations. Inspector General audits can have far reaching effects. For example, in 2019, the U.S Department of Veteran Affairs Office of Inspector General congressional relations staff fielded more than 140 requests related to constituent casework identifying VA struggles such as inappropriately denying and rejecting emergency care claims, the lack of reimbursement of home loan fees, and the veteran health care facilities. The resulting audit caused policy and practice changes at the VA and congressional action, including: creating a panel to improve claims processing for military sexual trauma; legislation to send refunds to veterans who were improperly charged home loan funding fees from which they were exempt; and a bipartisan, bicameral letter to the VA signed by more than 30 members of Congress concerning the denial of emergency medical claims. *See generally* U.S. DEP’T OF VETERANS AFF., OFF. OF INSPECTOR GEN., SEMIANNUAL REPORT TO CONGRESS (2019) (available at <https://www.vaoig.gov/sites/default/files/document/2023-08/vaoig-sar-2019-2.pdf>).

⁶⁸ Ronchetti, *supra* note 57.

⁶⁹ Levin, *supra* note 13, at 27–28. Professor Levin dismissed the first criticism because casework is mostly a staff function and that staff has been increased accordingly.

⁷⁰ *Id.* (citing Gellhorn, pp. 77–78; Jerry L. Mashaw, *Bureaucratic Justice* 71, 135–136 (1983)).

⁷¹ *Id.* (citing Mashaw at 135–136).

⁷² *Id.* at 28–29 (citing Gellhorn at 80–81, 124–125, 128).

interference.”⁷³ Finally, casework may, in some extreme instances, lead to corrupt practices, such as with the 1989 “Keating Five” scandal in the United States Senate.⁷⁴

Congressional casework fulfills the role of a formal “ombudsman” in other government systems.⁷⁵ While some members of Congress have suggested that Congress create such an entity to handle casework,⁷⁶ the idea has not been adopted because casework is generally popular among members and viewed as an effective way to solve bureaucratic problems that constituents face.⁷⁷ Members of Congress are unlikely to give up their ability to claim credit for successfully resolving casework requests.⁷⁸ Also, the number of staff an ombudsman office would require to handle the existing volume of constituent requests would be enormous.⁷⁹ Further, an

⁷³ Levin, *supra* note 13, at 29 (citing Johannes at 94. Johannes notes that program administrators sometimes look upon congressional inquiries as a headache, but in larger agencies congressional relations offices took a more positive view. *See* Johannes at 87–89. In fact, the majority of agency officials at the time had a positive view of the system. *Id.* at 89–92).

⁷⁴ In 1989, five senators were accused of corruption related to the savings and loan bank crisis of the late 1980s. In 1987, Alan Cranston (D-California), Dennis DeConcini (D-Arizona), John Glenn (D-Ohio), John McCain (R-Arizona), and Donald W. Riegle, Jr. (D-Michigan)—intervened on behalf of Charles H. Keating, Jr., chairman of the Lincoln Savings and Loan Association, which was being investigated by the Federal Home Loan Bank Board (FHLBB). Keating had made \$1.3 million in campaign contributions to the five senators. In 1989, the FHLBB dropped the investigation, only to see Lincoln Savings and Loan collapse, which cost the federal government \$3.4 billion and the loss of many investors’ life savings. In 1991, the Senate Ethics Committee found that Cranston, DeConcini, and Riegle had improperly interfered with the FHLBB’s investigation of Lincoln Savings, and Sen. Cranston received a formal reprimand.

⁷⁵ *Id.* Other countries have a formal ombudsman to inquire “into citizen grievances about acts or failures to act and, in suitable cases, to criticize or to make recommendations concerning future official conduct.” The ombudsman may answer complaints leveled against agencies such as, “maladministration, abusive or indifferent treatment, tardiness, unresponsiveness, and the like.” Admin. Conf. of the U.S., Recommendation 1990-2, The Ombudsman in Federal Agencies, 55 Fed. Reg. 34,209, 34,211 (1990). Professor Levin also discusses proposals for an ombudsman-like entity within Congress. *See* Levin, *supra* note 13, at footnotes 115–122.

⁷⁶ *Id.* at 29–31 (citing Gellhorn, *supra* note 46, at 128–30, 218–32; William B. Gwyn, Transferring the Ombudsman, in OMBUDSMEN FOR AMERICAN GOVERNMENT 37, 58–59 (Stanley V. Anderson ed., 1966). For discussion of a Congressional “office of constituent assistance” that would be detached from individual member offices, *see* Frederick M. Kaiser, CONG. RSCH. SERV., 91-893GOV, A CONGRESSIONAL OFFICE OF CONSTITUENT ASSISTANCE: PROPOSALS, RATIONALES, AND POSSIBLE OBJECTIONS (1991); Klonoff, *supra* note 46, at 724–33. Professor Levin notes that these proposals would have use of such an office be voluntary and members could pursue constituent casework in the traditional way. *Id.*

⁷⁷ Levin, *supra* note 13, at 29

⁷⁸ *Id.* at 30, note 117.

⁷⁹ *Id.* at 30, note 117.

ombudsman system would not prevent another Keating Five scandal because it would not preclude ethical lapses due to members making “an unusual display of clout.”⁸⁰

Regardless of how a member sees constituent service work, it is important to them, and even a rewarding part of being in Congress. Speaking on the House floor, Rep. Lee Hamilton (D-Indiana) stated,

Constituent service can be tough work for Members of Congress, and an unrelenting demand on our time. But in many ways casework is one of the most rewarding parts of the job. Passing legislation often requires difficult compromise and can take years. With casework, Members can see the impact of their work on the daily lives of individual citizens. Nothing gives more satisfaction than to see that my efforts made a difference and improved the quality of life for a constituent.⁸¹

IV. Congressional Staff Survey

Although this project specifically did not address congressional policies and procedures related to constituent services, it remains important to understand what congressional expectations of agencies are in these situations. To build such an understanding, I solicited responses from the constituent service staff of the 15 current members of Congress who have been nominated for the Congressional Management Foundation’s⁸² annual Constituent Service Award⁸³ since 2018.⁸⁴ The party affiliation of members was nearly equal and approximately one-third of the requests went to senate offices. To facilitate participation, staff was assured that to, the extent permissible by law, the names and offices providing survey responses will remain confidential.

Congressional offices receive a significant number of constituent requests for assistance, many that require the assistance of an agency. Offices consistently reported 1,000–1,500 cases per year requiring agency assistance. With 435 House members, that means between 435,000–

⁸⁰ Levin, *supra* note 13, at 30.

⁸¹ 142 Cong. Rec. 19015-16 (July 24, 1996) (Remarks by Representative Lee H. Hamilton on Casework).

⁸² The Congressional Management Foundation (CMF) is a 501(c)(3) nonprofit dedicated to “working...with Members of Congress and staff to enhance their operations and interactions with constituents.” See Congressional Management Foundation, “About CMF” (available at: <https://www.congressfoundation.org/about-cmf>) (last accessed March 6, 2024).

⁸³ The Constituent Service Award is awarded annually by the CMF to members whose offices “demonstrate[] excellence through...specific, methodical, and consistent processes for achieving measurable results in constituent service.” See CONGRESSIONAL MANAGEMENT FOUNDATION, CONSTITUENT SERVICES (available at https://www.congressfoundation.org/index.php?option=com_content&view=category&id=114&layout=blog&Itemid=585) (last accessed March 1, 2024).

⁸⁴ For example, see <https://www.congressfoundation.org/news/press-releases/1997-eight-members-of-congress-named-winners-for-democracy-awards-for-extraordinary-public-service>.

652,500 cases are sent annually by the House alone to various agencies for assistance. The agencies that received the most requests for assistance were not surprising:

- United States Citizenship and Immigration Services (USCIS);
- Department of State (State);
- Social Security Administration (SSA);
- Internal Revenue Service (IRS); and
- Veterans Administration (VA).

