

CRS Report for Congress

Continuing Resolutions: FY2007 Action and Brief Overview of Recent Practices

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Summary

Most of the operations of federal departments and agencies are funded each year through the enactment of several regular appropriations acts. Since these bills are annual, expiring at the end of the fiscal year, regular bills for the subsequent fiscal year must be enacted by October 1. Final action on some of the regular appropriations bills, however, are 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).

CRs 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, if earlier. *Full-year continuing resolutions* provide funding in lieu of one or more regular appropriations bills *through the end of the fiscal year*.

Over the past 35 years, the nature, scope, and duration of continuing resolutions gradually expanded and, then, contracted. From the early 1970s through 1987, CRs gradually expanded from interim funding measures of comparatively brief duration and length to measures providing funding through the end of the fiscal year. The full-year measures included, in some cases, the full text of one or more regular appropriations bills and contained substantive legislation (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees). Since 1987, continuing resolutions have generally been interim funding measures with little substantive legislation.

Over the years, delay in the enactment of regular appropriations measures and CRs 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*.

Nine of the 11 FY2007 regular appropriations bills remain outstanding. Congress and the President, therefore, have concluded action on three temporary, sequential FY2007 continuing resolutions, which together have extended funding for these outstanding bills from October 1, 2006, through February 15, 2007. (These continuing resolutions follow: P.L. 109-289, Division B; P.L. 109-369; and P.L. 109-383.)

On January 31, 2007, the House adopted a fourth CR, Revised Continuing Appropriations Resolution, 2007 (H.J.Res. 20), which would extend funding for the nine outstanding FY2007 regular bills through the end of FY2007.

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Continuing Resolutions: FY2007 Action and Brief Overview of Recent Practices

Most of the operations of federal departments and agencies are funded each year through the enactment of several regular appropriations acts. For FY2006 and FY2007, there have been 11 annual regular appropriations acts;¹ for FY2008, there will be 12 regular acts. Since these bills are annual, expiring at the end of the fiscal year,² regular bills for the subsequent fiscal year must be enacted by October 1. However, final action on several 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 spending 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 on and selected provisions of the FY2007 continuing resolutions. The second segment provides information on the history of CRs; the nature, scope, and duration of CRs during the past 35 years; the types of CRs that have been enacted; and an overview of those instances when spending has lapsed and a funding gap has resulted.

FY2007 Continuing Resolutions

Most Recent Developments

Nine of the 11 FY2007 regular appropriations measures remain outstanding. On January 31, 2007, the House adopted H.J.Res. 20, Revised Continuing Appropriations Resolution, 2007, which would extend funding for the remaining bills through the end of FY2007. These regular bills have been funded through three sequential FY2007 continuing resolutions that together have extended funding from October 1, 2006, through February 15, 2007. A short description of each follows.

¹ Initially, the House considered 11 regular bills, while the Senate considered 12 regular bills. During congressional consideration of the appropriations bills, the Senate combines two bills, resulting in 11 enacted measures. The Senate adds the Senate District of Columbia bill to the Senate Transportation, Treasury, Housing and Urban Development, the Judiciary, and Related Agencies Appropriations bill. The coverage of this combined bill corresponds to the House's Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations bill.

² The *fiscal year* of the federal government begins on October 1 and ends the following September 30.

Regarding the initial FY2007 continuing resolution, the conference committee on the FY2007 Department of Defense Appropriations Act (FY2007 Defense Appropriations Act)³ included the CR in the conference report on the bill. This continuing resolution⁴ extended funding from October 1, 2006, through November 17, 2006. President George W. Bush signed the bill on September 29, 2006. The act temporarily funded 10 FY2007 regular appropriations bills, until the 10th regular bill, FY2007 Department of Homeland Security Act,⁵ became law on October 4, 2006.

The second FY2007 CR⁶ was approved on November 17, 2006; it extended funding through December 8, 2006.

