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Continuing Appropriations Acts: Brief Overview of Recent Practices

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Summary

Normally, most of the operations of federal departments and agencies are funded each year through the separate enactment of 13 regular appropriations acts, which are scheduled to be enacted by October 1. Rarely, however, are all 13 bills enacted by the deadline. The affected departments and agencies usually are funded under continuing appropriations acts. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

Over the last 30 years, the nature, scope, and duration of continuing resolutions have fluctuated. From the early 1970s through 1987, continuing resolutions gradually expanded from interim funding measures of comparatively brief duration and length to full-year funding measures. During the Bush years and early Clinton years, the nature, scope, and duration contracted; in 1995-1996 they generally expanded; and in 1997-1999, they, again, contracted.

Continuing resolutions generally can be divided into two categories—those that provide temporary funding and those that provide funds for the entire fiscal year. Temporary continuing resolutions provide interim funding until a specific date or until the enactment of the applicable regular appropriations acts. Full-year continuing resolutions provide continuing appropriations for the entire fiscal year.

Over the years, delay in the enactment of regular appropriations measures and continuing resolutions after the beginning of the fiscal year has led to periods during which appropriations authority has lapsed. Such periods generally are referred to as *funding gaps*.

On September 25, 2000, Chairman C.W. Bill Young, House Appropriations Committee, introduced H.J.Res. 109, which would continue funding for the eleven outstanding FY2001 regular appropriations bills through October 6, 2000.

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Continuing Appropriations Acts: Brief Overview of Recent Practices

Most Recent Developments

On September 25, 2000, Chairman C.W. Bill Young, House Appropriations Committee, introduced H.J.Res. 109, which would continue funding for the eleven outstanding FY2001 regular appropriations bills¹ through October 6, 2000. It provided a spending level for the projects and activities associated with the bills at generally the total amount of *budget authority*² available last year. For instance, the funding level would include adjustments for supplementals and rescissions.

Table 1. Current Status of FY2001 Continuing Resolution

Measure	House Report	House Passage	Senate Report	Senate Passage	Conf. Report	Public Law
H.J.Res. 109	—	—	—	—	—	—

¹The eleven outstanding bills are: Agriculture, Commerce-Justice-State-the Judiciary, District of Columbia, Energy and Water Development, Foreign Operations, Interior, Labor-Health and Human Services-Education, Legislative Branch, Transportation, Treasury-General Government, and Veterans Affairs-Housing and Urban Development. The Defense bill became law on Aug. 9, 2000, and the Military Construction bill became law on July 13, 2000.

²Congress provides budget authority instead of cash to agencies. Budget authority represents the legal authority for federal agencies to make obligations requiring either immediate or future expenditures (or outlays). These obligations (for example, entering into a contract to construct a ship or purchase supplies) result in outlays, which are payments from the Treasury, usually in the form of checks, electronic funds transfers, or cash disbursements.

For example, an appropriations act might provide \$3 billion in new budget authority for FY2000 to the Defense Department to construct four ships. That is, the act gives the department legal authority to sign contracts to build the ships. The department can not commit the government to pay more than \$3 billion. The outlays occur when the contractor cashes the government check for building the ships.

Generally, appropriations are a type of budget authority.

Introduction

Under the Constitution and federal law, no funds may be drawn from the U.S. Treasury or obligated by federal officials unless appropriated by law.³ Normally, most of the operations of federal departments and agencies are funded each year through the separate enactment of 13 regular appropriations acts.⁴ However, it is not unusual for the enactment of one or more of these acts to be delayed beyond the beginning of the fiscal year on October 1⁵ (for data on the FY1977-FY2000 period, see **Table 2**). When this occurs, affected departments and agencies usually are funded under continuing appropriations acts. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

This report provides information on the history of continuing resolutions; the nature, scope, and duration of CRs during the last 30 years; the various types of CRs that have been enacted; and an overview of those instances when budget authority has lapsed and a funding gap has resulted.

History and Recent Trends

Continuing resolutions date from at least the late 1870s, and have been a regular part of the annual appropriations process in the post World War II period. In fact, with the exception of FY1989, FY1995, and FY1997, at least one continuing resolution has been enacted for each fiscal year since 1954. During the FY1977-FY2000 period, Congress enacted on average four continuing resolutions per year (for detailed information, see **Table 2**).