The number of cases sent to each agency fluctuates over time depending on the member's state or district, as well as based on local and national circumstances. One office reported that 62% of its current caseload related to programs administered by USCIS, while another reported that its casework most frequently dealt with programs administered by SSA. Offices reported, however, that over the course of the COVID-19 pandemic, the majority of their casework requests were directed to IRS in light of that agency's role in the administration of key components of the federal government's response to the COVID-19 pandemic. One office reported that, prior to the pandemic, there were never more than 300 IRS issues in a year, but during the period from 2020 to present the office has worked on approximately 5,000 such cases. Matters addressed by these IRS-focused constituent requests included delayed tax returns, the status of or issues with Economic Impact Payments, amended returns, and delayed returns. Another office reported that, at the height of this surge, it had three staff members working exclusively on IRS-related casework, though it added that the volume of such requests has now declined to the point that only one dedicated staffer is needed to handle them satisfactorily.

Pandemic-related impacts on agency constituent service workloads were not unique to the IRS, however. Indeed, the end of pandemic-related international travel restrictions created new issues for the State Department, especially among components responsible for the issuance or renewal of passports. Once such restrictions were loosened around the world, there was a well-documented surge in international travel and a concomitant increase in applications to obtain or renew passports.⁸⁵ Commenting on the scope of this surge, one office reported that they worked on approximately 400 passport-related cases during the summer of 2021.

How long a constituent's case takes to resolve is highly fact dependent and varies greatly between agencies. As one office stated: "A passport might take 72 hours and a visa or VA issue may take months if not years." Passport issues are often resolved between one week and three

⁸⁵ According to the State Department, in 1990, only 5% of Americans had a passport. By 2023, 48% of Americans held a passport, with over 160 million valid passports in circulation. During the 2022-2023 fiscal year, State issued over 24 million passport books and cards, its highest number ever. *See* U.S. DEP'T OF STATE, OFFICE OF THE SPOKESPERSON, RETURN TO PRE-PANDEMIC PASSPORT PROCESSING TIMES (Dec. 18, 2023) (available at <https://www.state.gov/return-to-pre-pandemic-passport-processing-times/>) (last accessed March 22, 2024).

months. IRS issues may take three to six months. Social Security issues often take approximately six months. Immigration issues take much longer, often up to six years. One office reported that if a veteran's record is incomplete or wrong, such as a date of birth or discharge status, this task may take 3–4 years to complete, and these cases cannot be expedited.

The congressional offices reported that agency response time to new cases varies. One office stated that the State Department “typically responds in a week” and that expedited cases with USCIS “take about two weeks.” Congressional offices reported that most agencies get back to them within a month. Staff reported that a significant part of the congressional caseworker's job is to help constituents understand how long a case will—or should—take.

Once a constituent request has been submitted to the appropriate agency, Congressional caseworkers employ a range of techniques for tracking the status of the pending case. For example, one congressional office reported that its standard practice is to give agencies 30 days from the date of the request's submission before following up, while another office reported that it does a quarterly audit to see if a case should stay open.

Congressional offices use a variety of metrics to determine if they have been successful with an agency-involved constituent case. These can range from informal measures such as the receipt of constituent “thank you” letters and “how close to the constituent's request did the office come.” Other offices use more formal measures such as asking constituents to complete a feedback form, using quarterly surveys to measure response time on closed cases, or adopting a “net promoter score” (NPS) borrowed from the private sector to rate the office's performance on a scale of 1–10.⁸⁶

Conversations with congressional offices produced several valuable lessons. A key takeaway is that the congressional staff are the intermediaries between the constituents and their government. Congressional casework staff are often dealing with many constituent requests at once, operating under tremendous pressure from both their employing member and the constituent as they work towards a timely and satisfactory outcome. Some staff members expressed frustration that agencies may take months to respond, if at all. Further, they want agencies to respond even if they cannot help in a particular case. In one circumstance, after a constituent's efforts resulted in two unresponsive letters from an agency and waited on hold with the agency for 5 hours, the congressional staff reached out to a regional liaison on behalf of the constituent. The liaison informed the caseworker that the request was frivolous and that such requests should not be submitted in the future. While the liaison's assertion may have been true, the agency's actions in both instances were far from helpful to either the constituent or the congressional staff. Often, congressional staff just need to show their constituents that “they have been heard” by the agency. Staff also noted that a written response from the agency is often particularly helpful, as it can be shared directly with the constituent. A letter or email from the agency explaining why the agency could not help the constituent may have achieved the goal of assuring the constituent that the agency considered their issue and to better understand the negative result.

⁸⁶ This particular office stated the most important question is, “would you refer us to a friend” and the office tries to have a 60% “yes” response on that question.

As the bridge between constituent and agency, the congressional staffer must manage the constituent's expectations. As discussed above, constituents often have an unrealistic understanding of what Congress and an agency can and may do on behalf of a constituent and how long it will take. This is often true with immigration cases, in which legal and security concerns must be considered. If agency officials can bear this in mind and respond to congressional inquiries accordingly, the congressional staff will be able to better respond to their constituents. Other insights provided by the congressional interviews, which are discussed in more detail below, include:

- Personal relationships are key to inter-branch understanding;
- Quality liaisons make a big difference to working with agencies;
- Methods of communication are important and can be improved;
- Clear and effective systems, often described in agency standard operating procedures, are important; and
- Technology can be leveraged to improve service.

V. Agency Interviews

With the information from interviews with congressional staff, I asked the liaison offices at several agencies to discuss selected aspects of their congressional casework.⁸⁷ Personnel at several agencies were very generous with their time and offered valuable insights into their work with Congress. To facilitate participation, agency staff were assured that, to the extent permissible by law, the names and offices providing survey responses will remain confidential. Interviews were loosely structured around the questions included in Appendix B, but often diverted as necessary and appropriate to explore areas of note, interest, or concern.

General Concerns

By far the most common concern was staffing, especially in the face of COVID and the new demands placed on agencies due to legislation passed as a response to the pandemic. One agency, which reported having only five employees dedicated to managing congressional casework requests, saw its number of congressional inquiries increase by a factor of five due to COVID-related legislation. This pandemic-related surge in inquiries created a backlog and new delays in resolution, with cases taking an average of 8–9 weeks to resolve. Another agency reported that “COVID crushed them.” Although perhaps not as extreme, several agencies reported struggling with a backlog as a result of the pandemic and its aftermath. Some agencies were able to address the backlogs by getting funds from Congress to hire additional staff. Even after such additional funding was secured, however, one agency reported that it was a challenge to find, onboard, and train new employees due to the tight labor market of the past few years,

⁸⁷ The questions I asked may be found in Appendix B below.

The end of the pandemic also created new challenges, such as the dramatic increase in passport applications that accompanied the resumption of international travel. During the pandemic, agency methods of resolving cases internally and communicating with Congress had to change, often moving from in-person contact to online meetings.

Ultimately, the pandemic—taken together with the range of new federal programs established to attenuate its social and economic effects—served as a sort of stress test for agencies, forcing them to keep up with a dramatic increase in casework volume while simultaneously adjusting to new (and often unanticipated) ways of doing business.

Systems and Standard Operating Procedures

The systems agencies have in place to address congressional inquiries, most often found in a standard operating procedure, greatly affected congressional opinion of the agency. For instance, several congressional staff praised the State Department's systems for answering constituent inquiries, often highlighting the effective responses to casework from its 23 geographically dispersed Passport Agencies. This praise came even though many of the constituent requests cannot be fulfilled due to legal or policy reasons. Another staff member stated that the IRS's system had improved over the past few years due to changes to communications methods and hiring more personnel. Staff members also complained about the systems at several agencies:

- One agency's casework system, which was called "archaic," took a long time, put people through call loops, and did not give Congress as many updates as it should;
- One agency's appeals process was "in need of reform," as it was difficult to work with and there are likely to be an increasing number of people seeking assistance in the next several years;
- Another agency system "is problematic" because it is overly protracted, difficult to work with, and "opaque."

Agencies had a range of standard operating procedures (SOPs) related to congressional case work. Nearly every agency interviewed stated that the agency had an SOP regarding congressional inquiries and casework, but some were better developed than others. Only a few agencies, typically those that are more operationally focused (like the USPS), have made their SOPs available to the public. Agencies noted, however, that even if their SOP was not available to the public, congressional staff had access to them.