On December 9, 2006, President George W. Bush approved the third FY2007 CR⁷ that continues spending for the nine regular bills through February 15, 2007.

For congressional and presidential action on the FY2007 continuing resolutions, see **Table 1**.

Table 1. Action on FY2007 Continuing Resolutions (CRs)

Measure	Committee Approval		House Passage	Senate Passage	Conference Report	Conference Report Approval		Public Law
	House	Senate				House	Senate	
H.R. 5631, FY2007 Defense Appropriations Act	a	a	a	a	H.Rept. 109-676	09/26/06 394-22	09/29/06 100-0	09/29/06 109-289
H.J.Res. 100, CR	—	—	11/15/06 Voice Vote ^b	11/15/06 UC ^c	—	—	—	11/17/06 109-369
H.J.Res. 102, CR	—	—	12/08/06 370-20	12/09/07 UC ^c	—	—	—	12/09/06 109-383
H.J.Res. 20, CR	—	—	01/31/07 286-140	—	—	—	—	—

a. The continuing resolution was not included in H.R. 5631 as approved by the House or Senate Committees on Appropriations or as passed by the House or Senate. The conference committee on H.R. 5631 added it to the conference report.

b. The House adopted the measure under suspension of the rules.

c. The Senate adopted the continuing resolution, without amendment, by unanimous consent. That is, a unanimous consent request was proposed to adopt the measure and since no Senator objected, the resolution was adopted.

³ Department of Defense Appropriations Act, 2007 (P.L. 109-289; 120 Stat. 1257).

⁴ Continuing Appropriations Resolution, 2007 (Public Law 109-289, Division B; 120 Stat. 1311).

⁵ Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295; 120 Stat. 1355).

⁶ P.L. 109-369, 120 Stat. 369.

⁷ P.L. 109-383, 120 Stat. 2678.

Initial FY2007 Continuing Resolution (P.L. 109-289, Division B)

The initial FY2007 continuing resolution generally extended budget authority⁸ for accounts⁹ funded by discretionary or mandatory spending¹⁰ through November 17, 2006. The CR, however, authorized mandatory spending payments due on or about December 1, 2006. The resolution also provides that if a regular appropriations bill becomes law prior to the expiration date, CR funding will generally cease for that act.

This CR generally extends budget authority for accounts funded in the FY2006 regular appropriations acts and would also be funded in the House- or Senate-passed FY2007 regular bills. Spending is also extended for accounts funded in the FY2006 acts, if: (1) only the House passed the applicable FY2007 regular bill and the bill did not provide spending for the account; or (2) neither chamber passed a FY2007 regular bill. This CR generally prohibits funding for new projects or activities that were not funded in FY2006.

CRs generally provide spending rates for most of the accounts covered; by contrast, both regular and supplemental appropriations acts generally provide a specific amount for each account funded. The initial FY2007 CR provides spending rates generally based on formulas. An exception is provided for mandatory spending, primarily entitlement programs, and the Food Stamp Program. The funding level for each program is the amount needed to maintain current program levels under existing law. This is generally designed to provide additional funding, if needed, to continue current services for eligible beneficiaries.

⁸ Congress funds federal activities by providing agencies with *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. Congress may make budget authority for specified activities available for obligation for only a single fiscal year, specified multi-years, or indefinitely. An *appropriation* is a type of budget authority that not only provides authority to make financial obligations for specified activities, but also provides authority to make payments from the Treasury for those activities.

⁹ The basic unit of a regular or supplemental appropriations act is the *account*. Under these acts, funding for each department and large independent agency is distributed among several accounts. Each account, generally, includes similar programs, projects, or items, such as a “research and development” account or “salaries and expenses” account. For small agencies, a single account may fund all of the agency’s activities. These acts typically provide a lump-sum amount for each of these accounts. A few accounts include a single program, project, or item, which the appropriations acts fund individually.

