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FY2017 Defense Spending Under an Interim Continuing Resolution (CR): In Brief

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Summary

Defense budget experts began discussing the likelihood of a continuing resolution (CR) to start FY2017 early in the second session of the 114th Congress. As the start of fiscal year 2017 (FY2017) approaches, congressional consideration of a CR to fund the federal government through the opening months of the fiscal year is widely anticipated. This report provides a basic discussion of interim CRs and highlights some specific issues for the Department of Defense (DOD) under a CR. It also provides a brief look at selected FY2017 defense programs that could be affected by a CR.

As with regular appropriations bills, Congress can draft a CR to provide funding in many different ways. Under current practice, a CR is an appropriations law that provides either interim or full-year funding by referencing a set of established funding levels for the projects and activities that it funds (or *covers*). Such funding may be provided for a period of days, weeks, or months, and may be extended through further continuing appropriations until regular appropriations are enacted, or until the fiscal year ends. In recent fiscal years, the referenced funding level on which interim or full-year continuing appropriations has been based was the amount of budget authority that was available under specified appropriations acts from the previous fiscal year. CRs may also include provisions that enumerate exceptions to the duration, amount, or purposes for which those funds may be used for certain appropriations accounts or activities. Such provisions are commonly referred to as anomalies. The purpose of anomalies is to preserve Congress's constitutional prerogative to provide appropriations in the manner it sees fit, even in instances when only interim funding is provided.

For affected agencies, CRs can create hurdles that would not exist under a full-year appropriation. For example, an interim CR may prohibit an agency from initiating or resuming any project or activity for which funds were not available in the previous fiscal year (i.e., prohibit new starts). In addition, Congress may include provisions in interim CRs to limit the expenditure of appropriations for programs that spend a relatively high proportion of their funds in the early months of a fiscal year. Also, if a CR provides funds at the rate of the prior year's appropriation, an agency may be provided additional (even unneeded) funds in one account, such as research and development, while leaving another account, such as procurement, underfunded or lacking. This is sometimes referred to as a problem with the *color of money*.

By its very nature, an interim CR can prevent agencies from taking advantage of efficiencies through bulk buys and multi-year contracts. It can foster inefficiencies by requiring short-term contracts that must be reissued once additional funding is provided, requiring additional paperwork and overhead in contracting actions.

DOD has started the fiscal year under a CR for 11 of the last 16 years and every year since FY2010. The amount of time DOD has operated under CR authorities during the year has increased in the last 6 years and equates to a total of more than 26 months since 2010. This has caused DOD to adapt its programming activities to a truncated budget year.

For FY2017, the Defense Department requested $523.9 billion in discretionary funding, as compared to the FY2016 enacted level of $521.7 billion. The Overseas Contingency Operations (OCO) request for FY2017 ($58.8 billion) is relatively close to the FY2016 enacted level ($58.6 billion). While these amounts may seem comparatively small (0.4% and 0.3% respectively), the variance in FY2016 enacted and FY2017 requested amounts by appropriation account may be significant under a CR.

For example, DOD is seeking an $8.4 billion increase in Operation and Maintenance (O&M) funding from FY2016 to FY2017. O&M appropriations fund critical readiness functions such as

individual, unit, and collective training, flying hours, ship steaming days, depot maintenance, and civilian personnel pay. This funding increase would likely require an anomaly in order for it to occur as requested under a CR. Moreover, the DOD Comptroller expects that many DOD programs and activities would be affected by enactment of an interim CR through prohibitions on new starts, limitations on production quantity increases and color of money issues, if such issues are not specifically addressed through anomalies.

Contents

Introduction 1
Background 1
CRs in General 1
Coverage and Funding Rate 1
Full Text versus Formulaic Continuing Appropriations 2
Limitations that CRs May Impose 2
Anomalies 3
How Agencies Implement a CR 3
Specific CR Considerations for DOD 4
Funding Levels for Defense 4
Timing of the NDAA 4
Effects of CRs on the Management and Operations of the DOD 5
FY2017 Defense Spending and a CR 8
Potential Impacts to DOD FY2017 Programs 9
Issues for Congress 12

