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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

Traditionally, most of the operations of federal departments and agencies are funded each year through 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. However, final action on one or more regular appropriations bills is typically delayed beyond the deadline. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions become law. 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 35 years, the nature, scope, and duration of continuing resolutions gradually expanded and, then, generally contracted. 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. 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 2004, the nature, scope, and duration of continuing resolutions generally contracted into interim funding measures with little substantive legislation.

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*.

Final action on the outstanding FY2005 regular appropriations bills did not occur until December 8, 2004, more than two months after the deadline. Congress and the President, therefore, completed action on three FY2005 continuing resolutions (P.L. 108-309, P.L. 108-416, and P.L. 108-434) that sequentially extended funding for the outstanding FY2005 regular appropriations bills from October 1, 2004, through December 8, 2004.

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Continuing Appropriations Acts: Brief Overview of Recent Practices

Traditionally, most of the operations of federal departments and agencies are funded each year through 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 1.¹ However, final action on one or more regular appropriations bills is typically delayed beyond the deadline. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions become law. Because continuing appropriations acts are, for the most part, enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

This report is divided into two segments. The first segment provides the most recent developments and content of the FY2005 continuing resolutions. The second segment provides information on the history of CRs; the nature, scope, and duration of CRs during the last 35 years; the types of CRs that have been enacted; and an overview of those instances when funding (or budget authority²) has lapsed and a funding gap has resulted.

FY2005 Continuing Resolutions

Most Recent Developments

Final action on the outstanding FY2005 regular appropriations bills did not occur until December 8, 2004,³ more than two months after the deadline. Congress and the President, therefore, completed action on three FY2005 continuing resolutions⁴ that sequentially extended funding for the outstanding FY2005 regular appropriations bills from October 1, 2004, through December 8, 2004.

¹ The *fiscal year* of the federal government begins on October 1 and ends the following September 30.

² Congress funds federal programs and activities by providing agencies *budget authority*, instead of cash. Budget authority refers to authority provided by law to enter into financial obligations requiring either immediate or future expenditures (or outlays) of government funds. An *appropriation* is generally a type of budget authority that not only provides authority to make financial obligations, but also provides authority to make payments from the Treasury for those purposes.

³ On this date, the President signed the Consolidated Appropriations Act, 2005 (P.L. 108-447), which includes the nine remaining FY2005 regular appropriations bills.

⁴ The three CRs were P.L. 108-309, P.L. 108-416, and P.L. 108-434.

Content of FY2005 Continuing Resolutions

The initial FY2005 continuing resolution (P.L. 108-309) provided temporary funding rates, an expiration date (November 20, 2004), and other provisions. The last two CRs sequentially extended the expiration date. P.L. 108-416 continued funding from November 21 through December 3, 2004, and P.L. 108-434 extended funding from December 4 through December 8, 2004.

P.L. 108-309 set different spending rates for discretionary and mandatory (or direct) spending activities.⁵ The discretionary spending rate was generally the amount of budget authority that was available in FY2004 for a program (activity, project, object, or account).⁶ This spending rate excluded budget authority that was needed to fund additional FY2005 costs, such as the increased costs of supplies due to inflation. Therefore, the rate may have resulted in less services under certain programs for the duration of the continuing resolution.

In contrast, the mandatory spending level was the amount needed to maintain FY2004 program levels under current law. The CR provided sufficient funds to pay for any additional costs needed to maintain current program services.

In addition to extending funding for the outstanding FY2005 regular appropriations bills, P.L. 108-309 included a provision continuing funding for the miscellaneous and supplemental appropriations laws enacted during FY2004.⁷ This

⁵ 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). For more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

⁶ Technically, discretionary spending activities were funded at a *rate of operations not exceeding the current rate*. The Office of Management and Budget (OMB) explained that the annualized spending level for an activity funded in the CR was the net of the amount:

- enacted in the FY2004 regular appropriations acts;
- minus rescissions (such as across-the-board reductions) for FY2004;
- plus or minus transfers mandated by law;
- plus a few specified supplemental appropriations; and
- plus funds carried over into FY2004 that were obligated in FY2004.
(Congress frequently provides budget authority for specified activities that is available for more than one fiscal year.)

U.S. Office of Management and Budget, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2005*, OMB Bulletin No. 04-05, available at [<http://www.whitehouse.gov/omb/>], visited Jan. 7, 2005.

⁷ P.L. 108-309, sec. 103.

CR also required agencies to use the most limited funding permitted in the CR.⁸ The Office of Management and Budget (OMB) interpreted the CR to exclude “one-time non-recurring projects and activities that were funded in FY2004, which include[d] most projects and activities funded by FY2004 supplemental appropriations.”⁹ Executive branch agencies are required to follow OMB’s interpretation because of preexisting legal requirements for budget execution.

Under the CR, funding is available under terms and conditions provided in the applicable FY2004 regular appropriations acts. For example, a provision in an FY2004 regular appropriations act prohibiting the use of funds in an account for a specified activity or project would generally be in effect.