¹⁰ Congress divides budget authority and the resulting outlays into two categories: *discretionary* and *mandatory (or direct) spending*. Discretionary spending is controlled by annual appropriations acts, which are under the jurisdiction of the House and Senate Committees on Appropriations. Mandatory spending is controlled by legislative acts under the jurisdiction of the authorizing committees (principally, the House Committee on Ways and Means and Senate Committee on Finance). All discretionary spending and some mandatory spending are included in the annual appropriations measures. For more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

The funding level for each account is generally determined by one of three formulas that are based on the status of the outstanding FY2007 regular appropriations bill funding the account.¹¹ A formula is established for each of the following situations: both the House and Senate passed the outstanding FY2007 regular appropriations bill, only the House passed the regular bill, or neither chamber passed the bill.

In instances in which both chambers passed their versions of a regular appropriations bill, funding is continued for each account at the lower of the amounts: (1) provided in the House-passed version of the bill; (2) provided in the Senate-passed version of the bill; or (3) generally available in FY2006.¹² An account that would be funded by only one chamber is protected until the final funding decisions are made in the FY2007 regular appropriations act. The funding level is not zero, instead funding is continued at the lower of the amount that would be provided by the chamber or was generally available in FY2006. Accounts funded in FY2006 that would not be funded by either chamber for FY2007, however, are not funded.

Initially, none of the nine outstanding FY2007 regular appropriations bills were passed by both chambers. The continuing resolution, however, uses a modification of this formula to fund specified Department of Defense activities. Due to a jurisdictional mismatch between two House and Senate appropriations subcommittees, funding for these activities was provided in the House-passed FY2007 Military Construction, Military Quality of Life and Veterans Affairs

¹¹ The initial CR provided that the formulas would be based on the status of each bill as of October 1, 2006. The third continuing resolution (P.L. 109-383) changed the date to November 15, 2006, in order to include the Senate-passed version of FY2007 Military Construction and Veterans Affairs and Related Agencies Appropriations Act, which the Senate passed on November 14, 2006.

¹² Technically, the resolution states the FY2006 amount is at a rate of operations *not exceeding the current rate*. The Office of Management and Budget (OMB) provided most Executive Branch agencies detailed instructions for calculating the net amount of “not exceeding the current rate” for each account funded in the FY2007 continuing resolution. OMB directed the agencies to include the full-year amount enacted in the FY2006 regular appropriations acts, minus any reductions (such as across-the-board reductions) and then add, if any (1) the amount enacted in FY2006 supplemental appropriations acts for recurring and ongoing projects and activities, if pre-approved by OMB; (2) the amount transferred to or from other accounts, if mandated by law; and (3) the discretionary unobligated balance carried forward to FY2006. Then, subtract from this sum the discretionary unobligated balance at the end of FY2006, if any.

Once this net annualized amount has been calculated, OMB instructs the agencies to multiply it by the lower of (1) the percentage of the year covered by the CR; or (2) the historical seasonal rate of obligations for the period of the year covered by the CR. U.S. Office of Management and Budget, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2007*, Bulletin No. 06-04 (Washington: Sept. 2006), Attachment, p. 1.

Unobligated balance refers to the cumulative amount of budget authority that is not obligated and that, under law, remains available for obligation. For example, if Congress had provided an appropriation to an account of \$2 million for the FY2006-FY2007 period and, by the end of FY2006, the agency had only obligated \$1.5 million; the remaining \$0.5 million would be an unobligated balance.

Appropriations bill (FY2007 Military Quality of Life Appropriations bill)¹³ and the Senate-passed FY2007 Defense appropriations bill. Therefore, the CR provides that these activities are funded at the lower of the amounts: (1) provided in the House-passed FY2007 Military Quality of Life Appropriations bill; (2) provided in the Senate-passed version of the FY2007 Defense Appropriations Act; or (3) generally available in FY2006. The effected Department of Defense activities follow: basic allowance for housing activities; facilities sustainment, restoration and modernization activities; “Environmental Restoration” accounts; and “Defense Health Program Account.” Final FY2007 funding levels for these activities are expected to be provided in the enacted FY2007 Military Quality of Life regular appropriations bill.