Figures

Figure 1. Days Under a Continuing Resolution: Department of Defense 7

Tables

Table 1. DOD Base Discretionary Budget Authority 9

Contacts

Author Contact Information 13

Introduction

Defense budget experts began discussing the likelihood of an interim continuing resolution (CR) to start FY2017 early in the second session of the 114th Congress.[1] As the start of FY2017 approaches, congressional consideration of an interim CR to fund the federal government through the opening months of the fiscal year is thought likely. In that light, this report provides a basic discussion of interim CRs and highlights some specific issues that may arise for the Department of Defense (DOD) under a CR. It also provides a brief look at select FY2017 defense programs that could be affected by an interim CR. For more detailed information on CRs, CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by (name redacted) and (name redacted), and CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by (name redacted).

Background

CRs in General

As is the case with regular appropriations bills (enacted separately or in omnibus form) Congress can draft a CR to provide funding in many different ways. Congress historically has had a number of reasons why it prefers an interim CR in a particular instance, be it for timing, policy, political, or larger budget process purposes. Under current practice, a CR is an appropriations law that provides either interim or full-year funding by referencing a set of established funding levels for the projects and activities that it funds (or *covers*). Such funding is provided for projects and activities for which the relevant regular annual appropriations bill has not been enacted at the start of a fiscal year (October 1). Such funding may be provided for a period of days, weeks, or months, and may be extended through further continuing appropriations until regular appropriations are enacted, or the fiscal year ends. (CRs are referred to as "continuing resolutions" because typically they are drafted in the form of a joint resolution rather than a bill.)

Coverage and Funding Rate

An interim CR typically provides that budget authority is available at a certain *rate for operations* or *funding rate* for the covered projects and activities, and for a specified period of time. The funding rate for a project or activity is based on the total amount of budget authority that would be available annually for that account under that referenced level, and is pro-rated based on the fraction of a year for which the interim CR is in effect.

In recent fiscal years, the referenced funding level on which interim or full-year continuing appropriations has been based was the amount of budget authority that was available under specified appropriations acts from the previous fiscal year. For example, the first CR for FY2016 (P.L. 114-53) provided, "...such amounts as may be necessary, at a rate operations as provided in the applicable appropriations Acts for fiscal year 2015...."

[1] Jon Harper, "Analysts: Next Fiscal Year Likely to Begin With Continuing Resolution," *National Defense Magazine*, April 2016 at http://www.nationaldefensemagazine.org/archive/2016/April/Pages/AnalystsNextFiscalYearLikelytoBeginWithContinuingResolution.aspx.

While a blanket continuation of the prior year's spending levels is one option for establishing the CR's funding rate, other funding levels also have been used to provide the funding rate. For example, the first FY2016 CR provided that funding be continued at the rate provided in the applicable FY2015 appropriations bill, minus 0.2108 percent. CRs have provided that the funding rate for certain accounts are to be calculated with reference to the funding rates in:

a. the previous year;
b. the President's pending budget request;
c. the appropriations bill for the pending year as passed by the House or Senate;
d. the bill for the pending year as reported by a committee for either chamber; or
e. the lowest amount provided by any of those sources.

Full Text versus Formulaic Continuing Appropriations

CRs have sometimes provided budget authority for some or all covered activities by incorporating the text of one or more regular appropriations bills for the current fiscal year. When this form of funding is provided in a CR or other type of annual appropriations act, it is often referred to as *full text appropriations*.

When full text appropriations are provided, those covered activities are not funded by a rate for operations, but by the amounts specified in the incorporated text. This full text approach is functionally equivalent to enacting regular appropriations for those activities, regardless of whether that text is enacted as part of a CR. For example, FY2011 discretionary funding for all agencies was provided by P.L. 112-10, the "Department of Defense and Full-Year Continuing Appropriations Act." For DOD, the text of a regular appropriations bill for DOD (Division A) was included in the CR, thus funding those covered activities via full text appropriations. In contrast, a formula based on the previous fiscal year's appropriations laws was used to provide full year continuing appropriations for the other projects and activities that normally would have been funded in the remaining 11 FY2011 regular appropriations bills (P.L. 112-10, Division B).