The Chairman of the House Committee on Appropriations, Representative C.W. Bill Young, explained other provisions in the CR, some of which are mentioned here.

It includes provisions that allow for the continuation of programs and fee collections that would otherwise expire, such as entitlements under the food stamp program, Medicare part B premium assistance, certain child nutrition programs, the WIC program [Special Supplemental Nutrition Program for Women, Infants, and Children], and certain SBA [Small Business Administration] loan programs.¹⁰

The CR extended certain Department of Defense authorities that expired on September 30, 2004, such as authority to pay for travel and transportation benefits for family members of military personnel injured during operations in Iraq and Afghanistan and authority to provide prepaid phone cards to all U.S. troops in certain combat zones. P.L. 108-309 reallocated certain Iraq reconstruction funds in response to a request from the Secretary of State. It also provided funding for the Election Assistance Commission.¹¹

The three FY2005 CRs were *interim continuing resolutions*,¹² which provide temporary funding until a specific date or until enactment of the applicable regular appropriations bills, if earlier. As a result, the number of bills covered by the FY2005 CRs gradually declined. The first FY2005 continuing resolution (P.L. 108-309) initially covered 12 FY2005 regular appropriations bills, since one regular bill had previously been enacted.¹³ By the time the second CR (P.L. 108-416) became

⁸ P.L. 108-309, sec. 111.

⁹ U.S. Office of Management and Budget, *Apportionment of the Continuing Resolutions(s) for Fiscal Year 2005*, Bulletin No. 04-05, available at [<http://www.whitehouse.gov/omb/>], visited Oct. 25, 2004.

¹⁰ Rep. C.W. Bill Young, remarks in the House, *Congressional Record*, available at [<http://www.congress.gov/>], visited Sept. 30, 2004.

¹¹ *Ibid.*

¹² See *Types of Continuing Resolutions* below.

¹³ The Department of Defense Appropriations Act, 2005 (P.L. 108-287) had previously become law.

law, three additional regular bills had been completed.¹⁴ Therefore, this CR covered nine regular bills.¹⁵ The third CR (P.L. 108-434) also covered the nine regular bills. These bills were not finished until the last day the third CR was in effect, December 8, 2004.

For the current status of the FY2005 continuing resolutions, see **Table 1**.

Table 1. Current Status of FY2005 Continuing Resolutions

Measure	House Report	House Adopted (Vote)	Senate Report	Senate Adopted (Vote)	Conference Report	Conference Report Approval		Public Law
						House	Senate	
H.J.Res. 107	—	09/29/04 (389-32)	—	09/29/04 (UC ^a)	—	—	—	09/30/04 (P.L. 108-309)
H.J.Res. 114	—	11/20/04 (Voice Vote)	—	11/20/04 (UC ^a)	—	—	—	11/21/04 (P.L. 108-416)
H.J.Res. 115	—	11/24/04 (Voice Vote)	—	11/24/04 (UC ^a)	—	—	—	12/03/04 (P.L. 108-434)

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.

¹⁴ The three regular acts were (1) Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (P.L. 108-324); (2) Department of Homeland Security Appropriations Act, 2005 (P.L. 108-334); and (3) District of Columbia Appropriations Act, 2005 (P.L. 108-335).

¹⁵ The nine outstanding regular acts were (1) Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005; (2) Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2005; (3) Energy and Water Development Appropriations Act, 2005; (4) Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005; (5) Department of the Interior and Related Agencies Appropriations Act, 2005; (6) Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2005; (7) Legislative Branch Appropriations Act, 2005; (8) Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005; and (9) Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2005.

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.¹⁶ Traditionally, most of the operations of federal departments and agencies are funded each year through 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. However, final action on one or more regular appropriations bills is typically delayed beyond the deadline (for data on the FY1977-FY2005 period, see **Table 2**). When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions are enacted. 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 for over 50 years. In fact, with the exception of three fiscal years, at least one continuing resolution has been enacted for each fiscal year since FY1954.¹⁷ (Although all 13 FY1977 regular appropriations bills became law on or by the deadline, two CRs were enacted. These CRs generally provided funding for certain unauthorized activities that had not been included in the regular appropriations acts.) From FY1978 through FY2005, Congress enacted on average five continuing resolutions per year (for detailed information, see **Table 2**).

Over the last 35 years, the nature, scope, and duration of continuing resolutions expanded and, then, generally contracted. 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 2004, the continuing resolutions generally contracted into interim

¹⁶ Article I, Section 9 of the Constitution, and 31 U.S.C. 1341. A major exception to this concept is *contract authority*. Congress enacts legislation providing an agency with authority to make obligations (budget authority). After the obligations are made, Congress provides the appropriations providing the authority to make the payments in another law (appropriations). Such appropriations are not considered budget authority.

¹⁷ The three exceptions were: FY1989, FY1995, and FY1997. In the first two instances, all 13 regular appropriations bills were enacted individually on or by the deadline. In the last instance, the deadline was met by adding five regular bills to a sixth bill, forming an omnibus appropriations act, and enacting seven bills individually.

funding measures that did not include the full text of the bills or much substantive legislation.