As mentioned previously, the initial continuing resolution provides a separate formula for instances in which only the House passed a FY2007 regular appropriations bill. Funding is continued at the lower of the amount that would be provided in the House-passed bill or was generally available in FY2006. If the House-passed bill would not continue FY2006 funding for an account, the account is protected. It is funded at the FY2006 level.

Initially eight of the nine outstanding FY2007 regular appropriations bills were funded under this formula, specifically the FY2007: (1) Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations bill (H.R. 5384); (2) Energy and Water Development Appropriations bill (H.R. 5427); (3) State, Foreign Operations, Export Financing, and Related Programs Appropriations bill (H.R. 5522); (4) Department of the Interior, Environment, and Related Agencies Appropriations bill (H.R. 5386); (5) Legislative Branch Appropriations bill (H.R. 5521); (6) remaining portions of the Military Quality of Life Appropriations bill;¹⁴ (7) Departments of Commerce and Justice, Science, and Related Agencies (H.R. 5672); and (8) Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations bill (H.R. 5576).

The final formula applies to FY2007 regular appropriations bills that neither chamber has passed. Funding is continued at the FY2006 levels. This formula only applies to one FY2007 regular bill: FY2007 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations bill (H.R. 5647, S. 3708).

The initial FY2007 continuing resolution makes funding available under terms and conditions provided in the applicable FY2006 regular appropriations acts. For example, a provision in an FY2006 regular appropriations act prohibiting the use of funds in an account for a specified activity or project may be in effect.

¹³ 109th Congress, H.R. 5385.

¹⁴ On November 14, 2006, the Senate passed the FY2007 Military Quality of Life bill. Beginning with the enactment of the third CR on December 9, 2006, the House- and Senate-passed formula has been used to fund the remaining military quality of life activities (see “Third FY2007 Continuing Resolution (P.L. 109-383)” below).

Second FY2007 Continuing Resolution (P.L. 109-369)

This CR was a clean resolution that simply changed the expiration date of the initial continuing resolution from November 17 to December 8, 2006.

Third FY2007 Continuing Resolution (P.L. 109-383)

The third CR modifies the previous continuing resolutions as well as adding other provisions, some are highlighted below.

The expiration date is changed from December 8, 2006, to February 15, 2007. The CR, however, authorizes mandatory spending payments due on or about March 1, 2007.

The CR also changes the discretionary funding formula for certain activities associated with the House-passed FY2007 Military Quality of Life and Veterans Affairs appropriations bill. First, the CR adds a Department of Defense account, "Chemical Demilitarization Construction, Defense-Wide account," to those activities that are funded at the lower of the amounts: (1) provided in the House-passed FY2007 Military Quality of Life Appropriations bill; (2) provided in the Senate-passed version of the FY2007 Defense Appropriations Act; or (3) generally available in FY2006.

Second, it changes the funding formula for the remaining Military Quality of Life activities to reflect Senate-passage of the bill on November 14, 2006. Under the CR, these activities are funded at the lower of the amounts: (1) provided in the House-passed FY2007 Military Quality of Life Appropriations bill; (2) Senate-passed FY2007 Military Quality of Life Appropriations bill; or (3) generally available in FY2006.¹⁵

In response to concerns about a shortfall in funds for the Medical Services account under the Department of Veterans Affairs,¹⁶ this continuing resolution provides the department with authority to transfer up to \$684 million from other department accounts to the Medical Services account.

The continuing resolution also delays the scheduled cost-of-living pay increase for Members of Congress until February 16, 2007, the day after this continuing resolution expires.