Over the last 30 years, the nature, scope, and duration of continuing resolutions have fluctuated.⁶ From the early 1970s through 1987, continuing resolutions gradually expanded from interim funding measures of comparatively brief duration and length to full-year funding measures. In many cases, the full-year measures included the full text of several regular appropriations bills and contained substantive

³See Article I, Section 9 of the Constitution, and 31 *U.S.C.* 1341.

⁴For information on the types of appropriations measures and the appropriations process, see U.S. Library of Congress, Congressional Research Service, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter, CRS Report 97-684 GOV (Washington: updated periodically).

⁵Fiscal years begin on October 1 and end the following September 30. For example, the fiscal year 1997 began on October 1, 1996.

⁶For a brief discussion of earlier periods see U.S. Library of Congress, Congressional Research Service, *Budget Concepts and Terminology: The Appropriations Phase*, by Louis Fisher, CRS Report 74-210 GGR (Washington: Nov. 21, 1974). For a discussion of trends involving the use of continuing resolutions through the mid-1980s, see U.S. Congress, House Committee on the Budget, *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*, committee print No. CP-3, prepared for the Task Force on the Budget Process by Allen Schick, 100th Cong., 1st sess. (Washington: GPO, 1987).

legislation. During the Bush years and early Clinton years, the nature, scope, and duration contracted; in 1995-1996 they generally expanded; and in 1997-1999, they, again, contracted. The more restricted nature of continuing resolutions in the 1997-1999 period occurred because budgetary conflicts were resolved in omnibus regular appropriations bills, instead of continuing resolutions.

Until the early 1970s, continuing resolutions principally were limited in scope and duration, and rarely exceeded a page or two in length. They were used almost exclusively to provide temporary funding at a minimum, formulaic level, and contained few provisions unrelated to the interim funding.

Table 2. Regular Appropriations Bills Enacted by Deadline and Continuing Resolutions (CRs), FY1977-FY2000

Fiscal Year	Presidential Administration	Party in Control of Congress		Regular Appropriations Bills		Continuing Resolutions Enacted	
		Senate	House	Approved by or on October 1st	Enacted in Continuing Resolution		
1977	Ford	Democrats	Democrats	13	0	2 ^a	
1978	Carter	Democrats	Democrats	9	1	3	
1979				5	1	1	
1980				3	3	2	
1981				1	5	2	
1982		Reagan	Republicans	Democrats	0	4	4
1983				1	7	2	
1984				4	3	2	
1985				4	8	5	
1986				0	7	5	
1987				0	13	5	
1988			Democrats		0	13	5
1989					13	0	0
1990	Bush		Democrats	Democrats	1	0	3
1991				0	0	5	
1992				3	1	4	
1993				1	0	1	
1994	Clinton	Democrats	Democrats	2	0	3	
1995				13	0	0	
1996		Republicans	Republicans	0	5 ^b	14	
1997				8 ^c	0	0	
1998				1	0	6	
1999				1	0	6	
2000					4	0	7

Sources: U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, 94th Cong., 2nd sess. - 104th Cong., 1st sess. (Washington: GPO, 1976-1995). U.S. Congress, House, *Calendars of the U.S. House of Representatives and History of Legislation*, 104th Cong., 1st sess. - 105th Cong., 2nd sess. (Washington: GPO, 1995-1999).

^a The two CRs did not provide continuing funding for entire regular bills; instead, they provided funding for selected activities.

^b An FY1996 continuing resolution (P.L. 104-99) provided full-year funding for the FY1996 foreign operations regular bill; however, the continuing resolution provided that the foreign operations measure be enacted separately (P.L. 104-107). It is excluded from the amount.

^c The remaining five bills were enacted by October 1, but not as separate measures; therefore, they are excluded from this amount. The five bills were included in the FY1997 Defense regular act.