Table 2. Regular Appropriations Bills Enacted by Deadline and Continuing Resolutions (CRs), FY1977-FY2005

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 ^a)
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
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	0 ^b	13
1997				(13) ^c	0	0
1998				1	0	6
1999				1	0	6
2000				4	0	7
2001				2	0	21
2002	George W. Bush	Democrats ^d	Republicans	0	0	8
2003		Republicans ^e		0	0 ^f	8
2004				3	0	5
2005				1	0	3

Sources: U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, 94th Congress, 2nd session - 104th Congress, 1st session (Washington: GPO, 1976-1995). U.S. Congress, House, *Calendars of the U.S. House of Representatives and History of Legislation*, 104th Congress, 1st session - 108th Congress, 2nd session (Washington: GPO, 1995-2004).

- a. Although all 13 FY1977 regular appropriations bills became law on or by the deadline, two CRs were enacted. These CRs generally provided funding for certain unauthorized activities that had not been included in the regular appropriations acts.
- 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 deadline was met by adding five regular bills to a sixth regular bill, forming an omnibus appropriations act, and enacting seven bills individually.
- 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 were the majority in 2003, during which final action on the remaining 11 FY2003 regular bills occurred.
- f. One measure (P.L. 108-7) originated as a continuing resolution, but in conference it was converted into an omnibus appropriations resolution.

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 interim funding at a minimum, formulaic level, and contained few provisions unrelated to the interim funding.

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 sequestration¹⁸) 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 from FY1996 through FY2002, conflict within Congress and between Congress and the President on funding and policy issues generally delayed action on regular appropriations bills. In particular, there were significant conflicts between the Democratic President and Republican Congress from FY1996 through FY2001.

¹⁸ 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*).

Instead of resolving these differences in expanded continuing resolutions, Congress and the Administration generally resolved them in omnibus regular appropriations bills (or in separate appropriations bills). During a conference on a regular appropriations bill, other outstanding regular appropriations bills and substantive legislation were 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. This practice has continued through FY2005.

The change in the type of vehicle for omnibus appropriations measures from full-year continuing resolutions to regular appropriations bills was due, in part, to avoid floor amendments to regular appropriations bills and 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 to another regular bill, action on the amendments was avoided. An example of using an omnibus appropriations measure to expedite consideration occurred during consideration of the FY1997 regular appropriations bills. To ensure all the 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.

Types of Continuing Resolutions

Continuing resolutions generally can be divided into two categories — interim and full-year continuing resolutions.¹⁹

Interim (or partial) continuing resolutions provide temporary funding until a specific date or until the enactment of the applicable regular appropriations acts, if earlier. Since FY1988, they have remained fairly constant in form and structure. They have typically set formulas or rates to calculate the funding level for an activity (program, project, or object). The initial FY1991 continuing resolution (P.L. 101-403), for example, generally provided a formula for specified regular bills. The funding level for an activity (project or object) 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 rate, sometimes with individual modifications, has been used.

In most cases, the funding rate or formula have applied to all or almost all the 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).

¹⁹ For more information, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Robert Keith.

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.) Full-year funding provisions have generally been of two types: (1) full text of the regular act; and (2) language that incorporates regular acts by reference to the latest stage of congressional action (usually the conference agreement, if one has been reached).

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 a few full-year and interim continuing resolutions. The continuing resolutions generally provided a specific percentage reduction for activities in the specified regular appropriations bills. The FY1992 full-year continuing resolution (P.L. 102-266), for example, required a 1.5% spending reduction in discretionary spending activities in the only outstanding FY1992 regular appropriations bill. Another example is the FY1982 interim continuing resolution (P.L. 97-92), that included 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.

During consideration of the FY1996 continuing resolutions, Congress also used a another type of continuing resolution: *targeted appropriations*. A single continuing resolution traditionally 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,²⁰ 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 that establish major new policies and amend permanent provisions of law, such as omnibus crime control legislation (in FY1985). They have also included narrower provisions focused on temporary or one-time problems, such as providing a temporary extension of statutory authority to pay for travel and transportation benefits for family members of military personnel injured during operations in Iraq and Afghanistan (in FY2005). 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.

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.”²¹

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

²⁰ *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*).

²¹ U.S. Government Accountability Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31, Mar. 3, 1981, p. i.

that the Justice Department would enforce the criminal sanctions provided for under the act against future violations.²²

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.²³ 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.”²⁴

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). 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.

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.”²⁵ The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

²² 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.

²³ 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.

²⁴ P.L. 101-508 Section 13213(b), 31 U.S.C. 1342.

²⁵ 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.

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, 100th Congress, 1st 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 RL32614. *Duration of Continuing Resolutions in Recent Years*, by Robert Keith.

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.

CRS Report 98-844, *Shutdown of the Federal Government: Causes, Effects, and Process*, by Kevin R. Kosar.

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