The publicly available SOPs typically contain plain language descriptions of at least three aspects of the agency’s procedures for resolving congressional constituent service requests: the process by which a case is resolved;⁸⁸ the timeline the agency sets for getting a response to Congress;⁸⁹ and guidance on how agency liaisons should navigate any relevant legal considerations, especially privacy issues, that apply to their work with Congressional staff.⁹⁰

Some agencies are fairly centralized, with all congressional inquiries coming to the headquarters, and then, if needed, sent to the appropriate office or bureau for the preparation of a substantive response. Other agencies are highly decentralized, with regional offices spread throughout the country that are empowered to work directly with the congressional constituent service staff in district or state offices, rather than with the staff on Capitol Hill. Some agencies reported desiring increased centralization at headquarters, which would give greater control over cases, but acknowledged that this could keep local relationships from forming.

Agencies’ suggested timelines for resolving cases ranged from ten days to eight weeks. In addition, most agencies will send an interim response for more complex cases at some point between two and six weeks of the requests receipt to provide a status update.

Agencies seem to review their SOP fairly frequently, especially considering the pandemic with an increase in casework and new federal programs to administer. Agencies will also offer interim guidance on new processes that must go into place before the SOP can be fully revised.

To better illustrate the nature and kinds of information an agency might include in its procedures for managing congressional casework, the SOPs adopted by the USPS and the IRS are explored below.

Case Study: United States Postal Service

One example of a well-developed standard operating procedure (SOP) in this space can be found at the USPS.⁹¹ Indeed, its procedures—which are available to the public through the agency’s website—provide an overview of the structure and leadership of the Office of Government Relations and Public Policy (OGRPP),⁹² along with guidelines for and productivity goals related to congressional correspondence with the USPS.⁹³ The OGRPP, working with

⁸⁸ For example, how new inquiries are added to case tracking systems, what agency staff should do if they receive a request that ought to have gone to a different office, and who must review and sign off on an outgoing response.

⁸⁹ In addition to overall response time, the USPS SOP provides expected timelines for each stage of its process for casework request process.

⁹⁰ A proposed outline for a SOP is available in Appendix C.

⁹¹ U.S. POSTAL SERVICE, GOVERNMENT RELATIONS AND PUBLIC POLICY: STANDARD OPERATING PROCEDURES FOR CONGRESSIONAL AND OTHER GOVERNMENTAL INQUIRIES (November 1, 2021) (<https://about.usps.com/who/government-relations/correspondence-sops.pdf>).

⁹² The Government Relations and Public Policy office develops and executes the public policy and legislative objectives of USPS. *Id.* at 2.

⁹³ *Id.* at 3-5.

other parts of the USPS, is tasked with providing a “coordinated and consistent message” to key stakeholders and the general public.⁹⁴ The Vice President that directs the office reports to the Post Master General and manages government relations for the USPS.⁹⁵ The Vice President manages three groups:

- Legislative Policy & Strategy Development Group, which provides guidance to the USPS on legislative issues and advises on the USPS’s legislative agenda;
- Liaison Group, which is the liaison between the USPS and members of Congress and their staff; and
- Correspondence Group, which researches and analyzes issues and responds to congressional and other inquiries.⁹⁶

According to the USPS SOP, all three groups share responsibility for educating and informing members of Congress and their staff on the current workings of the USPS, in addition to working with USPS field personnel to collect information and generate content for responses to congressional constituent service requests.⁹⁷ The SOP sets productivity goal of responding to requests within 15 workdays.⁹⁸ Task-specific productivity goals include: an average of 5 work days to analyze, research, and draft a response; 2 work days to perform first-level and second-level reviews; and 1 work day to format and prepare the response for signature and mail to the appropriate recipients.⁹⁹ The SOP specifies that when a liaison receives a case, the liaison must acknowledge receipt to the originating congressional office.¹⁰⁰ The inquiry, supporting documents, and case specific information are scanned and entered into the Correspondence Tracking System (CTS).¹⁰¹ Once logged within the CTS, the correspondence manager then assigns cases to staff according to case complexity, staffing levels, skill levels, and individual caseloads.¹⁰² Following case assignment, the appointed staffer then reviews the inquiry and accompanying documentation, and contacts appropriate personnel at headquarters or field offices

⁹⁴ *Id.* at 2.

⁹⁵ *Id.* at 2.

⁹⁶ *Id.* at 3.

⁹⁷ *Id.* at 3

⁹⁸ *Id.* at 4

⁹⁹ *Id.* at 4.

¹⁰⁰ *Id.* at 6.

¹⁰¹ *Id.* at 6. The CTS automatically generates a case number and due dates based on the SOP productivity goals. Case specific information entered into the system includes: name of the member of Congress or other requestor, constituent’s name, constituent’s mailing address, subject of inquiry, and the member of Congress or other requestor’s mailing address for response. *Id.*

¹⁰² *Id.* at 6. The correspondence manager oversees the correspondence specialists and maintains a list of open cases. The manager also tracks whether a final response is sent for inquiries. *Id.* at 8. The manager also monitors inquiries to identify sensitive issue that should be brought to the attention of higher-level managers. *Id.* at 6.

to research and, ultimately, draft a response.¹⁰³ During the second-level review by the Government Relations and Public Policy Office’s government relations representative and liaison staff, the liaison considers the response in relation to their “in-depth knowledge of the geographic territory” and the member of Congress’ interests, committee assignments, and known constituent issues.¹⁰⁴ If approved following second-level review, the cleared response is then emailed as a PDF to the congressional office and uploaded to the CTS.¹⁰⁵ The SOP specifies that if, during this process, the office cannot generate a response within 20 work days, then the member will receive an interim response.¹⁰⁶

Case Study: Internal Revenue Service

In contrast to the USPS SOP, which is presented in a stand-alone document available on the agency’s website, the IRS devotes a section of the voluminous Internal Revenue Manual (IRM) to its Congressional Affairs Program.¹⁰⁷ The IRM contains four subsections that relate to Congressional inquiries.¹⁰⁸ The subsections state which officers will handle various inquiries, that acknowledgement should be sent to the congressional office within two business days of receipt, and that all congressional inquiries should be resolved within 20 days of receipt, unless support from another IRS component prevents it. When a final response is delayed, the IRM states interim responses should be sent every two weeks, “unless the congressional office agrees that less frequent updates are appropriate.”¹⁰⁹ Congressional correspondence that could have nationwide implications should be brought to the attention of the District Congressional Liaison Branch Chief.¹¹⁰

The IRM also notes, “Many congressional offices prefer to receive information via email or by fax.”¹¹¹ Even so, the IRS restricts what information can be sent by email, forbidding the use of email to send personally identifiable information (PII),¹¹² information protected by IRC

¹⁰³ *Id.* at 6-7.

¹⁰⁴ *Id.* at 7.

¹⁰⁵ *Id.* at 7. The irony of the USPS primarily using email to communicate with Congress is not lost upon this report’s author.

¹⁰⁶ *Id.* At 8.

¹⁰⁷ Internal Revenue Manual, §11.5.2, Congressional Affairs Program (revised December 2, 2022) (https://www.irs.gov/irm/part11/irm_11-005-002).

¹⁰⁸ *Id.* at §11.3.4.2, Disclosure of Official Information—Disclosure to Members of Congress, §11.5.2.2.5 Congressional Inquiries, §11.5.2.2.6 E-Mail, and §11.5.2.2.7 Frivolous Filers.

¹⁰⁹ *Id.* at §11.5.2.2.5 Congressional Inquiries.

¹¹⁰ *Id.*

¹¹¹ *Id.* §11.5.2.2.6 E-Mail

¹¹² Examples of personally identifiable information include social security numbers, passport and driver’s license numbers, taxpayer identification numbers, financial account or credit card information, and personal addresses and phone numbers.

