

# CRS Report for Congress

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## **Continuing Appropriations Acts: Brief Overview of Recent Practices**

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# Continuing Appropriations Acts: Brief Overview of Recent Practices

## 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. From 1988 through 2002, the nature, scope, and duration generally contracted, except during 1995 and 1996. During this period expanded FY1996 continuing resolutions were enacted.

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

Action on seven of the 13 FY2004 regular appropriations bills has not been completed. Therefore, Congress adopted and the President signed four FY2004 continuing resolutions (P.L. 108-84, P.L. 108-104, P.L. 108-107, and P.L. 108-135). These acts consecutively extend funding from October 1 through January 31, 2004, for ongoing FY2003 activities associated with the outstanding FY2004 regular appropriations bills.

Congress and the President have also completed action on a fifth FY2004 continuing resolution (P.L. 108-185), which makes a few funding changes to the initial CR (P.L. 108-84).

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# Continuing Appropriations Acts: Brief Overview of Recent Practices

This report is divided into two segments. The first segment provides the most recent developments regarding the FY2004 continuing resolution. The second segment provides information on the history of continuing resolutions; the nature, scope, and duration of continuing resolutions (or CRs) during the last 30 years; the various types of CRs that have been enacted; and an overview of those instances when *budget authority*<sup>1</sup> has lapsed and a funding gap has resulted.

## Most Recent Developments: FY2004 Continuing Resolutions

Action on seven<sup>2</sup> of the 13 FY2004 regular appropriations bills has not been completed.<sup>3</sup> Therefore, Congress adopted and the President signed four FY2004 continuing resolutions (P.L. 108-84, P.L. 108-104, P.L. 108-107, and P.L. 108-135).

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<sup>1</sup> Congress 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 FY2003 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. In addition to providing an agency with legal authority to make obligations, appropriations permit the agency to make the payments.

<sup>2</sup> The seven outstanding regular appropriations bills are Agriculture; Commerce-Justice-State-the Judiciary; District of Columbia; Foreign Operations; Labor-Health and Human Services-Education; Transportation-Treasury-Independent Agencies; and Veterans Affairs-Housing and Urban Development-Independent Agencies.

Six regular bills have become law: Defense (P.L. 108-87); Energy and Water Development (P.L. 108-137); Homeland Security (P.L. 108-90); Interior (P.L. 108-108); Legislative Branch (P.L. 108-83); and Military Construction (P.L. 108-132).

<sup>3</sup> In conference, six of the seven outstanding regular appropriations bills were incorporated into the remaining bill (H.R. 2673, Agriculture) converting the bill into an omnibus appropriations act, the Consolidated Appropriations Act, 2004. On December 8, 2003, the House adopted the conference report to the omnibus act. Senate action is pending.

These acts consecutively extend funding from October 1, 2003, through January 31, 2004, for ongoing FY2003 activities associated with the outstanding FY2004 regular appropriations bills. The initial CR (P.L. 108-84) set the spending levels and continued funding from October 1 through October 31, 2003. P.L. 108-104 extended the expiration date a week, through November 7, 2003. P.L. 108-107 continued funding from November 8 through November 21, 2003. P.L. 108-135 extends funding through January 31, 2004.

After these continuing resolutions became law, Congress adopted and the President approved a fifth FY2004 continuing resolution (P.L. 108-185). This measure makes a few funding changes to the initial CR (P.L. 108-84).

Congress also has considered, but has not completed action on, two additional FY2004 continuing resolutions, H.J.Res. 73 and H.J.Res. 78. For more details, see “H.J.Res. 73” and “H.J.Res. 78” below.

For the current status on each FY2004 continuing resolution, see **Table 1**.