Limitations that CRs May Impose

CRs may contain limitations that are generally written to allow execution of funds in a manner that provides for only minimal continuation of projects and activities in order to preserve congressional prerogatives prior to the time a full appropriation is enacted.[2] As an example, an interim CR may prohibit an agency from initiating or resuming any project or activity for which funds were not available in the previous fiscal year. Congress has, in practice, included a specific section (usually Section 102) in the CR to expressly prohibit DOD from starting production on a program that was not funded in prior years (i.e. a *new start*), and also prohibits DOD from increasing production rates above levels provided in the prior year.[3] In addition, Congress may limit certain contractual actions such as multi-year procurement contracts.[4]

[2] CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by (name redac ted) .

[3] Section 102(a) of the Continuing Appropriations Act, 2016 (H.R. 719) states "No appropriation or funds made available or authority granted pursuant to Section 101 for the Department of Defense shall be used for: (1) the new production of items not funded for production in fiscal year 2015 or prior years; (2) the increase in production rates above those sustained with fiscal year 2015 funds; or (3) the initiation, resumption, or continuation of any project, activity, operation, or organization...for which appropriations, funds, or other authority were not available during fiscal (continued...)

An interim CR may provide funds at the rate of the prior year's appropriation and, as a result, may provide funds in a manner that differs from an agency's budget request. For example, if a CR is based on the prior year's enacted appropriation, a mismatch at the account level between the agency's request and the CR funding level. This is sometimes referred to as an issue with the *color of money*.[5] This issue occurs because the Antideficiency Act (ADA) prohibits a federal employee from making or authorizing "an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation" unless authorized by law.[6]

Anomalies

Even though CRs typically provide funds at a rate, CRs may also include provisions that enumerate exceptions to the duration, amount, or purposes for which those funds may be used for certain appropriations accounts or activities. Such provisions are commonly referred to as *anomalies*. The purpose of anomalies is to insulate some operations from potential adverse effects of a CR while providing time for Congress and the President to agree on full-year appropriations and avoiding a government shutdown.[7]

For example, an anomaly might be included to stipulate a set rate of operations for a specific activity.[8] Or, an anomaly could be included to extend an expiring authority for the period of the CR. In the case of DOD, an anomaly could provide "new start" authority for a specified program or could provide authority to enter into a multi-year procurement contract, despite a general prohibition on such actions.

How Agencies Implement a CR

After enactment of a CR, the Office of Management and Budget (OMB) provides detailed directions to executive agencies on the availability of funds and how to proceed with budget execution, typically in a bulletin. The bulletin includes announcement of an "automatic apportionment" of funds that will be made available for obligation, as a percentage of the annualized amount provided by the CR. Under a typical OMB bulletin, part of the annualized amount is apportioned and made available for obligation. Funds usually are apportioned either in proportion to the time period of the fiscal year covered by the CR, or according to the historical, seasonal rate of obligations for the period of the year covered by the CR, whichever is lower. A

(...continued)

year 2015."

[4] Section 102(b) of the Continuing Appropriations Act, 2016 (H.R. 719) states "No appropriation or funds made available or authority granted pursuant to section 101 for the Department of Defense shall be used to initiate multi-year procurements utilizing advance procurement funding for economic order quantity procurement unless specifically appropriated later."

[5] The colloquialism *color of money* is often used in defense circles to refer to accounts (e.g. Military Personnel, Operation and Maintenance, Procurement, and Research, Development, Test and Evaluation) used in appropriations acts. A *color of money problem* would imply that funding was provided in one account, when it was actually needed in another.

[6] 31 U.S.C. § 1341.

[7] CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by (name re dacted) .

[8] Typically, such funding is specified as an annualized rate based upon a lump sum. For example, Section 120 of P.L. 112-33 provided the following anomaly for a specific account, which was an exception to the generally applicable rate in Section 101: "Notwithstanding section 101, amounts are provided for 'Defense Nuclear Facilities Safety Board—Salaries and Expenses' at a rate for operations of $29,130,000."

30-day CR might, therefore, provide 30 days' worth of funding, derived either from a certain annualized amount that is set by formula or from a historical spending pattern. In an interim CR, Congress also may provide authority for OMB to mitigate furloughs of federal employees by apportioning funds for personnel compensation and benefits at a higher rate for operations, albeit with some restrictions.[9]

When operating under a CR, agencies generally encounter intangible consequences that can include additional obligatory paperwork, additional need for short-term contracting actions, and other managerial complications as the affected agencies work to implement funding restrictions and other limitations that the CR imposes. For example, the government can normally save by buying in bulk under annual appropriations lasting a full fiscal year or enter into new contracts (or extend their options on existing agreements) to lock in discounts and exploit the government's purchasing power. These advantages may be lost when operating under a CR.