§6103,¹¹³ and employee information protected by employee privacy laws.¹¹⁴ When resolution of a constituent request would require transmission of such information, the IRC requires that it be sent by letter or fax.¹¹⁵

Interestingly, the IRC provides procedures for dealing with “frivolous filers,” i.e., taxpayers whose requests for congressional assistance are predicated upon “frivolous statements” or contain specious arguments, like challenges to the constitutionality of the federal income tax.¹¹⁶ The IRM states that, despite the potentially frivolous nature of these requests, they must still receive a response from the IRS, though it is to be directed to the congressional office, not the taxpayer, and should address only those issues raised by the congressional office, not the taxpayer.¹¹⁷

The IRM also specifies that under the Internal Revenue Code §6103(c), members of Congress may not have access to returns or return information without taxpayer authorization.¹¹⁸

In 2022 the IRS added a helpful subsection to the IRM with “Dos and Don’ts in Dealing with Congress.”¹¹⁹ It includes many useful nuggets of wisdom. For example,

Do... Remember that you are providing quality customer service to an important external stakeholder.

Don’t...Be afraid to tell [congressional staff] what your office appropriately can do for them and their constituents.

The USPS SOP is a relatively short nine pages and the portions of the IRM regarding casework is highly detailed and spread over several sections. Whereas the USPS emphasizes the process and productivity goals, the IRM places more emphasis on the method of correspondence and complying with the relevant privacy mandates within the Internal Revenue Code. The respective approaches make sense given the nature of the likely congressional inquiries. For example, an agency receiving relatively few congressional inquiries, or working on cases that are not governed by privacy laws such as the Internal Revenue Code, do not need the specificity found in the IRM. The sample SOP outlined in Appendix C is drawn, in part, from elements of the IRM and USPS examples, but each agency must adopt an SOP that fits its mission.

¹¹³ 26 U.S.C. § 6103(a) provides that tax returns and return information “shall be confidential” and, subject to certain exception (*see, e.g.*, 26 U.S.C. § 6103(d)), bars any current or former officer or employee of the United States from disclosing taxpayer return information to a third party.

¹¹⁴ Internal Revenue Manual, §11.5.2.2.6 E-Mail.

¹¹⁵ *Id.*

¹¹⁶ *Id.* §11.5.2.2.7 Frivolous Filers.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at §11.3.4.2, Disclosure of Official Information—Disclosure to Members of Congress.

¹¹⁹ *Id.* at §11.5.2.2.10, Do’s and Don’ts in Dealing with Congress. The complete subsection is reproduced in Appendix C as part of the outline for a casework related standard operating procedure.

Metrics for success

How do agency congressional liaisons determine whether their efforts were successful? Typically, the answer has some relation to the timeliness of the agency's response to Congress. Several agencies set a target response time frame that was shared with Congress, and if the response was timely, the case was deemed successful.¹²⁰ Some agencies, such as the State Department, are starting to track the response time by their individual bureaus. USCIS also tracks cases by month and quarter, with staff providing an annual report to the director. In addition to tracking and internally reporting on casework volume, USCIS further measures success by assessing whether and, if so, how frequently, congressional staff must follow up on a case the agency believed was closed—a metric that tracks the extent of liaisons' success in resolving the constituent request through the agency's initial response.

Training

Training, both internally within the agency and externally with congressional staff, is an essential aspect of constituent service casework. Not only does training promote greater understanding of the processes at work in each branch; it also helps build the inter-branch relationships that can make resolving casework more efficient and effective.

Congressional staff reported working with excellent liaisons across many agencies. There were, of course, also reports of less than helpful liaisons, which staff said was dependent on personality and experience level. New agency liaisons have a steep learning curve in dealing with constituent issues, both with respect to substantive issues and their agency's internal process. In the absence of sufficient training, accruing that knowledge takes time and experience. For example, one congressional staffer expressed the view that one of the agencies they worked with had not done enough to train their new liaison employees after a recent surge in hiring, creating problems until the new employees obtained on-the-job experience. Another staffer singled out an agency as "terrible," stating it is inordinately difficult to get a return telephone call, "even for members," or to get something as simple as the proper liaison's telephone number. Another congressional office stated that one agency may take 6 months to respond to inquiries, "if you get an answer at all."

One congressional office complained that customer service at agencies seemed to be "down a lot" since the pandemic. When asked to speculate why, one staff member said that there was a lot more personal contact between staff and liaisons before the pandemic, but all too often now there may be meetings on Zoom, but that medium is not conducive to building effective working relationships. The better the staff know the liaison the better the working relationship.

¹²⁰ For example, the State Department has a target of 21 days and the USCIS target is 30 days. Both agencies stressed that some cases were more complicated and could not be completed on those timelines.

There is also the problem of under-resourced agencies pulling experienced personnel away from congressional casework and assigning them to other agency tasks to make up staffing shortfalls.

With Congress

Key aspects of the congressional / agency casework dynamic are informing congressional staff of how the agency answers constituent inquiries, what the agency liaisons can and cannot do in furtherance of resolving the inquiry and building productive and effective relationships between congressional staff and agency personnel. All three are made more difficult by the nature of Congress, where frequent member and staff turnover is common reality given the tempo of elections and the waning power of incumbency.

Personal relationships are key to inter-branch understanding. One congressional staffer noted that, in some instances, it is difficult to get information from agency liaisons. This lack of communication is sometimes the result of considered policy—agency personnel cannot offer legal advice, for example, and must avoid violating information security rules. Despite these policy-based restrictions, some liaisons, especially those with a good working relationship with the congressional staffer, try to offer information by being “vague but clear,” allowing congressional staffers who can “read between the lines” to understand a situation without violating the law or agency policy. Several staff members reported that better personal relationships help ease these communication issues, which in turn results in more efficient resolution of casework requests.

Most agencies stated that they conducted trainings for congressional staff after elections when new congressional staffs are transitioning into their positions. The agencies interviewed took different approaches to contacting congressional staff. Some agencies participate in Office of the Chief Administrative Officer (CAO)¹²¹ organized trainings, which are like job fairs—staff will go to the agencies that are the area of their focus and spend about ten minutes of time talking with agency staff. The Senate sets up a round table forum with what one interviewee characterized as a “speed dating” component so congressional staff and agency personnel can exchange contact information.

At some agencies, individual subcomponents also hold their own trainings, some twice a year. If an agency bureau or department receives enough congressional inquiries, such as the State Department’s Bureau of Consular Affairs, it may have its own congressional affairs team and conduct its own trainings. The Taxpayer Advocate Service emphasized the importance of training congressional staff about protecting data, the need for waivers, and the risks of disclosing information. The Small Business Administration emphasized the value of information congressional staff can provide, such as loan numbers and what exactly the constituent wants, to help the agency facilitate speedy resolution of the case.

¹²¹ The CAO provides “administrative, technical, and operational solutions so that [House] Members can perform their Constitutional duties.” See <https://cao.house.gov/about>.

In addition to trainings, the State Department recently distributed to congressional staff an information packet about their processes.

A difficulty for agencies with regional staff is the expense of bringing liaisons to Washington DC to meet staff on Capitol Hill and build relationships. The IRS reports it brings regional liaisons to DC once a year to spend several days on Capitol Hill meeting with staffers employed by members that represent districts or states within their region. These IRS liaisons also meet with staff for relevant committees, including, for example, a 2023 meeting with the Senate Finance Committee.

Agencies that employ regional or geographically dispersed liaisons also emphasize the need to educate and establish connections with congressional staff located in a member's state or district offices. For instance, USCIS holds local workshops, tailored to the needs and interests of the region in which they occur and connect congressional staff located in a member's state or district offices with the regional liaisons that will be responsible for managing the casework requests that they submit. In 2022, the IRS updated its detailed instructions for conducting regular congressional visits to “develop and maintain relationships and reinforce communications channels.”¹²² In advance of these visits, district liaisons and local taxpayer advocates are required to “identify trends and subjects for discussion,” review recent congressional correspondence, and prepare handouts and information packets to present information relevant to the meeting. Indeed, the IRM even requires the district liaison to report to the district congressional liaison branch chief at least weekly on all newly scheduled visits. After the visits, liaisons and advocates are instructed to “[t]ake appropriate and immediate action on any congressional suggestions, requests or comments, and follow-up with the congressional office as necessary.”¹²³

Internal Training

Agencies report that they conduct internal trainings on congressional casework procedures, especially for the policy experts in line or program offices who may be called upon to explain an issue or policy decision. Sometimes, the types of casework dictates a closer relationship between congressional liaison offices and various internal offices. For example, the Department of Education's staff reported that congressional liaisons receive trainings from the Office of Federal Student Aid (OFSA), the subcomponent within the Department responsible for managing student financial assistance programs established under Title IV of the Higher Education Act of 1965, to ensure that personnel are sufficiently familiar with systems that are likely to be implicated by incoming constituent casework requests. In addition to trainings, the Department's congressional liaisons within the Office of Legislation and Congressional Affairs hold monthly meetings with OFSA to discuss trends and matters of concern affecting pending or incoming congressional casework requests. Another agency reports that internal trainings help ensure that personnel reporting back to Congress do so with a “more human touch,” especially in cases with a negative result, to help the congressional staff, and ultimately the constituent, understand how the agency came to its decision.