**Table 1. Current Status of FY2004 Continuing Resolution**

Measure	House Report	House Adopted (Vote)	Senate Report	Senate Adopted (Vote)	Conference Report	Conference Report Approval		Public Law
						House	Senate	
H.J.Res. 69	—	9/25/03 (407-8)	—	9/25/03 (uc) <sup>a</sup>	—	—	—	9/30/03 P.L. 108-84
H.J.Res. 73	—	10/21/03 (397-19)						
H.J.Res. 75	—	10/30/03 (406-13)	—	10/30/03 (uc) <sup>a</sup>	—	—	—	10/31/03 P.L. 108-104
H.J.Res. 76	—	11/5/03 (418-5)	—	11/7/03 (uc) <sup>a</sup>	—	—	—	11/7/03 P.L. 108-107
H.J.Res. 78	—	11/20/03 (410-10)	—	11/20/03 (uc) <sup>b</sup>				
H.J.Res. 79	—	11/21/03 (407-16)	—	11/21/03 (uc) <sup>a</sup>	—	—	—	11/22/03 P.L. 108-135
H.J.Res. 82	—	12/8/03 (voice vote)	—	12/9/03 (uc) <sup>a</sup>	—	—	—	12/16/03 P.L. 108-185

a. The Senate adopted the continuing resolution by unanimous consent. That is, a unanimous consent request was proposed to adopt the measure and since no Senator objected, the resolution was adopted.

b. The Senate adopted H.J.Res. 78, with an amendment, on Nov. 20, 2003, and modified the adopted resolution on Nov. 21, 2003.

## Initial Continuing Resolution (P.L. 108-84, H.J.Res. 69)

P.L. 108-84 continued funding from October 1 through October 31, 2003, for ongoing FY2003 activities associated with the outstanding FY2004 regular appropriations bills. It establishes spending rates based on FY2003 funding levels.

The initial continuing resolution sets different FY2003 spending rates for activities funded with *discretionary spending* and those funded with *mandatory* (or *direct spending*).<sup>4</sup> Under the CR, the discretionary spending level is generally the total amount of budget authority available to use (obligate) for a program (or account or activity<sup>5</sup>) in FY2003. However, the rate excludes funds that were available for use in the FY2003, but were not used and remained available. (Congress frequently provides budget authority for specified purposes that is available for more than one fiscal year.) If the costs of a program increases from FY2003, discretionary spending programs must absorb the costs, which may result in less services provided under a program. The direct spending level is the budget authority needed to maintain FY2003 programs levels under current law. The continuing resolution provides sufficient funds for direct spending programs to pay for both the cost increases as well as the costs to continue the services.

P.L. 108-84 also extends funding for the 10 outstanding bills under terms and conditions provided in the applicable FY2003 regular appropriations acts. For example, a provision in an FY2003 regular appropriations act, which applied to a single account, prohibiting funds for a specified activity or project generally remains in effect.

The initial CR provides room for an additional \$2.2 billion under the FY2004 spending ceilings. The conference report to the FY2004 budget resolution (H.Con.Res. 95) includes budget authority and outlays ceilings for the House and Senate Appropriations Committees, with provisions for certain adjustments. The Consolidated Appropriations Resolution, 2003, provided \$9.0 billion in new budget authority for FY2004 under the Education for the Disadvantaged account. The continuing resolution moved \$2.2 billion of these funds from FY2004 to FY2003.<sup>6</sup> This move was due to an agreement between congressional leaders and the White House that was reached in the late spring of 2003.

P.L. 108-84 also includes several provisions regarding other matters. For example, it continues certain programs and fees that would otherwise have expired, provides a no-subsidy \$550 million Foreign Military Financing loan to the Czech

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<sup>4</sup> Congress divides budget authority and the resulting outlays into two categories: *discretionary* and *mandatory (or direct) spending*. Appropriations measures include both types of spending. Discretionary spending is controlled by annual appropriations acts, which are under the jurisdiction of the House and Senate Appropriations Committees. Mandatory spending is controlled by legislative acts under the jurisdiction of the authorizing committees (principally the House Ways and Means and Senate Finance Committees).

<sup>5</sup> The funding level may apply to a program, activity, account, or other purpose. The type of purpose varies among accounts.

<sup>6</sup> See 117 Stat. 326 and P.L. 108-84, §106.

Republic, and includes a \$3.8 billion ceiling on certain new loan guarantees of the Federal Housing Administration.

### **P.L. 108-104 (H.J.Res. 75)**

On October 31, 2003, the President signed H.J.Res.75, which extended funding provided in the initial CR for one week, through November 7, 2003.