Specific CR Considerations for DOD

Funding Levels for Defense

If formulaic interim or full-year continuing appropriations were to be enacted for DOD, the funding levels for both base defense appropriations and Overseas Contingency Operations (OCO) spending could be determined in a variety of ways. A separate formula could be established for defense spending, or the defense and nondefense spending activities could be funded under the same formula. Likewise, the level of OCO spending under a CR could be established by the general formula that applies to covered activities (as discussed above), or by providing an alternative rate or amount for such spending. For example, the first CR for FY2013 (P.L. 112-175) provided the following with regard to OCO funding:

> Whenever an amount designated for Overseas Contingency Operations/Global War on Terrorism pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (in this section referred to as an "OCO/GWOT amount") in an Act described in paragraph (3) or (10) of subsection (a) that would be made available for a project or activity is different from the amount requested in the President's fiscal year 2013 budget request, the project or activity shall be continued at a rate for operations that would be permitted by...the amount in the President's fiscal year 2013 budget request.

In addition to the rate for operations, anomalies could affect both the amount and purposes of defense spending in the CR. For instance, specific language could be included to allow selected "new starts," changes in the number of certain end-items to be purchased (e.g. a particular type of airplane or ship), and/or changes in the amount of budget authority provided for certain activities, such as OCO.

Timing of the NDAA

Along with specific authorization for military construction projects, the National Defense Authorization Act (NDAA) provides additional authorities that DOD needs to conduct its mission. Such authorities range from authorization of end strengths for active and reserve military forces to authorization for specific training activities with allied forces in contingency

[9] CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by (name redac ted) .

operations.[10] Some such authorities are slated to expire at the start of the fiscal year, while others, such as certain authorities for special pay and bonuses, expire at the end of the calendar year.[11] Should final action on the NDAA be delayed, Congress may consider addressing expiring authorities through the inclusion of associated anomalies in a CR.

Effects of CRs on the Management and Operations of the DOD

In a Statement for the Record to the Senate Committee on Homeland Security and Governmental Affairs, the Government Accountability Office (GAO) remarked that CRs can create budget uncertainty, complicating agency operations and causing inefficiencies, and that agency officials report taking "varied actions to manage inefficiencies resulting from CRs, including shifting contract and grant cycles to later in the fiscal year to avoid repetitive work, and providing guidance on spending rather than allotting specific dollar amounts during CRs to provide more flexibility and reduce the workload associated with changes in funding levels."[12]

DOD faces these challenges as do other federal agencies, but DOD also faces unique challenges operating under a CR while providing the military forces needed to deter war and protect the security of our country. The President's first tenet of the National Security Strategy (NSS), "Strengthen our Nation's Defense," asserts that "To maintain our military edge and readiness, we will continue to insist on reforms and necessary investment in our military forces and their families."[13] In order to accomplish this, DOD has argued that it depends heavily on stable but flexible funding patterns and new start activities in order to maintain a modernized force ready to meet future threats. Defense Secretary Ashton Carter recently posited that CRs put commanders in a "straight-jacket" that limits their ability to adapt, or keep pace with complex national security challenges around the world while responding to rapidly evolving threats like the Islamic State.[14]

Programmatic Effects

In addition to overcoming the general management challenges created by an interim CR, DOD would likely be prohibited from any new starts or production quantity increases, thus delaying development, production, testing and fielding of certain weapon systems. It is also likely that

[10] Title VI of the annual National Defense Authorization Act provides military personnel authorizations for the Department of Defense. Authorities for the Office of Security Cooperation (Iraq) provided under Section 1215 of the National Defense Authorization Act for Fiscal Year 2015 (P.L. 112-81) were requested to be extended by OMB in the event enacted of the FY2017 NDAA is also delayed.