¹²² IRM, §11.5.2.2.3 Congressional Office Visits.

¹²³ *Id.*

Other agencies report that the trainings are centered around new technology such as a new electronic case or request tracking or portal system. Such trainings can be quite extensive. For example, the USCIS reports conducting trainings on the use of its new constituent request portal system for 2,200 members of its staff.

Communication

How do agencies communicate with Congress about casework? This is an area that has changed dramatically over the past 25 years and will certainly continue to evolve. During the 1990s, congressional staff would forward a constituent's letter with a cover letter to the appropriate agency requesting prompt action.¹²⁴ In more complex cases, congressional staff may have made a telephone call to the agency as well.¹²⁵ The responses were letters or faxes back to Congress. Today, the process takes place mostly through email, although hard copy letters and faxes persist, and new technologies, such as portals, are starting to supplant email. These new methods of communication sometimes allow direct communication between congressional and agency staff, and in other instances are making it less likely that agency and congressional staff will develop relationships.

I asked the congressional staff whom they primarily dealt with at agencies: designated liaison offices, with the relevant agency component office, or some other known contact within the agency. The answers varied depending on the agency at issue. Most agencies have congressional liaisons in the Washington, D.C. area, which is often the designated, primary point of contact for incoming congressional requests.¹²⁶ Other agencies, however, divert constituent service requests to designated subcomponents or offices. For example, the IRS directs most individual account-related problems to the Taxpayer Advocate Service. Issues concerning Housing and Urban Development (HUD) typically go to county-level housing authorities, “who seem to have more information and can work collaboratively” to resolve the request. Social Security-related issues typically go to the SSA field office representative located within the geographical area in which the constituent resides. Some agencies have different liaisons for different problems and the size of regional liaison’s jurisdiction makes a difference in the quality of service. For instance, one congressional office reported that, following the USPS’s recent shift towards more centralized management of constituent service requests, they now “get more of a vague answer” whereas in the past a state-specific USPS liaison would “talk to the postmaster for you and answer concerns.”

Agencies communicate with congressional staff in various ways outside of casework. USCIS, for example, holds quarterly meetings and “virtual coffee” events intended to educate and engage with Congressional casework staff. Similarly, during the passport crisis, the State

¹²⁴ Levin, *supra* note 13, at 18.

¹²⁵ *Id.* (citing, Johannes at 99-100.)

¹²⁶ Six years ago, the Congressional Research Service (CRS) published a directory of executive and judicial offices legislative liaisons. See Audrey Celeste Crane-Hirsch, CONG. RSCH. SRV., 98-446, CONGRESSIONAL LIAISON OFFICES OF SELECTED FEDERAL AGENCIES (available at <https://sgp.fas.org/crs/misc/98-446.pdf>).

Department hosted webinars for Congressional staff that addressed how the Department was handling the situation and provided other relevant updates.

The House Office of the Chief Administrative Officer offers congressional staff casework events at which agency liaisons meet and speak with staff, which one congressional staff member called “very helpful.” Other agencies, such as the State Department and USCIS, periodically conduct their own conferences with congressional staff.

When surveyed, congressional staff offered several thoughts on how communications with agencies could be improved. These suggestions included:

- Increasing staffing levels for agency offices dedicated to constituent services;
- Updating portals to be more user friendly;
- Encouraging agency personnel to provide greater detail about cases, when legally possible, to both manage constituent expectations and explain agency actions such as denials;
- Increasing the number of in-person meetings between agency liaisons and congressional staff (instead of the new, pandemic-induced norm of Zoom meetings or simply distributing information); and
- Improving agency liaisons’ ability and willingness to work collaboratively with Congressional staff towards resolution of a constituent’s requests (as opposed to the more formalistic approach noted by some congressional caseworkers in which agencies may automatically close a constituent’s request if, for example, the content of the case file is incomplete or otherwise deficient).

Interestingly, only one of these suggestions, related to portals, requires an upgrade of technology. All of them, however, would likely require more resources, which must be appropriated by Congress. Some small changes may make an impact on the number of constituent requests to Congress, such as the Office of Personnel Management’s recent 2023 publication of a redesigned “quick guide” on the retirement process with a checklist of steps workers can take advantage of so claims will be processed quickly, and an estimated timeline for retirement process steps.¹²⁷

Although most congressional / agency communication are now conducted via email, some congressional offices still prefer a hard copy letter responses from agencies. One agency liaison called requests subject to such a requirement “a waste of time.” Another liaison stated that their agency will send formal letters electronically as a PDF.

Agencies seem to be finally moving away from faxes as a means of communication. For example, the Department of Education reports not having used faxes in the past 3–4 years.

¹²⁷ *Id.*

Security issues with email, however, causes the IRS and the Taxpayer Advocate Service to continue faxing information to Congress.

Communications in the future may take place more and more through portals. USCIS now prefers to work with Congress through its portal, but the agency has not shut down its email boxes quite yet. At this point, 70% of cases are coming through the portal, but some offices refuse to use the technology. If a congressional office sends a case by email, agency staff must do the work of uploading the request and documents into the portal.

Agencies also attempt to leverage their websites to preempt congressional inquiries, often by publishing information, tools, and forms to answer commonly asked questions and allow constituents and congressional staff to engage more effectively in self-help. For example, USCIS has tools for case tracking and management available, along with videos on how to file claims and how cases are adjudicated on its website that congressional staff may use without sending an inquiry to the agency.¹²⁸ Another agency employs a system of automated responses to incoming requests from Congress that provides an immediate response, including links to relevant information that is likely to be of use to the congressional caseworker as they advise their constituent.

Technology

Despite the leaps in communication technology in recent decades, some congressional offices also complained that some agencies used “outmoded technology” such as faxes, resisted using email, and did not make key forms available online. Congressional offices contend that telephone calls create fewer misunderstandings, and emails are helpful because the staff can keep a record of responses and paste them into internal files or spreadsheets. Staff can also use agency emails to forward information to constituents and give proof that the congressional office and agency are working on their problem. Finally, emails create a record that is particularly helpful when there are multiple people in a congressional office or agency working on a case to get people new to the case informed as to what has already happened. Our research showed agencies are increasingly leveraging technology to improve the efficiency and quality of their casework management practices.¹²⁹ Two examples of these efforts are legislative tracking systems and portals.

¹²⁸ For instance, there is a case management tool to track the status of an immigration application, petition, or request. See <https://egov.uscis.gov/>.

¹²⁹ For example, in September 2023, the Office of Personnel Management (OPM), which has in recent years been beset with backlogs of retirement cases, published an Information Technology strategic plan. This plan seeks to modernize the retirement process by 2026 with a “digital retirement system” that uses electronic retirement records and an online retirement application process. See Erich Wagner, *The federal retirement backlog just hit another recent record low*, Government Executive, October 6, 2023 (available at <https://www.govexec.com/pay-benefits/2023/10/federal-retirement-backlog-just-hit-another-recent-record-low/391023/>). In September 2023, OPM’s retirement backlog fell to 15,852 pending cases, down from a high

Request Tracking Systems

Several of the agencies interviewed employed a correspondence tracking system, although there are many different platforms in use. Once cases are uploaded, agency staff can see where in the process a case is and who within the agency is working on it. Still, tracking systems, depending on the platform, can take a considerable amount of work to manage, including manually inputting information and converting emails and documents into PDFs, which must then be uploaded into the tracking system. For example, the Department of Education must input detailed account histories for student loan borrowers, often including multiple employers, into their internal tracking system.