¹⁵ The initial CR based the formulas on the status of the regular bills as of October 1, 2006. In order to reflect Senate passage of the Military Quality of Life bill on November 14, 2006, the third CR, which became law on December 9, changed date status to November 15, 2006

¹⁶ This account is under the Veterans Health Administration, which is a part of the Department of Veterans Affairs.

Fourth FY2007 Continuing Resolution (H.J.Res. 20, 110th Cong.)

This measure would extend funding for the nine outstanding regular appropriations bills through the end of FY2007 and replace the FY2007 funding formula and adjustments previously enacted. The new spending rate is described below. It is important to note that the new CR would provide adjustments to the rate for numerous accounts under each of the regular acts covered (for specifics, see H.J.Res. 20).

The spending rate would no longer be based on any action on the FY2007 regular appropriations bills, instead this CR provides that accounts funded in the FY2006 regular appropriations acts would be funded at the level appropriated in the those acts, including transfers and obligation limitations.¹⁷ Funds designated as an emergency or for overseas contingency operations in the FY2006 acts, however, would be excluded.¹⁸ The funding level would also exclude rescissions,¹⁹ except the following: (1) 1.0% government-wide discretionary spending rescission provided in the FY2006 Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act;²⁰ (2) 0.476% across-the-board rescission of discretionary appropriations in the FY2006 Department of the Interior, Environment, and Related Agencies Appropriations Act;²¹ and (3) 0.28% across-the-board rescission of discretionary accounts in the FY2006 Science, State, Justice, Commerce, and Related Agencies Appropriations Act.²²

This measure retains the exception for mandatory spending and the Food Stamp Program included in the initial FY2007 CR. That is, the funding level for each program is the amount needed to maintain current program levels under existing law. This is generally designed to provide additional funding, if needed, to continue current services for eligible beneficiaries.

Under the fourth CR, funds remain available under terms and conditions provided in the applicable FY2006 regular appropriations acts.

¹⁷ An *obligation limitation* is a provision of a law or legislation that restricts or reduces the availability of budget authority that would have become available under another provision of law.

¹⁸ Since 1990, the House and Senate have generally provided mechanisms to exempt certain funding from spending ceilings associated with a budget resolution, which may be enforced by points of order. The FY2006 budget resolution provided that funds designated as an emergency or for contingency operations would be exempt (see section 402 of the FY2006 budget resolution, H.Con.Res 95 (109th Cong.)). For information on the points of order, see CRS Report 97-865, *Points of Order in the Congressional Budget Process*, by James V. Saturno.

¹⁹ *Rescissions* cancel previously enacted budget authority.

²⁰ For the specifics, see P.L. 109-148, section 3801; 119 Stat. 2791.

²¹ For the specifics, see P.L. 109-54, section 439; 119 Stat. 559.

²² For the specifics, see P.L. 109-108, section 638; 119 Stat. 2347.

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.²³ Traditionally, most of the operations of federal departments and agencies are funded each year through separate enactment of several regular, annual appropriations acts.²⁴ Because 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-FY2006 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 (FY1989, FY1995, and FY1997²⁵), at least one continuing resolution has been enacted for each fiscal year since FY1954. (In addition, all 13 FY1977 regular appropriations bills became law on or by the deadline, but two CRs were enacted to generally fund certain unauthorized activities that had not been included in the regular appropriations acts.) From FY1978 through FY2006, Congress enacted on average five continuing resolutions per year (for detailed information, see **Table 2**).

²³ 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.

²⁴ For almost 40 years (FY1968-FY2005), Congress considered 13 regular appropriations bills each year. Beginning with FY2006, the number of bills considered was reduced due to separate reorganizations of the House and Senate Appropriations Committees. The House initially considers 11 regular bills and the Senate 12 bills. During congressional consideration of the appropriations bills, the Senate combines two bills, resulting in 11 enacted measures. The Senate adds the Senate District of Columbia bill to the Senate Transportation, Treasury, Housing and Urban Development, the Judiciary, and Related Agencies Appropriations bill. The coverage of this combined bill corresponds to the House's Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations bill.