[11] For example, Section 611 of H.R. 4909 provides a one-year extension (from December 31, 2016 to December 31, 2017) of authorities for special pay for enlisted members assigned to certain high-priority units, Ready Reserve enlistment bonuses, and authorities related to income replacement payments for reserve component members experiencing extended and frequent mobilization for active duty service. Furthermore, Section 612 provides a similar extension of authorities related to accession and retention bonuses for psychologists, nurses, nurse anesthetists, and other health professionals in critically short wartime specialties.

[12] U.S. Government Accountability Office, Statement for Record to the Committee on Homeland Security and Governmental Affairs, U.S. Senate, *Effects of Budget Uncertainty from Continuing Resolutions on Agency Operations*, GAO-13-464T, March 13, 2013, at http://www.gao.gov/assets/660/652999.pdf.

[13] *National Security Strategy*, President Barack Obama, Washington, DC, February 2015, p.7, at https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf.

[14] U.S. Department of Defense, "Statement from Secretary of Defense Ash Carter on Omnibus Bill Negotiations," press release, December 8, 2015, http://www.defense.gov/News/News-Releases/News-Release-View/Article/633403/statement-from-secretary-of-defense-ash-carter-on-omnibus-bill-negotiations?source=GovDelivery.

DOD would be limited in its ability to enter into planned long-term contracts, thus losing the program stability and efficiencies that can be gained by such contracts.

DOD may also encounter significant *color of money* issues. Many defense acquisition programs may face problems if they were going through a transitional period in the acquisition process amidst a CR. For example, a program ramping down development activities and transitioning into production, could be allocated research, development, test and evaluation (RDT&E) funding under a CR, based on the prior year's appropriation, when the program is now in need of procurement funding.

An example of a program affected by limitations on the "color of money" is the Columbia class Ballistic Missile Submarine Program, which has been provided funding exclusively for RDT&E in previous fiscal years.[15] Under a CR, RDT&E funding might be provided at the FY2016 rate and the RDT&E account would presumably be managed by the Navy to prioritize certain efforts within the RDT&E account and mitigate risk caused by funding shortfalls. In FY2017, however, the budget request for the Columbia class program includes not only RDT&E funding, but also advance procurement (AP) funding. If the Navy operates under a CR for part of FY2017, there would be no AP funding for the program unless Congress provides an anomaly. In addition, the initiation of procurement activities for the Columbia class program in FY2017 would also likely be deemed a *new start*.

Military construction (MILCON) appropriations may also be uniquely effected by a CR. Title 10 U.S.C §114 requires that MILCON appropriations be authorized by law. This project-level authorization is normally provided through the NDAA. Annual appropriations for MILCON are also usually provided for specific projects. As a consequence, even if the amount and purposes of MILCON appropriations for the prior fiscal year are extended under a CR, each new project scheduled for the current fiscal year would be considered a new start if the NDAA has not yet been enacted. In other words, if the NDAA is enacted by the start of the fiscal year, DOD should be able to initiate new MILCON projects under a CR. However, if the NDAA is not enacted by that time, MILCON projects would be delayed until 10 U.S.C §114 requirements can be met.

The Navy's shipbuilding account, known formally as the Shipbuilding and Conversion, Navy (SCN) appropriation account, is written in the annual DOD appropriations act not just with a total appropriated amount for the entire account (like other DOD acquisition accounts), but also with specific appropriated amounts at the line-item level. As a consequence, under a CR, SCN funding is managed not at the account level, but at the line-item level. For the SCN account—uniquely among DOD acquisition accounts—this can lead to misalignments (i.e., excesses and shortfalls) in funding under a CR for SCN-funded programs, compared to the amounts those programs received in the prior year. The shortfalls in particular can lead to program-execution challenges under an extended or full-year CR.