### **P.L. 108-107 (H.J.Res. 76)**

On November 7, 2003, President George W. Bush approved H.J.Res. 76, which extended funding from November 8 through November 21, 2003.

### **P.L. 108-135 (H.J.Res. 79)**

H.J.Res. 79, which became law on November 22, 2003, extends funding from November 22, 2003, through January 31, 2004.

### **P.L. 108-185 (H.J.Res. 82)**

President George W. Bush signed H.J.Res. 82 on December 16, 2003. This act amended the initial FY2004 continuing resolution (P.L. 108-84). H.J.Res. 82 (1) doubled the ceiling on certain new loan guarantees provided by the Federal Housing Administration, which was included in P.L. 108-84, from \$3.8 billion to \$7.7 billion; and (2) provided an annual rate of \$141.4 million for the Federal Aviation Administration's office of security and investigations.

### **H.J.Res. 78**

Prior to House and Senate action on H.J.Res. 79, the House adopted H.J.Res. 78, which would have extended funding from November 22, 2003, through November 23, 2003. The House adopted the measure on November 20 and the Senate adopted it, with a technical correction, on the same day. The following day the Senate modified the correction and sent the measure to the House. The Senate-modified version would have extended funding three days, through November 24, 2003, instead of two days proposed by the House.

### **H.J.Res. 73**

Earlier, on October 21, 2003, the House adopted another FY2004 continuing resolution (H.J.Res. 73). It was designed as a possible vehicle for an FY2004 omnibus appropriations measure. The FY2004 agriculture regular appropriations bill (H.R. 2673) has since become the vehicle.

H.J.Res. 73, as adopted by the House, would consolidate the six FY2004 regular appropriations bills the Senate had not passed as of October 21. It includes, by

reference, the House-passed versions of the six bills.<sup>7</sup> Since October 21, 2003, the Senate has passed all of the bills except one: Commerce-Justice-State-the Judiciary.

## Recent Practices Regarding Continuing Resolutions

### Background

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 (Article I, Section 9 of the Constitution, and 31 U.S.C. 1341). Traditionally, most of the operations of federal departments and agencies are funded each year through the separate enactment of 13 regular appropriations acts. Since these measures expire at the end of the fiscal year, the regular appropriations bills for the subsequent fiscal year must be enacted by October 1<sup>st</sup>. However, it is not unusual for the enactment of one or more of these acts to be delayed beyond the deadline (for data on the FY1977-FY2003 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*).

### 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 3 fiscal years, at least one continuing resolution has been enacted for each fiscal year since FY1954. (The exceptions were FY1989; FY1995; and FY1997.) From FY1977 through FY2003, Congress enacted on average five continuing resolutions per year (for detailed information, see **Table 2**).

Over the last 30 years, the nature, scope, and duration of continuing resolutions have varied. From the early 1970s through 1987, continuing resolutions gradually expanded from interim funding measures of comparatively brief duration and length to measures providing funding through the end of the fiscal year (referred to as *full-year continuing resolutions*). In many cases, the full-year measures included the full text of several regular appropriations bills and contained substantive legislation (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees). From 1988 through 2003, the nature, scope, and duration generally contracted, except during 1995-1996 and 2002-2003. During each period, an expanded continuing resolution was enacted.

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

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<sup>7</sup> These regular bills are Agriculture; Commerce-Justice-State-the Judiciary; District of Columbia; Foreign Operations; Transportation-Treasury-Independent Agencies; and Veterans Affairs-Housing and Urban Development-Independent Agencies.



exclusively to provide interim 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-FY2003**

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	Gerald Ford	Democrats	Democrats	13	0	2 <sup>a</sup>		
1978	Jimmy Carter	Democrats	Democrats	9	1	3		
1979				5	1	1		
1980				3	3	2		
1981				1	5	2		
1982	Ronald 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		George H.W. Bush	Democrats	Democrats	1	0	3	
1991	0				0	5		
1992	3				1	4		
1993	1				0	1		
1994	William Clinton	Democrats	Democrats	2	0	3		
1995				13	0	0		
1996				Republicans	Republicans	0	5 <sup>b</sup>	14
1997						8 <sup>c</sup>	0	0
1998		1	0			6		
1999		1	0			6		
2000		4	0	7				
2001		2	0	21				
2002	George W. Bush	Democrats <sup>d</sup>	Republicans	0	0	8		
2003		Republicans <sup>e</sup>		0	11	9		