Introducing a new or different tracking system can be a major change for the agency, especially when it comes to training staff on its use and “working out the kinks” that invariably arise following its deployment. Despite these potential pitfalls, some agency interviewees shared that their agency was actively looking for or considering adoption of new tracking systems, enticed by benefits like the improved availability and searchability of data housed within such systems, which would allow agencies to better understand trends affecting their resolution of incoming congressional casework. For example, through adoption of a tracking system that captures information on things like case commencement, response transmittal, and closure dates, agencies would be able to assess the anticipated timeline for resolution of a given congressional casework requests more accurately. While potentially cumbersome in the short term, these tracking systems represent a near term opportunity to improve an agency’s situational awareness and operational control, equipping leaders with the data necessary to make informed decisions about their congressional casework processes.

Portals

Some agencies are actively using portals for casework. Portals are web-based platforms that can collect information from several sources into a single user interface. Unlike a website, where all users may access information on various web pages, a web portal is an internet access point where specific information is only available to specific users. Portals allow constituents and congressional staff to directly upload completed forms and required information into the agency’s system, while at the same time allowing agencies to provide status updates, notify the requesters of determinations in the case, or request that the caseworker or constituent provide further information. Like tracking systems, portals typically grant their administrators improved access to valuable performance metrics, including the number of pending cases, the status and procedural posture of pending cases, average case closure times, any other relevant metric or dataset baked into portal during its design and implementation. Unlike most tracking systems, however, portals typically allow credentialed external users (e.g., congressional caseworkers) to not only log in to the system to upload their request and any supporting documentation, but also track the agency’s progress and receive automated status updates as the case moves towards resolution.

number of cases; 36,000 cases in March 2022. Average processing time for cases was 70 days in September 2023, in contrast to the overall 2023 average of 77 days. Id.

As with any new technology, portals, both in agency and private sector use, are a work in progress.¹³⁰ The adoption by users, constituents and congressional staff alike, is also uneven. Some congressional staff have found portals are easier to use than previous methods of communication, while other offices stated that even with a portal, often emails and telephone calls were the preferred methods of communication. Some congressional offices currently refuse to use agency portals, insisting on relying on telephone calls and emails.

USCIS, for example, has had a correspondence tracking system since 2014, but in 2020 the Service rolled out a new platform consisting of a portal system. Several other agencies were receptive to the idea of portals, but worried about security issues and who would have access to the data such a system would contain. Other agencies are actively exploring adoption of a portal system, but there noted there may be challenges such as the need for statutory changes and communications issues. For example, the Taxpayer Advocate Service pointed out that, in order to adopt a portal, the IRS Code would have to be adjusted and there would have to be new messaging effort after years of IRS messaging that it would never email taxpayers to prevent fraud.

The USCIS portal has reportedly helped reduce the need for telephone calls and emails, saved staff time, and required less manual inputting of data, while also being more accurate. Congress can upload information, including completed forms and documents, which facilitates USCIS personnel's ability to respond to inquiries. The portal, however, has also created new challenges. The portal allows greater centralization, so new cases are assigned the next available USCIS officer regardless of their location, as opposed to keeping cases in the state or region where it was generated. This may be efficient, but if a congressional office asks USCIS liaisons who within the agency is working on a particular constituent's case, the answer may take some time and effort to determine. In addition, this method of assigning cases at times creates difficulties getting a case to the right office or person to answer particular constituent issues. While more efficient, the portal offers less of a personal touch; a congressional office is less likely to build a relationship with regional liaisons by working on a series of cases. In addition, USCIS reports that it has been challenging informing congressional offices on the new system and how the agency is processing casework.

USCIS has also identified changes it would like to make to the portal, including getting cases to the "right" person or office earlier in the process, and improved analysis of cases to see patterns and discern problems that neither Congress nor the agency have yet identified so the agency can address issues earlier. USCIS hopes to have some of these enhancements in place in 2024.

¹³⁰ Portals have already gained somewhat of a negative reputation as difficult to use, prone to sending cases to the wrong place, and prone to hacking.

VI. Proposed Best Practices

1. Create Casework Specific Standard Operating Procedures

As described above, some agencies have detailed, congressional casework specific SOPs in place, while other agencies have not put the procedures in writing or do not make them available to the public. Agencies should create casework specific SOPs. These will help make the agency's process more understandable and predictable largely by setting and managing expectations for congressional staff and constituents. Obviously, some cases are more complex and will take longer to resolve. Still, having expected timelines for various stages of the process, including when interim reports should be sent to Congress and an overall target timeframe for resolving typical cases will also allow the agency to determine if the casework is being handled as expected. SOPs will also be helpful for:

- Training new agency congressional liaisons;
- Informing other agency personnel who are called upon to help resolve cases;
- Gives congressional staff a document that they can share with constituents to help manage expectations; and
- Keeping congressional staff up to date on changes to process or timing.

Some agencies, such as the IRS, have detailed procedures related to congressional casework, but not as a stand-alone SOP. Instead, the IRS and Taxpayer Advocate procedures are part of the voluminous Internal Revenue Manual. Further, casework procedures are spread over several sections of the IRM. It would be helpful for congressional staff and constituents to have a single document to understand the IRM required process, and even more importantly, the privacy restrictions that federal law requires the IRS to follow.

An outline for a potential SOP is attached in Appendix C.

2. Establish Metrics For Success

What constitutes a successful resolution of a case sent to an agency by Congress? Negative outcomes for constituents are inevitable and constituents will not always be happy with the process. Still, what would make the interaction between congressional office and agency "successful?" Possibilities are:

- Was the case resolved within the expected or a reasonable time frame?
- Were updates and interim reports sent while more complex cases are resolved?

- Was the congressional staff fully informed of the agency’s process and what the agency needed (information, waivers, releases, etc.) to resolve the case?
- Was there a need for follow-up communications after the agency thought the case was closed?
- Did the congressional staff and constituent “feel heard” by the agency?

Another metric for success could be whether the resolution of a case gave the agency an insight into a systemic problem that, if solved, could reduce the number of cases going forward.

3. Manage Expectations

One of the most difficult aspects of constituent casework may be managing the expectations of both congressional staff and constituents. Constituents often feel overwhelmed and unheard by the sprawling federal bureaucracy, which is why they turn to their member of Congress in the first place. It is little wonder that constituents do not understand the intricacies of having a mistake on their service record changed by the military, becoming a personal representative for a deceased parent with Social Security, or changing service priorities for the USPS. Constituents and inexperienced congressional staff alike may struggle understanding why the agency liaison cannot “fix” the situation quickly and easily.

Congressional staff report that they spend considerable time trying to manage the expectations of constituents. Agencies should assist in this effort whenever possible. Having standard operating procedures that can be shared with the constituent can help show the steps an agency must take and the legal restrictions it faces for even what seems like an “easy fix.” Another aspect is to continuously making it clear to constituents that congressional intervention does not push a case “to the front of the line” or ensure a positive outcome.

Agencies should also manage expectations with congressional staff, especially those new to the job. Again, a SOP can help educate new and old staff alike. Perhaps even more effective is to build relations with congressional staff in both the Washington DC office and the member’s state or district offices through trainings and frequent meetings. Not only will the congressional staff better understand the agency’s process and legal limitations, but better relationships can improve communications and levels of trust between staff and agency liaisons.

4. View congressional staff as a partner in providing service

As discussed above, there are many ways to look at congressional casework. It can be characterized as differently as constituents exercising their constitutional right to petition the government, to a favor by an elected official that will improve their political standing, to an exercise in legislative oversight. In fact, one agency interviewee said they always view congressional casework as oversight. Casework is combination of all those factors although different offices will emphasize different aspects depending on the member’s political situation

and philosophical outlook. Regardless of the motivations, congressional staff must be the bridge between average citizens and federal agencies. Consequently, staff are under tremendous pressure from both the constituent and the member to resolve cases, hopefully positively, in a timely fashion.

Agency liaisons can be partners with congressional staff in three specific ways:

First, several agencies tend to close out cases after a period of time—sometimes a short one if they do not have the documentation or signed forms necessary to work on a case. This can be frustrating for the congressional staff and constituents, especially if the case must start all over again. If agencies can keep cases open longer and work with congressional staff if documents are missing, this will be helpful in dealing with the constituents.