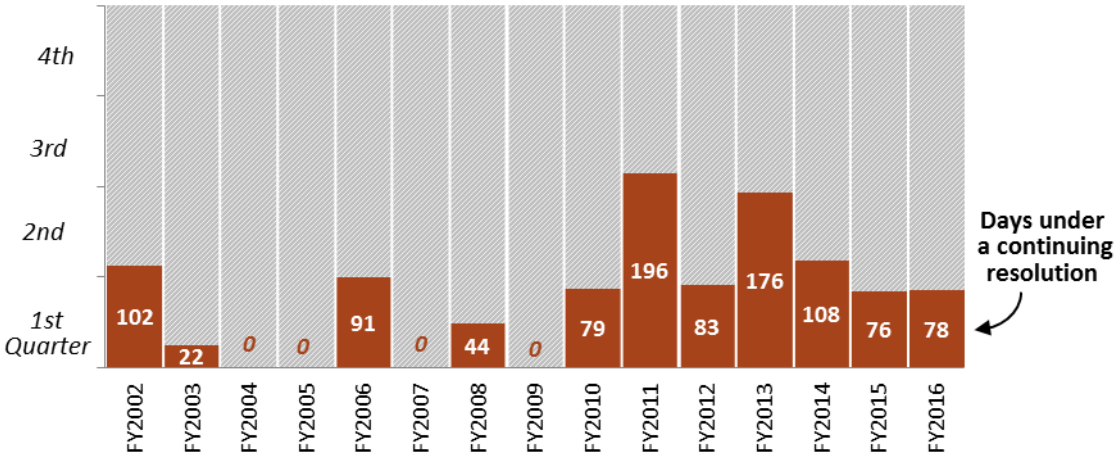
Managing to an Expectation of a CR

DOD has started the fiscal year under a CR for 11 of the last 16 years and every year since FY2010. The amount of time DOD is under CR during the year has increased in the last 6 years as seen in **Figure 1**.

[15] The Columbia class Ballistic Missile Submarine Program has also be referred to the Ohio Replacement Program or SSBN(X).

Figure 1. Days Under a Continuing Resolution: Department of Defense

FY2001-FY2016



Source: CRS analysis of dates of enactment of public law. See the CRS Appropriations Status Table at http://www.crs.gov/AppropriationsStatusTable/Index.

Since 2010, DOD has spent over 26 months operating under the budget uncertainty of a CR. Senior defense officials have stated that the military services and defense agencies have consequently come to expect that a full-year appropriations bill will not be completed by the start of the fiscal year.[16] According to Admiral John Richardson, Chief of Naval Operations, "The services are essentially operating in three fiscal quarters per year now. Nobody schedules anything important in the first quarter."[17]

Based on personal and professional experience developed while operating under a CR, many DOD program managers and senior leaders may work, well in advance of the outcome of annual decisions on appropriations, to minimize contracting actions planned for the first quarter of the fiscal year.[18] For example, re-planning and executing short-term contracting actions could be reduced by building a program schedule in which planned contracting actions are pushed to later in the fiscal year when it is more likely that a full appropriation is in place. Additionally, program managers could adjust hiring cycles and travel policies may be restricted in anticipation of a CR. The Defense Acquisition University, DOD's education service for acquisition program management, imparts that, "Members of the OSD, the Services and the acquisition community must consider late enactment to be the **norm** [emphasis in original] rather than the exception and, therefore, plan their acquisition strategy and obligation plans accordingly."[19] These efforts by Defense officials to prepare for the potential of a CR appear to have reduced some of the need to request that specific anomalies be included in the CR.[20]

[16] Discussion with Under Secretary of Defense (Comptroller) Mike McCord, August 8, 2016.

[17] U.S. Congress, Senate Committee on Armed Services, *Long-term Military Budget Challenges*, 114th Cong., 2nd sess., September 15, 2016.

[18] Ibid.

[19] Gregory Martin, "President's Budget Submission and the Congressional Enactment Process," Teaching Note, National Defense University, VA, April 2013, https://acc.dau.mil/adl/en-US/44269/file/76896/Congressional%20Enactmanet%20Process%20April%202013.pdf.

[20] Discussion with Under Secretary of Defense (Comptroller) Mike McCord, August 8, 2016.

FY2017 Defense Spending and a CR

As discussed above, a CR generally provides continued budget authority based on the amount of budget authority that was made available for the previous fiscal year. As shown in **Table 1**, the Defense Department request for discretionary funding in FY2017 was $523.9 billion compared to the FY2016 enacted level of $521.7 billion. The OCO request for FY2017 ($58.8 billion) is relatively close to the FY2016 enacted level ($58.6 billion). While these requested increases seem comparatively small (0.4% and 0.3% respectively), the variance in FY2016 enacted and FY2017 requested amounts by appropriation account may be significant under a CR.