**Sources:** U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, 94<sup>th</sup> Congress, 2<sup>nd</sup> session - 104<sup>th</sup> Congress, 1<sup>st</sup> session (Washington: GPO, 1976-1995). U.S. Congress, House, *Calendars of the U.S. House of Representatives and History of Legislation*, 104<sup>th</sup> Congress, 1<sup>st</sup> session - 107<sup>th</sup> Congress, 1<sup>st</sup> session (Washington: GPO, 1995-2001).

- 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 attached to the FY1997 Defense regular act.
- d. On June 6, 2001, the Democrats became the majority in the Senate. By that time, the Senate Appropriations Committee had not reported any FY2002 regular appropriations measures.
- e. The Democrats were the majority in the Senate in 2002, during initial consideration of the 13 FY2003 regular appropriations bills and final action on two of the regular bills. The Republicans are the majority in 2003, during which final action on the remaining 11 FY2003 regular bills occurred.

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 (see P.L. 99-591 and P.L. 100-202).

From FY1988 through FY1995, Congress and the President generally operated under multi-year deficit reduction agreements achieved through budget summits. For the FY1991-FY1995 period, an enforcement mechanism (referred to as *sequestration*<sup>8</sup>) was established. From FY1988 through FY1995, there was a period of relative agreement on overall budget priorities and, therefore, agreements 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.

Although the multi-year agreements and enforcement mechanisms remained in effect through FY2002, the President and Congress were in conflict from FY1996 through FY2002. As a result of disagreements over the 1995 balanced budget plan and spending and policy priorities in the FY1996 appropriations measures, two funding gaps occurred in 1995-1996; 14 FY1996 continuing resolutions were enacted; and action was not completed on all 13 FY1996 regular appropriations bills until almost seven months into the fiscal year. The final continuing resolution provided funding through the end of the fiscal year for the five outstanding regular appropriations bills, incorporating the full text of each bill, and included substantive legislation. (For information on funding gaps, see “Funding Gaps” below.)

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<sup>8</sup> The Budget Enforcement Act of 1990 (P.L. 101-508) established spending ceilings for each fiscal year (FY1991-FY1995) for funding provided in appropriations measures and controlled by the House and Senate Appropriations Committees (referred to as *discretionary spending*). If appropriations measures were enacted that in total exceeded the spending ceilings, the Act provided for an automatic across-the-board reduction in discretionary spending to eliminate the additional spending (referred to as *sequestration*).

From FY1997 through FY2002, budgetary conflicts have continued between the President and Congress. Instead of resolving these differences in expanded continuing resolutions, they have generally been resolved in omnibus regular appropriations bills. During conference on a regular appropriations bill, other outstanding regular appropriations bills and substantive legislation have been attached to the bill — creating an omnibus regular appropriations bill. During this period, continuing resolutions, when needed, provided interim funding for short periods of time and included little substantive legislation.

The change in the type of vehicle for omnibus appropriations measures from continuing resolutions to regular appropriations bills was due, in part, to avoid floor amendments to regular appropriations bills and to expedite completion of the regular bills. In the House and Senate, conference reports are not amendable. Some regular bills either were not considered on the House or Senate floors or were pulled before floor action was completed thereby preventing action on certain floor amendments. By attaching these measures to a conference report on another regular bill, action on the amendments was avoided. To ensure all FY1997 regular appropriations bills became law by the October 1 deadline, five FY1997 regular bills were attached to a sixth FY1997 regular bill in conference. This action obviated the need for a continuing resolution.

Budgetary conflict continued during consideration of the FY2003 regular appropriations bills. Final action on the 11 outstanding FY2003 regular bills was not completed until over four and half months into the fiscal year. A significant reason for the conflict and delay was the absence of agreed spending ceilings.