²⁵ 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.

Table 2. Regular Appropriations Bills Enacted by Deadline and Continuing Resolutions (CRs), FY1977-FY2006

FY	Presidential Administration	Party in Control of Congress		Regular Appropriations Bills		CRs Enacted
		Senate	House	Approved by or on October 1	Enacted in CRs	
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
1983	Ronald Reagan	Republicans	Democrats	1	7	2
1984				4	3	2
1985				4	8	5
1986				0	7	5
1987				0	13	5
1988				0	13	5
1989				13	0	0
1990				George H.W. Bush	Democrats	Democrats
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				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
2006				2	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).

- 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.
- 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.
- The deadline was met by adding five regular bills to a sixth regular bill, forming an omnibus appropriations act, and enacting seven bills individually.
- 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.
- 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.
- One measure (P.L. 108-7) originated as a continuing resolution, but in conference it was converted into an omnibus appropriations resolution.

During the past 35 years, the nature, scope, and duration of CRs expanded and, then, generally contracted. From the early 1970s through 1987, CRs gradually expanded from interim funding measures of comparatively brief duration and length to measures providing funding in lieu of one or more regular appropriations bills *through the end of the fiscal year* (referred to as *full-year continuing resolutions*). The full-year measures included, in some cases, the full text of one or more regular appropriations bills and contained substantive legislation (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees). Since 1987, continuing resolutions have generally been interim funding measures with little substantive legislation.

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 CRs 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, CRs became vehicles for substantive legislative provisions unrelated to interim funding, as it became clear that in some years CRs 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, CRs 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.²⁶

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)²⁷ 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

²⁶ P.L. 99-591; 100 Stat. 3341 and P.L. 100-202; 101 Stat. 1329.

²⁷ The Budget Enforcement Act of 1990 (P.L. 101-508, 104 Stat. 1388-573, 1388-574) established spending ceilings for discretionary spending for each fiscal year (FY1991-FY1995). 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*).

necessary, generally were more limited, contained far less substantive legislation, and were used mainly to provide interim funding for relatively brief periods.

Since FY1995, the conflicts have generally resumed. Although the enforcement mechanisms remained in effect from FY1996 through FY2002,²⁸ conflict within Congress and between Congress and the President on funding and policy issues generally delayed action on regular appropriations bills. Beginning in FY1996 (and continuing through FY2001) there were significant conflicts between the Democratic President and the newly-elected Republican-controlled Congress. From FY2002 through FY2006, there were conflicts within the Republican-controlled Congress and between Congress and the newly-elected Republican President (George W. Bush), which delayed action on the regular bills.

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). Omnibus regular appropriations bills were generally developed by attaching outstanding regular appropriations bills and substantive legislation to another regular appropriations bill in conference.

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.

Since FY1995, continuing resolutions, when needed, have continued to provide interim funding for short periods of time and have included little substantive legislation.

Types of Continuing Resolutions

Continuing resolutions generally can be divided into two categories — interim and full-year continuing resolutions.²⁹

²⁸ Two acts extended the spending ceilings originally established in the Budget Enforcement Act of 1990. The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 107 Stat. 312, 683) extending the ceilings through FY1998 and the Balanced Budget Act of 1997 (P.L. 105-33, 111 Stat. 251) extended the limits through FY2002.

²⁹ For more information, see CRS Report RL32614, *Duration of Continuing Resolutions in* (continued...)

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 FY1989, they have remained fairly constant in form and structure. In contrast to regular and supplemental appropriations acts, interim continuing resolutions do not generally provide specific amounts for each account. These CRs provide “such sums as are necessary” to continue funding at specified “rates for operations” for accounts in bills covered by the resolution. The rates may be set in various ways, for example, funding levels for accounts in a covered bill have been based on formulas, such as (1) the lower of the amounts provided in the House-passed version or Senate-passed version of the bill; or (2) the funding levels available for the previous fiscal year. Rates may be based on the status of the covered bill. In addition, some rates for operations have been simply the funding levels available in the previous year. Continuing resolutions frequently provide rates that vary among the bills funded.