Beginning in the early 1970s, conflict between the President and Congress over major budget priorities, triggered in part by rapidly increasing deficits, greatly increased the difficulty of reaching final agreement on regular appropriations acts. This conflict led to protracted delay in their enactment. Continuing resolutions, because they historically have been viewed as "must-pass" measures in view of the constitutional and statutory imperatives, became a major battleground for the resolution of budgetary and other conflicts. Consequently, the nature, scope, and duration of continuing resolutions began to change.

Continuing resolutions began to be used to provide funds for longer periods, and occasionally for an entire fiscal year, when agreement on one or more regular acts could not be reached. Further, continuing resolutions became vehicles for substantive legislative provisions unrelated to interim funding, as it became clear that in some years continuing resolutions would be the most effective means to enact such provisions into law. These trends culminated in FY1987 and FY1988, following a period of persistently high deficits and sustained conflict over how to deal with them. For those two years, continuing resolutions effectively became omnibus appropriations measures for the federal government, incorporating all of the regular appropriations acts for the entire fiscal year as well as a host of substantive legislation covering a broad range of policy areas.⁷

Since FY1988, Congress and the President have generally operated under multi-year deficit reduction agreements achieved through budget summits. Since 1990, these agreements have included enforceable limits on spending controlled in annual appropriations acts (so-called *discretionary spending*).⁸ From FY1988 through FY1995, a period of relative agreement on overall budget priorities, agreement on regular appropriations acts came more readily. Continuing resolutions, when necessary, generally were more limited, contained far less substantive legislation, and were used mainly to provide interim funding for relatively brief periods.

During consideration of the FY1996 regular appropriations bills and continuing resolutions, the President and Congress were in conflict over the 1995 balanced budget plan and spending and policy priorities in the FY1996 appropriations measures. As a result, two funding gaps⁹ occurred; 14 continuing resolutions were enacted; and action was not completed until almost seven months into the fiscal year. The final continuing resolution was used for the entire fiscal year and contained six regular appropriations bills.

From FY1997 through FY2000, budgetary and other conflicts continued between the President and Congress. The differences were resolved in omnibus bills included in regular appropriations bills, instead of continuing resolutions. Therefore, continuing resolutions, when needed, provided interim funding for short periods of time and included little substantive legislation.

⁷See P.L. 99-591 and P.L. 100-202.

⁸For more information, see Streeter, *The Congressional Appropriations Process: An Introduction*; and U.S. Library of Congress, Congressional Research Service, *Manual on the Federal Budget Process*, by Allen Schick and Robert Keith, CRS Report 98-720 GOV (Washington: periodically updated).

⁹For information on funding gaps, see *Funding Gaps* below.

Types of Continuing Resolutions

Continuing resolutions generally can be divided into two categories—those that provide temporary funding and those that provide funds for the entire fiscal year.

Temporary continuing resolutions provide interim funding until a specific date or until the enactment of the applicable regular appropriations acts, if earlier. They have remained fairly constant in form and structure in recent years. Typically, they establish formulas that provide funding for programs and activities under the affected appropriations act(s) at a level which is the lowest of one of the following: (1) the current rate (*i.e.*, the total amount provided for the previous year); (2) the rate provided for in the applicable regular act as reported to or passed by the House (if any); or (3) the rate provided in the applicable regular act as reported to or passed by the Senate (if any). (See, for example, Section 101 of P.L. 103-88, approved September 30, 1993.) In earlier years, this funding formula sometimes included the rate of appropriations provided for in the President's budget as another option. (See, for example, Section 101(b) of P.L. 94-41, approved June 27, 1975.)

The temporary continuing resolutions in recent years have generally used some variation of the formula that provides funds at the lower of the House or Senate passed (reported) levels, or at the current rate. In most cases, the formula has applied to all programs or activities covered by a particular regular appropriations act. However, such formulas also have been used to fund specific programs that were not covered by regular appropriations acts because they were not yet authorized by law or for other reasons (for example, Section 101 of P.L. 94-473, approved October 11, 1976). Once a temporary continuing resolution is enacted, additional temporary resolutions, if necessary, may simply extend the deadline in the initial resolution without changing the funding formula, or they may include an updated formula that represents, for example, a later stage of congressional action on one or more of the covered regular acts than had been reached earlier.