Congress used an omnibus continuing resolution to complete action on the 11 outstanding regular appropriations bills. Under a *closed rule*,<sup>9</sup> the House adopted a temporary continuing resolution that continued funding through January 31, 2003. The Senate subsequently converted the resolution into a full-year, omnibus resolution. One of the procedural effects of this approach was to prohibit floor amendments in one chamber, while allowing them in the other. Attaching the outstanding regular bills to a bill in conference would have prohibited floor amendments in both chambers.

## Types of Continuing Resolutions

Continuing resolutions generally can be divided into two categories — interim and full-year continuing resolutions.

Interim (or temporary) continuing resolutions provide temporary 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. They have typically established formulas or rates that have provided funding levels for agencies and activities. For example, the initial FY1991 continuing resolution

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<sup>9</sup> A closed rule is a special rule reported by the House Rules Committee that prohibits floor amendments to specific measure. After the House adopts the special rule, it considers the measure.

(P.L. 101-403) generally provided a formula for specified regular bills. The funding level for a purpose in a regular bill was the lower of the amounts provided in the House- and Senate-passed versions of the regular bill. The initial FY2002 continuing resolution (P.L. 107-44) provided a rate: the previous year's amount. Since FY1998, this general rate, with specific modifications, has been used.

In most cases, the funding method has applied to all or almost all programs or activities covered by a particular regular appropriations act. However, such funding methods 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).

Once a temporary continuing resolution is enacted, additional interim resolutions, if necessary, are enacted to extend the deadline. These subsequent continuing resolutions sometimes change the funding methods.

Full-year continuing resolutions provide continuing appropriations through the end of the fiscal year. (**Table 2** provides the number of regular bills funded through the end of the fiscal year in continuing resolutions.) Recently, full-year funding provisions have generally been of three types: (1) full text of the regular act; (2) language that incorporates regular acts by reference to the latest stage of congressional action (usually the conference agreement, if one has been reached); and (3) language that incorporates by reference a new, compromise version of the regular acts.

Full-year continuing resolutions effectively become regular appropriations 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 and Section 101 of P.L. 99-591). Consequently, they may be hundreds of pages in length, whereas interim resolutions typically are a few pages or less (in the case of a simple extension of a previous resolution, perhaps only one page).

Since FY1977, Congress has included across-the-board spending reductions in at least two full-year continuing resolutions and one interim continuing resolution, which was subsequently extended through the end of the fiscal year. The continuing resolutions generally provided a specific percentage reduction for each purpose in the specified regular appropriations bills. The FY1992 full-year continuing resolution (P.L. 102-266) required a 1.5% spending reduction in discretionary spending purposes in the only outstanding FY1992 regular appropriations bill. An FY1982 interim continuing resolution (P.L. 97-92) provided a 4% across-the-board reduction, with certain exceptions, for specified FY1982 regular appropriations bills. A subsequent FY1982 full-year continuing resolution extended this provision through the end of the fiscal year. For a discussion of the across-the-board reduction in the FY2003 full-year resolution, see *Across-the-Board Discretionary Spending Reduction* above.

During consideration of the FY1996 continuing resolutions, Congress also used a another type of continuing resolution — *targeted appropriations*. Traditionally, a

single continuing resolution provides funding for all activities in the outstanding regular appropriations and generally provides the same expiration date for all these bills. In January 1996, Congress separated activities from the six outstanding regular bills and distributed them among three FY1996 continuing resolutions (P.L. 104-91, P.L. 104-92, and P.L. 104-94). Some of the activities were full-year funded, while others were temporarily funded.

**Substantive Legislative Provisions.** Substantive legislative provisions (i.e., provisions under 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 interim and full-year continuing resolutions.

House Rules XXI, Clause 2, and XXII, Clause 5, prohibit the consideration of general appropriations measures containing legislative provisions or *unauthorized appropriations*,<sup>10</sup> but these restrictions do not apply to continuing resolutions. (The House typically adopts special rules restricting amendments to continuing resolutions, in part for this reason.) Comparable Senate restrictions, in Senate Rule XVI, 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 affairs reform and restructuring assistance legislation (in FY1999), 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 adjustments to the requirements of the 1985 Balanced Budget and Emergency Deficit Control Act (or *Gramm-Rudman-Hollings*). These provisions vary in length from less than 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*. 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.