Second, congressional staff benefit from having something in writing they can show the constituent that demonstrates the agency heard the constituents complain and did what the agency could within the law to help them. This could be the reason that some congressional offices continue to ask for hard copy letters from the agency, which several agency liaisons characterized as “a waste of time,” or at the very least an email. Providing this documentation, along with SOPs, help congressional staff explain what happened during the casework effort, especially if the outcome was negative.

Third, agencies should give responses even in cases that the agency views as “frivolous.” Bear in mind that congressional staff often do not want to be working with these constituents or on these issues either. An example is how congressional offices handle tax protestors. Tom Tillett, a long-time Congressional staffer, devoted an entire section of his casework guide to the subject.¹³¹ Mr. Tillett’s office had a policy of not helping these constituents, but he acknowledges that other congressional offices have a policy to take every constituent request and bring it to the attention of the agency.¹³² He states that in these situations, the staffer should “absolutely make sure your friends at the IRS [Taxpayer Advocate Office] understand your hands are tied. And find a new job pronto.”¹³³ Even with Mr. Tillett’s office policy, he had to work with a constituent who knew his member of congress and was being pursued by Revenue Agents in the local field office for serious charges. Only after a great deal of effort was Mr. Tillett able to get the constituent to sign a Privacy Act consent form. After the IRS informed Mr. Tillett what the constituent was being investigated for, the congressional office informed the constituent there was nothing more they could do for him.¹³⁴ If Congress reaches out to an agency, the legislative liaisons should understand the pressures the staffer is under and do what they can to help them. Some agencies, including the IRS, have written policies for these situations. The Internal Revenue Manual states that in the case of tax protestors and other

¹³¹ Tom Tillett, CONGRESSIONAL CASEWORK, (last revised 11/23/16), §8, pp 52-54. 11/23/16 (https://www.congressfoundation.org/storage/documents/Misc/congressional_casework_guide.pdf). In 2016, Mr. Tillett was the chief of staff for Congressman Joe Pitts (PA-16).

¹³² *Id.* at 52.

¹³³ *Id.*

¹³⁴ *Id.*

“frivolous filers” the IRS will respond to the congressional office, and address the issues raised by the congressional office, not the taxpayer.¹³⁵

5. Build Relationships with Congressional Staff

Building relationships between agency liaisons and congressional staff is essential for working on and resolving constituent casework. These relationships can be built through formal trainings and more casual contacts with congressional offices where staff meet and hear concerns that the office may have.

The form of trainings and information sessions depend on the size of the agency’s liaison staff. As discussed above, agencies with smaller staffs tend to take advantage of information sessions run by the House and the Senate, while agencies with busier liaison offices may run their own Capitol Hill trainings, sometimes twice a year. Agencies with regional offices may require liaison staff to meet with congressional staff in member’s state or district offices regularly. Regional staff may also come to Washington DC periodically to meet Capitol Hill staff.

Unfortunately, COVID interrupted these valuable opportunities to create cross-branch relationships. Information sessions and trainings have restarted, but the world has moved online with a new reliance on video meetings. Although more efficient and cost effective, most people would agree that something is lost meeting virtually and not in person. In addition, agencies cite budget concerns for not bringing staff to Capitol Hill more frequently. However, better relationships will, in the long run, create better communication and understanding and perhaps reduce the number of cases sent to agencies.

Trainings will become even more important as agency’s transition to new technology such as portals. Congressional staff will not only have to learn new systems, but may have to be convinced that the new systems will be secure, more efficient, and help resolve cases for their constituents.

6. Leverage Technology to Track and Resolve Cases

Agencies should leverage technologies such as case tracking systems and portals to make the casework process more efficient and accurate.

With agencies adopting portals already, there is no question that this will be technology that more agencies will use for congressional casework soon. While this technology shows great promise to make the entire process more efficient and accurate, agencies should bear in mind drawbacks.

¹³⁵ Internal Revenue Manual. §11.5.2.2.7 Frivolous Filers.

One drawback is that users, both external and internal, may fail to use the portal properly. The healthcare industry, which has widely adopted portal use, has seen resistance to portals from both patients and doctors despite cost savings and enhanced healthcare outcomes.¹³⁶ One health care billing company states that despite the advantages only 25% of patients consistently use available portals¹³⁷ Why would even technology savvy patients¹³⁸ and doctors not take advantage of portals? Patients may have little incentive to use portals, doctors may lack the staff to effectively use portals, patients over the age of 40 are concerned about the security believing their information will be hacked, and the confusion and anxiety caused by new technology.¹³⁹ Further, surveys show patients just want to talk to their physician directly.¹⁴⁰ Sometimes, patients are not even aware that the portal is available or properly instructed on how to use it.¹⁴¹ An effective communications strategy would include presenting relevant and helpful directions for use on the portal in an effort to make its use as easy and streamlined as possible.¹⁴²

The top concern for agencies adopting portals will likely be security. The federal government has had difficulty securing data from hackers in the recent past.¹⁴³ Still, security quality is growing and private enterprises, including health care companies, have helped keep data secure through security management measures such as multi-factor authentication and routine password resets. Of course, Congress will have to be a partner in this effort providing the needed statutory changes to make portal use possible and to provide the funds for portals that are both effective and secure.

An important consideration for agencies looking to adopt new technologies is to incorporate data and analytic tools. Several agencies stated that they wished their communications tracking systems could pull specific data so that the agency could spot problems with its own operations and patterns in the cases being presented. The latter would help the

¹³⁶ “Why Your Patients are Failing to Use Your Portal Properly,” Medwave Medical Billing, LLC, December 17, 2022, (<https://medwave.io/2022/12/why-arent-patients-using-patient-portals/#:~:text=The%20reason%20why%20many%20patients,their%20medical%20records%20%2F%20patient%20portal.>). Medwave is a medical billing and credentialing company headquartered in Pennsylvania.

¹³⁷ *Id.*

¹³⁸ Obviously, this is a generational consideration with Millennials and Gen Zers being very comfortable with technology such as portals and Baby Boomers being less comfortable.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *See generally* Keith Wagstaff, James Eng and Matthew DeLuca, “OPM: 21.5 Million People Affected By Background Check Breach,” NBC News, July 9, 2015, (<https://www.nbcnews.com/tech/security/opm-hack-security-breach-n389476>). In 2015, The U.S. Office of Personnel Management announced that information including Social Security numbers for 21.5 million people along with other sensitive data was stolen from its computer networks by hackers. In December 2023, the government began making distributions to claimants as part of a \$63 million settlement. *See, In re: U.S. Office of Personnel Management Data Security Breach Litigation*, No. 15-1394 (ABJ) (D.D.C.); <https://www.opmdat breach.com/>.

agency understand what Congress was collectively telling the agency without telling it. This is especially important if constituent service work is viewed through the lens of congressional oversight. Each case potentially can inform an agency of larger, more systemic problems, but only if personnel can spot the patterns presented by many cases. Tracking systems and portals have the potential to provide this information if the agency considers the information that would be most helpful and incorporate the data collection and analysis into the systems.

7. But... Don't Use Technology As a Substitute For Outreach

The real danger of technology is allowing it to replace building relationships between people and providing the responses needed to show constituents that they have been heard and their case was fully considered by the agency. One agency was using automated responses to communications from Congress as a method of dealing with a lengthy casework backlog. The messages were essentially a form letter pointing congressional staff and constituents to the agency website where they could access “helpful links.” Most people are now fairly internet savvy, and if they could have their questions answered by the website, they probably would never have contacted Congress in the first place. This must also be frustrating to congressional staff who may be just looking for status updates on behalf of the constituent. As another agency put it, Congress does not want a form letter—agencies need to give good customer service.

Appendix A: Congressional Staff Interview Questions

The questions posed to Congressional staff about constituent service requests to agencies were:

Question 1: Approximately how many constituent service requests does your office make to federal agencies each year? If annual figures are not readily available, approximately how many requests does your office submit per month? Per quarter?

