



CITIZENS UNION OF THE CITY OF NEW YORK
April 2015 Addendum to Report
“SPENDING IN THE SHADOWS: DISCRETIONARY FUNDING IN THE NYS BUDGET”

In an update to its report released last month, [Spending in the Shadows: Discretionary Funding in the NYS Budget](#), Citizens Union finds that the recently enacted FY 2016 state budget of \$142 billion contains \$2.9 billion in opaque “lump sum funds,” which allow spending decisions to be made in the shadows by elected officials after the budget is passed. This represents an increase of \$303 million from the \$2.6 billion proposed in the executive budget.

The continued existence of these funds points to one important area that the governor and legislature failed to address in the recent ethics reforms included as part of the final state budget: transparency and accountability of these lump sum pots. Former Speaker Sheldon Silver was charged with personally directing \$500,000 in undisclosed grants from a lump sum fund to a prominent doctor, who began referring his patients to a law firm that, in turn, paid referral fees to Silver. His arrest sparked a renewed push for ethics reform in Albany, yet greater disclosure of who makes these decisions and who receives these funds will remain unknown. The effort to prevent conflicts of interest related to discretionary funding was not also ultimately included in the reforms.

Citizens Union’s updated findings include a complete analysis of the enacted budget, including [vetoes issued by the Governor](#) looking at:

- Lump Sum discretionary funds directed by elected officials, totalling \$2.9 billion; and
- Items and pots from the defunct Community Projects Fund, totalling \$350 million.

Our detailed findings are included below for both of these areas.

Citizens Union’s Major Findings on “Lump Sums”

1. The **FY 2016 Enacted Budget contains \$2.9 billion in lump sum funds distributed by elected officials**, through 95 separate pots. The Enacted Budget **adds \$303 million** in 30 additional lump sum pots beyond the 65 initially proposed by the Governor in January.¹

¹ Note that Citizens Union’s March 2015 report “Spending in the Shadows: Discretionary Funding in the NYS Budget,” mistakenly listed the number of lump sums proposed by the Governor in the executive budget as 66. There were 65 such pots.

2. Nearly all additions were made in the **Aid to Localities Budget**, which now contains **\$465 million in lump sum funds, almost five times as much as the \$96 million first proposed in the executive budget in January.**
3. The Capital Projects Budget **contains nearly \$2.5 billion in lump sum funds.** This decreased slightly from the proposed executive budget due to one [vetoed](#) lump sum fund: a \$78 million pot of SUNY Challenge Grant funds. The Governor in his veto message stated the item in the final budget was an "unconstitutional alteration of a reappropriation contained in the Executive Budget submission, because it changes the purpose of the reappropriation..." This reduced the overall amount of the Governor's funds.
4. Aside from authorizing old pots of spending this year, **14 brand new pots totalling \$70 million have been added** to the Aid to Localities Budget, beyond those initially proposed in the executive budget. These pots are largely in the areas of criminal justice and education funding, and include a [\\$25 million pot to be distributed by the Senate Republicans to charter schools](#) and a \$14 million pot to be distributed by the Assembly for education, among other items. These will take years to spend down and serve to perpetuate the lump sum problem.
5. The Governor, Assembly, Senate and Attorney General each have considerable amounts of lump sum funds available for their use in the FY 2016 Enacted Budget (note that some of these funds are jointly distributed, therefore overlap between parties; in total they add up to \$2.9 billion):
 - a. \$2.3 billion for the Governor;
 - b. \$1.2 billion for the Senate;
 - c. \$989 million for the Assembly; and
 - d. \$82 million for the Attorney General.
6. Reforms proposed by the Governor in February, which would increase disclosure on certain legislative lump sums, were stripped out of the enacted budget entirely, which included:
 - a. an affirmation by the lawmaker to the director of the Division of the Budget that the contract or grant is for a lawful, public purpose, that the lawmaker has not and will not receive any financial benefit, and that there are no conflicts of interest (including for family members, staff, etc.); and
 - b. compliance with all financial disclosure requirements of section 73-a of the public officers law.

Major Findings Regarding the Community Projects Fund

1. The final budget also reappropriates \$350 million in old Community Projects Fund items. No spending was proposed by the Governor from in the executive budget from the Community Project Fund, meaning its addition was the result of negotiations with the legislature.
2. Continuing a troubling trend, \$330 million of the Community Project Fund reappropriations are unitemized, with \$169 million of this to be distributed via a Memorandum of Understanding between the Secretaries of the Senate Finance and Assembly Ways and Means Committees. Another \$161 million of the reappropriations lack specific detail regarding how they are to be distributed. Of that \$161 million, \$130 million is located in unitemized pots related to senate funds, and \$31.8 million is in unitemized pots related to assembly funds.
3. While the final budget authorizes up to \$350 million to be distributed, the Governor's [Financial Plan](#), however, stated that there was only \$87 million in cash available to be spent *this year* out of this fund. Typically reappropriations overestimate the amount that will be spent in a given year, and based on trends from previous years, far less than \$87 million will be spent this year. This will perpetuate the presence of 'ghost' member items in the budget for years to come.
4. The Governor vetoed only \$2.4 million from the Community Projects Fund, largely stating that there was "minimal spending remaining," or they were "fully expended." Many other community projects fund items have minimal spending remaining, yet were untouched in the vetoes. The Governor also made other vetoes on the basis that funding was more than 7 years old; all Community Project Fund items date only as recently as 2009, with some as old as 1998. In the case of one organization, the Governor vetoed funding for ACORN due stating it is an "organization for which the appropriation is made is now defunct."

As Citizens Union noted in our [2013 Spending in the Shadows report](#), the Community Projects Fund is yet another portion of the budget that has suffered from misuse. For instance, former Assemblymember Vito Lopez, who resigned in May 2013 amid allegations of ethical misconduct, founded and used the Ridgewood Bushwick Senior Citizens Council (RBSCC) as a power base. The enacted budget continues to allocate member item funding to controversial or defunct non-profits, including \$285,336 to the RBSCC, which was not vetoed.

While no new member items have been enacted since 2009, their continued existence, without proper vetting of the organizations receiving funding and disclosure of sponsors and recipients, threatens to abet yet more corruption in New York.

Citizens Union once again calls on state lawmakers to enact reforms to:

1. Support the governor's proposal to require an affirmation from legislators who seek to make awards from lump sum appropriations that the contract or grant is for a lawful, public purpose, that the lawmaker has not and will not receive any financial benefit, and that there are no conflicts of interest, and that the legislator is in compliance with all financial disclosure requirements in the public officers law.
2. Expand the governor's proposal to apply to all state elected officials involved in determining grants, including the governor; and all lump sum funds authorized in the budget. This should be further codified in state finance law to ensure application to all future lump sum pots.
3. All grants and contracts expended under lump sum funds should receive comprehensive, online disclosure. The disclosure should be in a user-friendly format permitting independent analysis and should include all MoUs, plans, resolutions and other agreements, funds distributed and the identity of recipients, and the amount of funds that remain.
4. Lump sum appropriations should disclose in the state budget the detailed purposes and criteria set forth for their distribution.
5. For lump sum funds distributed via assembly or senate resolution, resolutions should age for 3 days and identify the legislative sponsor.
6. There should be a time limit for the reappropriation of lump sums to decrease slush funds and the use of such funds as "one-shot" budget gap fillers.