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<sup>10</sup> Unauthorized 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 CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*).

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.”<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup> 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.”<sup>14</sup>

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). 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.

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<sup>11</sup> U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31, Mar. 3, 1981, p. i.

<sup>12</sup> U.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.

<sup>13</sup> For 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/OGC-92-13, Dec. 1992, pp. 6-92 — 6-99.

<sup>14</sup> P.L. 101-508 Section 13213(b), 31 U.S.C. 1342.

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.”<sup>15</sup> The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

## For Additional Reading

### Congressional Document

U.S. Congress. House. Committee on the Budget. *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*. Committee print, prepared for the Task Force on the Budget Process by Allen Schick, 100<sup>th</sup> Congress, 1<sup>st</sup> session. CP-3. Washington: GPO, 1987.

### CRS Reports

#### Budget and Appropriations Process.

CRS Report 97-947. *The Appropriations Process and the Congressional Budget Act*, by James V. Saturno.

CRS Report 97-684. *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

CRS Report RS20095. *The Congressional Budget Process: A Brief Overview*, by James V. Saturno.

CRS Report RL30619. *Examples of Legislative Provisions in Omnibus Appropriations Acts*, by Robert Keith.

CRS Report RS20348. *Federal Funding Gaps: A Brief Overview*, by Robert Keith.

CRS Report 98-721. *Introduction to the Federal Budget Process*, by Robert Keith.

CRS Report 97-865. *Points of Order in the Congressional Budget Process*, by James V. Saturno.

CRS Report RL30339. *Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*, by Robert Keith.

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<sup>15</sup> U.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, Aug. 16, 1995.

CRS Report 98-844. *Shutdown of the Federal Government: Causes, Effects, and Process*, by Sharon S. Gressle.

**FY2004 Regular Appropriations Bills.**

CRS Report RL31809. *FY2004 Appropriations: Commerce, Justice, State, the Judiciary, and Related Agencies*, by Ben Canada, Coordinator.

CRS Report RL31802. *Appropriations for FY2004: Department of Homeland Security*, by Paul M. Irwin and Dennis W. Snook, Coordinators.

CRS Report RL31813. *Appropriations for FY2004: District of Columbia*, by Eugene Boyd, Coordinator.

CRS Report RL31807. *Appropriations for FY2004: Energy and Water Development*, by Carl Behrens and Marc Humphries, Coordinators.

CRS Report RL31811. *Appropriations for FY2004: Foreign Operations, Export Financing, and Related Programs*, by Larry Nowels.

CRS Report RL31806. *Appropriations for FY2004: Interior and Related Agencies*, by Carol Hardy Vincent and Susan Boren, Coordinators.

CRS Report RL31803. *Appropriations for FY2004: Labor, Health and Human Services, and Education*, by Paul M. Irwin.

CRS Report RL31812. *Appropriations for FY2004: Legislative Branch*, by Paul E. Dwyer.

CRS Report RL31810. *Appropriations for FY2004: Military Construction*, by Daniel H. Else.

CRS Report RL31808. *Appropriations for FY2004: Transportation, Treasury, Postal Service, Executive Office of the President, General Government, and Related Agencies*, by David Randall Peterman and John Frittelli, Coordinators.

CRS Report RL31801. *Appropriations for FY2004: U.S. Department of Agriculture and Related Agencies*, by Ralph M. Chite, Coordinator.

CRS Report RL31804. *Appropriations for FY2004: VA, HUD, and Independent Agencies*, by Dennis W. Snook and E. Richard Bourdon, Coordinators.

CRS Report RL31805. *Authorization and Appropriations for FY2004: Defense*, by Amy Belasco and Stephen Daggett.



## **Other Sources**

U.S. General Accounting Office. *Funding Gaps Jeopardize Federal Government Operations*. GAO/PAD-81-31. March 3, 1981.

———. *Principles of Federal Appropriations Law: Vol. II*, 2<sup>nd</sup> ed. GAO/OGC-92-13. December 1992, chap. 8, “Continuing Resolutions.”