Full-year continuing resolutions provide continuing appropriations for the entire fiscal year. (**Table 2** provides the number of regular bills funded through the end of the fiscal year in continuing resolutions.) Typically, full-year funding provisions are one of two types: (1) provisions that incorporate regular appropriations acts by reference to the latest stage of congressional action (usually the conference agreement, if one has been reached); or (2) the full text of the regular act.

Full-year continuing resolutions effectively become regular appropriation acts for the fiscal year. Further, when continuing resolutions have included the full text of one or more regular appropriations acts, they also have included all the myriad general and administrative provisions (so-called *riders*) typically included in regular acts. (See, for example, Section 101 of P.L. 100-202, approved December 22, 1987, and Section 101 of P.L. 99-591, approved October 30, 1986.) Consequently, they may be hundreds of pages in length, whereas temporary resolutions typically are a few pages or less (in the case of a simple extension of a previous resolution, perhaps only one page).

During consideration of the FY1996 continuing resolutions, Congress also used *targeted appropriations*. Traditionally, a single continuing resolution provides funding for all activities in the outstanding regular appropriations bills and generally provides the same expiration date for all these bills. However, Congress separated activities from the outstanding regular bills and distributed them among three FY1996 continuing resolutions. Congress distributed funding for activities in four of the six outstanding regular bills among the three continuing resolutions. Funding for most of the activities in the fifth regular bill (Foreign Operations) was provided in one of these continuing resolutions and funding for most of the activities in

the sixth bill (District of Columbia) in another. In addition, Congress extended funding for the entire fiscal year for selected activities in the bills, such as Meals on Wheels and visitor services in national parks, while it provided interim funding for the remaining activities.

Substantive Legislative Provisions

Substantive legislative provisions (*i.e.*, provisions in the jurisdiction of committees other than the House and Senate Appropriations Committees) covering a wide range of subjects also have been included in some continuing resolutions. Continuing resolutions are attractive vehicles for such provisions because they are considered must-pass legislation on which the President and Congress eventually must reach agreement. Such provisions have been included both in temporary and full-year continuing resolutions.

House rules¹⁰ that prohibit the consideration of general appropriations measures containing legislative provisions or *unauthorized appropriations*¹¹ do not apply to continuing resolutions (though the House typically adopts special rules restricting amendments to continuing resolutions, in part for this reason). Comparable Senate restrictions¹² on legislative provisions and unauthorized appropriations do apply in the case of continuing resolutions.

Substantive provisions in continuing resolutions have included comprehensive measures, such as omnibus crime control legislation (in FY1985) and foreign assistance reauthorizations (in FY1984), that establish major new policies and amend permanent provisions of law. They have also included narrower provisions focused on temporary or one-time problems, such as special House and Senate procedures for considering certain presidential requests for funding, temporary increases in the statutory limit on the public debt, and provisions canceling or modifying a sequester order under the 1985 Balanced Budget and Emergency Deficit Control Act (or *Gramm-Rudman-Hollings*). These provisions vary in length from one page to over 200 pages (in the case, for example, of the Comprehensive Crime Control Act of 1984).

Funding Gaps

Over the years, delay in the enactment of regular appropriations measures and continuing resolutions after the beginning of the fiscal year has led to periods during which appropriations authority has lapsed. Such periods generally are referred to as funding gaps.¹³ Depending on the number of regular appropriations that have yet to be enacted, a funding gap can affect either a few departments or agencies or most of the federal government.

¹⁰House Rules XXI, clause 2, and XXII, clause 5.

¹¹Unauthorized appropriations are funds in an appropriations measure for agencies or programs whose authorization has expired or was never granted, or whose budget authority exceeds the ceiling authorized (for more information, see Streeter, *The Congressional Appropriations Process: An Introduction*).

¹²Senate Rule XVI.

¹³For more information on funding gaps, see U.S. Library of Congress, Congressional Research Service: *Federal Funding Gaps: A Brief Overview*, by Robert Keith, CRS Report RS20348, (Washington: updated periodically) and *Shutdown of the Federal Government: Causes, Effects, and Process*, by Sharon S. Gressle, CRS Report 98-844 GOV (Washington: updated periodically).