For example, DOD is seeking an $8.4 billion increase in Operation and Maintenance (O&M) funding from FY2016 to FY2017 (see **Table 1**). O&M appropriations fund critical readiness functions such as individual, unit, and collective training, flying hours, ship steaming days, depot maintenance, and civilian personnel pay. Holding DOD to the FY2016 enacted level could result in reductions in expenditures on military readiness activities. However, it should be noted that, in the absence of a specific anomaly, potential readiness risks could likely be mitigated under a short-term CR by prioritizing allocation of resources to those units with critical missions or that are next to deploy.

Table 1. DOD Base Discretionary Budget Authority

billions of dollars

DoD Base Budget	FY2016 enacted	FY2017 request	Percent change
Military Personnel	$135.3	$135.3	-
Operation and Maintenance (O&M)	$197.5	$205.9	4.2%
Procurement	$110.7	$102.6	-7.4%
Research and Development (R&D)	$68.8	$71.4	3.8%
Military Construction	$8.2	$7.4	-9.8%
Total Base Budget	**$521.7**	**$523.9**	0.4%
Overseas Contingency Operations	**$58.6**	**$58.8**	0.3%

Source: Department of Defense Fiscal Year 2017 Budget Request Overview, Office of the Under Secretary of Defense (Comptroller)/CFO, Table A-4, February 9, 2016.

Notes: Because of details in the financing of certain DOD activities and in the organization of the annual DOD funding bills, data in this table are not comparable to the summary data regarding the annual defense authorization and appropriations bills. For example, in this table, the Military Personnel totals include accrual payments to the so-called "TRICARE for Life" program ($6.6 billion for FY2016 and $6.4 billion in FY2017) that is scored as discretionary funding but which occurs automatically each year through a permanent provision of law (10 U.S.C. 1116). Also, Family Housing is included in Military Construction. The amounts listed in the table for O&M, Procurement, and R&D include funds authorized and appropriated as part of 1. the Defense Health Program, 2. a program to eliminate chemical weapons, and 3. DOD's drug interdiction and counter-drug program. Totals may not reconcile due to rounding.

Potential Impacts to DOD FY2017 Programs

Interim CRs typically are designed to preserve congressional funding prerogatives until annual budgetary decisions are made, while avoiding a government shutdown.[21] As a consequence, a CR by its very nature provides funding quite differently from a regular appropriations bill, if only because decisions on funding levels that the use of a CR defers are, instead, decided by default to continue at previous levels. Secretary of the Air Force Deborah James recently stated that as many as 60 new start or upgrade Air Force programs could be impacted.[22] Programs she cited include MQ-9 Reaper unmanned systems, C-130 cargo transport and the B-52 and B-2 bombers. She also stated that development of the new B-21 bomber would be limited and the procurement rate for the KC-46A would be capped at 12, instead of the requested 15 If held to the lower FY2016 production rates through January 2017 the Air Force could face a cost increase of over $331 million for the KC-46A program.[23]

An inability to execute funding as planned could cause delays in accomplishing detailed design work for a program, hinder the ability to meet already tight delivery schedules, and constrain the ability to complete required testing before fielding. Accordingly, the DOD Comptroller expects that many DOD programs and activities would be affected by enactment of a CR in lieu of a full-

[21] CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by (name redacted).

[22] Aaron Mehta, "60 US Air Force Programs Could Be Delayed by CR," *Defense News*, August 10, 2016.

[23] Discussion with Under Secretary of Defense (Comptroller) Mike McCord, August 8, 2016.

year appropriations act for FY2017.[24] The longer the DOD operates under a CR during FY2017, the greater these effects could be.

Select programs cited by the Comptroller as being directly affected under a notional three month CR are as follows.