In most cases, the rates provided in interim CRs have applied to most 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.

A form of interim CR is the *long-term continuing resolution*, which extends appropriations for outstanding regular appropriations bills temporarily from one calendar year into the next, but does not extend funding to the end of the fiscal year. In cases in which a long-term CR extends funding into a new Congress, new bills providing funding must be introduced in the new Congress. At the end of a Congress, all measures that have not been enacted die.

Full-year continuing resolutions provide funding in lieu of one or more regular appropriations bills *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 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); or (3) rates of operations.

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 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

²⁹ (...continued)

Recent Years, by Robert Keith.

typically are a few pages or less (in the case of a simple extension of a previous resolution, perhaps less than half a 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,³⁰ 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,³¹ 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.³² 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 legislative provisions or unauthorized appropriations³³ in general appropriations measures, 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.

³⁰ P.L. 102-266.

³¹ P.L. 97-92.

³² P.L. 104-91, P.L. 104-92, and P.L. 104-94.

³³ *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*, by Sandy Streecher).

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 more than 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.”³⁴

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.³⁵

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.³⁶ Activities authorized by law, for example, include funding for entitlement programs, such as Social Security and Medicare, that are permanently appropriated. In 1990,

³⁴ U.S. Government Accountability Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31, Mar. 3, 1981, p. i.

³⁵ U.S. Department of Justice, Office of the Attorney General, Memorandum to the President, Apr. 25, 1980, reprinted in *Funding Gaps Jeopardize Federal Government Operations*, App. IV, pp. 63-67.

³⁶ 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.

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.”³⁷

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.”³⁸ The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

³⁷ P.L. 101-508 Section 13213(b), 31 U.S.C. 1342.

³⁸ 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.

FY2007 Regular Appropriations Bills.

CRS Report RL33412, *Agriculture and Related Agencies: FY2007 Appropriations*, by Jim Monke, Coordinator.

CRS Report RL33405, *Defense: FY2007 Authorization and Appropriations*, by Stephen Daggett.

CRS Report RL33563, *District of Columbia: Appropriations for 2007*, by Eugene Boyd and David P. Smole.

CRS Report RL33346, *Energy and Water Development: FY2007 Appropriations*, by Carl E. Behrens, Coordinator.

CRS Report RL33420, *Foreign Operations (House)/State, Foreign Operations, and Related Programs (Senate): FY2007 Appropriations*, by Larry Nowels, Connie Veillette, and Susan B. Epstein.

CRS Report RL33428, *Homeland Security Department: FY2007 Appropriations*, by Jennifer E. Lake and Blas Nunez-Neto, Coordinators.

CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*, by Carol Hardy Vincent and Susan Boren, Coordinators.

CRS Report RL33576, *Labor, Health and Human Services, and Education: FY2007 Appropriations*, by Paul M. Irwin.

CRS Report RL33379, *Legislative Branch: FY2007 Appropriations*, by Paul E. Dwyer and Ida A. Brudnick.

CRS Report RL33427, *Military Construction, Military Quality of Life and Veterans Affairs: FY2007 Appropriations*, by Daniel H. Else, Paul J. Graney, and Sidath Viranga Panangala.

CRS Report RL33470, *Science, State, Justice, Commerce and Related Agencies (House)/ Commerce, Justice, Science and Related Agencies (Senate): FY2007 Appropriations*, by Susan B. Epstein and M. Angeles Villarreal, Coordinators.

CRS Report RL33551, *Transportation, the Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, the Executive Office of the President, and Independent Agencies (TTHUD): FY2007 Appropriations*, by David Randall Peterman and John Frittelli, Coordinators.

Other Sources

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

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