Question 2: What are the major categories of constituent issues that your office attempts to resolve by contacting agencies?

Question 3: Approximately how much time does it typically take to resolve constituent service issues involving an agency? (If the answer is agency dependent, please specify.)

Question 4: Does your office direct agency-related constituent service requests to a designated liaison office (such as an office of legislative affairs) or directly to the relevant component / program office or some other known contact within the agency?

Question 5: Which agencies have been particularly helpful in resolving constituent service problems?

Question 6: Which agencies would benefit most from improving their processes for resolving constituent service requests?

Question 7: What, in your opinion, causes challenges or difficulties for agency personnel when addressing these requests?

Question 8: What, in your opinion, is the best way for agencies to communicate with congressional offices regarding constituent service requests?

Question 9: How can agencies improve communication with congressional offices regarding constituent service requests?

Question 10: What metric does your office use to measure success in providing constituent services, particularly where agencies are involved?

Appendix B: Agency Staff Survey

The questions posed to agency personnel during interviews were generally as follows:

General

What are the biggest challenges facing your agency / office in answering constituent service requests?

Are service requests handled by a central office or are they distributed according to topic?

What recent changes to answering constituent service requests, if any, have made the process easier? More difficult?

Why were those changes made?

Are there any areas of inefficiency, duplication or confusion related to service inquiries?

Standard Operating Procedures

Do you have standard operating procedures for service inquiries? (can I have a copy?)

Are those procedures available to the public?

How were those procedures developed?

How often are the procedures reviewed and updated?

Do the procedures include productivity goals? If so, what are they?

Do you have a correspondence tracking system for service inquiries?

Are there other legal requirements that affect service inquiries?

Metrics for success

What metrics do you use to measure the success of a response to a service inquiry?

Can these metrics be improved or expanded? How?

Are the monthly / quarterly/ yearly results of service inquiries compiled and reported?

Training

Do you provide training to staff on constituent inquiries?

Would additional training improve the quality and timeliness of agency responses?

Communication

How do you communicate with congressional staff on these requests?

How can this communication be improved?

Does your office communicate with other parts of your agency about the importance of congressional inquiries?

How can this communication be improved?

Technology

How has your agency leveraged technology to help with service requests?

What technology could assist service inquiries?

What prevents your agency from adopting that technology?

Do you use portals?

Could service inquiries become automated in some way? (algorithms?) What would that look like?

Appendix C: Standard Operating Procedures Outline

Standard Operating Procedures for Congressional Inquiries

1.0 [Name of office responsible for Congressional inquiries]

1.1 Overview

Short description of the office and its mission.

1.2 Leadership

Who make up this office and to whom does the head of the office report to in the agency?

1.3 Organizational Chart

1.4 Primary Functions of Office

If there are multiple groups or departments within the office, give a short description of each group's duties.

2.0 Congressional Correspondence

2.1 General Guidelines

Which components of the office work on Congressional inquiries?

What are the shared accountabilities across groups/ departments?

Describe the individual accountabilities for each group/ department.

2.2 Productivity Goals

What are the metrics used to determine whether the office is responding to Congressional inquiries in a timely and responsive manner?

Overall Goals

This section should give the time expectations for responding to inquiries. For example, the USPS SOP states:

The department's productivity goal is to respond to requests handled by the correspondence group within 15 workdays from the date of receipt. The productivity clock starts on the day the inquiry is date stamped by the controller if correspondence is received after 4 PM it is date stamped the next workday.

Workdays in the correspondence tracking system may not always be consistent with normal business days. During instances of government wide closures such as presidential inauguration's, weather related emergency closures, department wide training, or other similar occasions, the target productivity goals in CTS maybe adjusted to reflect actual workdays, rather than business days.

Position Specific Goals

What are the time expectations for each person working on a case to meet the overall goals above?

2.3 Process Flowchart

Give a visual representation of how an inquiry moves through the process from reception to response.

2.4 Process Structure

Receipt and input into correspondence tracking system

- Who acknowledges receipt of inquiry to the congressional office?
- Requirements for identifying sensitive issues (if any) to bring to the attention of higher-level managers.
- Requirements for inputting information into the tracking system.
- Requirements for uploading / scanning supporting documents into the tracking system
- How cases will be distributed among personnel? eg. By individual caseload? By case complexity? Does the case need to go to another office within the agency?

Research and Draft Response

What is the most appropriate course of action to address and resolve the pertinent issues?

Draft Review

Who reviews draft responses and what should they be considering?

Finalization

Who finalizes the response and is responsible for sending it to Congress? What format should the response be in? Eg. emailed PDF, portal upload, etc.

Storage

How will the response be stored according to agency retention policies?

2.5 Interim Responses

At what point should an interim response be sent to Congress? The USPS SOP states:

During any phase of the correspondence process, if it is determined that a response will not be finalized until more than 20 work days have elapsed from the date-stamp date, an interim response will be generated to the MOC or other requestor.

The USPS also states what responsibilities various actors have in drafting, reviewing, and finalizing interim responses.

3.0 Restrictions on providing information

- What information can the agency not provide to Congress? Provide appropriate citations to relevant statutes and regulations restricting the agency in responding to Congressional inquiries.
- What forms / waivers / releases are required to release information on a constituent to Congress?
- When will the agency close a case due to not having the required documentation?

4.0 “Frivolous” Inquiries

- What constitutes a “Frivolous” issue or inquiry from Congress?
- What is the appropriate response?

The internal Revenue Manual (IRM) states:

The response should be written to the congressional office, not the taxpayer. The response should address questions asked or issues raised by the congressional office, which may differ from the questions/issues the taxpayer submitted to the congressional office.

5.0 Tips on communicating with Congress

Consider giving caseworkers a list of dos and don'ts such as the one provided by the IRS in the IRM.

Dos...	Don't...
Have a positive attitude.	Be shy or apologetic.
Plan to explain and defend (if needed) your office's programs, products, and services, as well as any national concerns.	Think it is someone else's job.
Remember that you are providing quality customer service to an important external stakeholder.	Be afraid to tell them what your office appropriately can do for them and their constituents.
Remember that LA is a legitimate function of all federal agencies. The IRS Office of LA has already provided Members of Congress and their staffs with considerable information and material on the IRS and tax administration issues.	<p>Feel that speaking with, writing to, or visiting Members and/or staffs is somehow inappropriate.</p> <p>Be surprised if the Member/staff are familiar with certain IRS items; use that to lead into your message about your office.</p>
Call on your colleagues in all parts of LA for general or specific advice on all matters relating to Congress (schedules, reference books, bill status, committee memberships, current events, etc.)	Hesitate to check (it could save some embarrassment).
Concentrate on providing education and information. Avoid lobbying or the appearance of lobbying (trying to influence the Member on a specific issue or bill).	Tell the Member or the staff your opinion on an issue or bill (you could be quoted).

<p>Stick to educating Members and staff on your office’s organization, programs, operations, products and services, and national programs of interest.</p>	<p>Talk about other agencies or issues.</p>
<p>If asked about specific tax or other legislation:</p> <ul style="list-style-type: none"> • Advise that IRS, Treasury and OMB require prior clearance on any comments, which will be limited to administrative concerns in any event. • Suggest that the Member write directly to the Assistant Secretary on Tax Policy or to the Commissioner. 	<p>Saying that a bill is good or bad, or that you favor or don’t favor it.</p> <p>Feel bad about referring such questions where they belong.</p>
<p>Avoid discussion of IRS budget/appropriations whenever possible.</p> <ul style="list-style-type: none"> • Stick to whatever resources you have in your office and how you are using them. • Suggest that any questions on overall IRS programs or budget be sent to the Commissioner. 	<p>Say that you need more resources (everyone has that problem -- even Members of Congress).</p> <p>Feel bad about referring such questions where they belong.</p>
<p>Remember that anything discussed by the IRS in prepared testimony has been cleared by Treasury and OMB and can be discussed with Members and staff.</p>	<p>Go beyond what is in the testimony.</p>
<p>Follow-up to ensure that you have addressed all their concerns.</p>	<p>Forget.</p>
<p>Keep LA advised of any significant items or developments you learn about.</p>	<p>Keep it to yourself.</p>