Funding gaps are not a recent phenomenon. In fact, by the 1960s and 1970s, delay in the enactment of appropriation acts, including continuing resolutions, beyond the beginning of the fiscal year had become almost routine. Notably, according to a 1981 GAO report, "most Federal managers continued to operate during periods of funding gaps while minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down while the appropriations measures were being passed."¹⁴

On April 25, 1980, Attorney General Benjamin Civiletti issued a formal opinion which stated in general that maintaining nonessential operations in the absence of appropriations was not permitted under the Antideficiency Act (31 U.S.C. 1341), and that the Justice Department would enforce the criminal sanctions provided for under the Act against future violations.¹⁵

In another opinion issued on January 16, 1981, the Attorney General outlined the activities that could be continued by federal agencies during a funding gap. Under that opinion, the only excepted activities include (1) those involving the orderly termination of agency functions; (2) emergencies involving the safety of human life or the protection of property; or (3) activities authorized by law.¹⁶ Activities authorized by law, for example, include funding for entitlement programs, such as Social Security and Medicare, that are permanently appropriated. In 1990, the Antideficiency Act was amended to clarify that "the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."¹⁷

Since 1981, whenever delay in the appropriations process has led to periods of lapsed appropriations, federal agencies and departments lacking appropriations generally have shut down all nonessential operations and furloughed nonessential employees (although provisions of law have been enacted to ratify obligations and pay employees retroactively). During late 1995 and early 1996, there were two funding gaps—one lasting 21 days and the other lasting six (including weekends).¹⁸ In contrast, from 1981 through 1994, there were nine funding gaps, varying in duration from only one to three days, some of which occurred over weekends. Most of these gaps occurred after the beginning of the fiscal year, meaning that they were not caused because of a failure to enact an initial continuing resolution, but because of delay in enacting a further extension.¹⁹

¹⁴U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO report PAD-81-31 (Washington: March 3, 1981), i.

¹⁵U.S. Dept. of Justice, Office of the Attorney General, Memorandum to the President, April 25, 1980. Reprinted in *Funding Gaps Jeopardize Federal Government Operations*, App. IV, pp. 63-67.

¹⁶For additional information on the 1981 opinion of the Attorney General, and on the excepted activities outlined in that opinion, see U.S. General Accounting Office, *Principles of Federal Appropriations Law*: vol. II, GAO report GAO/OGC-92-13 (Washington: Dec. 1992), pp. 6-92—6-99.

¹⁷P.L. 101-508 sec. 13213(b), 31 U.S.C. 1342.

¹⁸U.S. Library of Congress, Congressional Research Service, *Shutdown of the Federal Government: Effects on the Federal Workforce and Other Sectors*, by James P. McGrath, CRS Report 95-906 GOV (Washington: Aug. 15, 1997), pp. 4-5.

¹⁹See U.S. Library of Congress, Congressional Research Service, *Continuing Resolutions and Funding Gaps: Fiscal Years 1981-1995*, by Robert Keith and Edward Davis, CRS

On August 16, 1995, Assistant Attorney General Walter Dellinger, in a memorandum for the Director of the Office of Management and Budget (OMB), stated that "the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations."²⁰ The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

¹⁹(...continued)

Report 95-77 GOV (Washington: Dec. 30, 1994).

²⁰U.S. Department of Justice, Office of Legal Counsel, *Government Operations in the Event of a Lapse in Appropriations*, Memorandum for Alice Rivlin, Director, Office of Management and Budget (Washington: Aug. 16, 1995).

For Additional Reading

Congressional Documents

U.S. Congress, House Committee on the Budget, *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*, committee print No. CP-3, prepared for the Task Force on the Budget Process by Allen Schick, 100th Cong., 1st sess. (Washington: GPO, 1987).

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Other Sources

U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO report PAD-81-31 (Washington: March 3, 1981).

U.S. General Accounting Office, *Principles of Federal Appropriations Law: Vol. II, 2nd Ed.*, GAO report GAO/OGC-92-13 (Washington: Dec.1992), Ch. 8, "Continuing Resolutions."