No funding or authority for new starts. The FY2017 request includes funds for a number of new programs, both in procurement and in RDT&E that, based on previous CRs, would likely be explicitly prohibited to be funded under a CR. Select DOD programs that would likely be affected are:

- Littoral Combat Ship Anti-surface Warfare Module[25]
- E-4B (National Airborne Operations Center)
- A-10 replacement wings and planned depot maintenance to install the wings
- Stryker (ECP 2)[26]
- CH-53K (Lot 1)
- Columbia Class Ballistic Missile Submarine Program (Ohio Replacement) [27]
- John Lewis (TAO-205) Class Oiler Shipbuilding Program[28]
- B-52 Radar Modernization Program[29]

Prior level of funding for programs scheduled to ramp up. The FY2017 request includes a number of programs for which increased funding is proposed. Production rate increases are, like new starts, typically not permitted under CR. Select DOD programs that would likely be affected are:

- Joint Light Tactical Vehicle[30]
- KC-46A aerial refueling aircraft[31]
- Carrier Replacement Program
- CVN refueling complex overhaul
- Joint Strike Fighter (F-35B STOVL variant)
- E-2D Advanced Hawkeye
- Joint Direct Attack Munition
- AGM-114 Hellfire missile

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[24] Ibid

[25] For more information see CRS Report RL33741, *Navy Littoral Combat Ship (LCS)/Frigate Program: Background and Issues for Congress*, by (name redacted) .

[26] For more information on the Stryker Program see CRS Report R44229, *The Army's M-1 Abrams, M-2/M-3 Bradley, and M-1126 Stryker: Background and Issues for Congress*, by (name redacted) .

[27] For more information see CRS Report R41129, *Navy Columbia Class (Ohio Replacement) Ballistic Missile Submarine (SSBN[X]) Program: Background and Issues for Congress*, by (name redacted) .

[28] For more information see CRS Report R43546, *Navy John Lewis (TAO-205) Class Oiler Shipbuilding Program: Background and Issues for Congress*, by (name redacted) .

[29] CRS Report R43049, *U.S. Air Force Bomber Sustainment and Modernization: Background and Issues for Congress*, by (name redacted) .

[30] CRS Report RS22942, *Joint Light Tactical Vehicle (JLTV): Background and Issues for Congress*, by (name r edacted).

[31] CRS Report RL34398, *Air Force KC-46A Tanker Aircraft Program*, by (name redacted) .

- Standard Missile
- Various ammunition procurement including 20MM, 25MM, 30MM, 40MM, and105MM
- European Reassurance Initiative

Mismatch between FY2016 appropriations and FY2017 request. While the aggregate funding amounts under a CR might vary little from FY2016 enacted levels, the amounts for particular accounts requested for FY2017 may vary significantly from FY2016. For example, the FY2017 request for O&M is $8.4 billion greater than the FY2016 enacted level and the FY2017 request for Procurement is $8.1 billion less than the FY2016 enacted level (see **Table 1**). This misalignment of funding could have an impact on military readiness, even under a short-term CR. The Army would likely be more affected than the other services, as Army FY2017 budget documents show the Army emphasized that the service's FY2017 budget request prioritized readiness (O&M) over modernization (procurement).[32] In testimony before the House Armed Services Committee, Lieutenant General Kevin Mangum stated, "What the Army cannot do is continue to just provide for aviation units at platoon or company level readiness, which a CR would do, and expect those same units to operate in environments that require battalion level proficiency and flight skills".[33]

In keeping with past practice, OMB reportedly has drafted a list of anomalies for Congressional consideration in development of an interim (through mid-December) CR for FY2017.[34] The only item on the list for DOD relates to FY2017 plans to provide information technology (IT) services to the Office of Personnel Management's (OPM's) National Background Investigation Bureau (NBIB) at a rate for operations of $95 million. Without an anomaly in the FY2017 CR, OPM states that it would be required to significantly increase the prices it charges its customers for security clearance investigations or put IT development on hold for the period of the CR. This could delay the effort to stand up more secure IT systems and prolong NBIB's reliance on existing systems that remain vulnerable to security breaches like the one experienced in 2015.[35]

In the event that authorizing legislation, such as the NDAA, is also not enacted in a timely manner, OMB has also reportedly provided a list of items to allow either for the continuation of programs funded under a CR or for other legislative fixes.[36] The list includes:

- certain authority to support operations and activities of the Office of Security Cooperation in Iraq;
- support programs for immediate family members of the Armed Forces assigned to Special Operations Forces;

[32] Major General Thomas A. Horlander, Army FY2017 Budget Overview Briefing, February 2017, at http://asafm.army.mil/Documents/OfficeDocuments/Budget/budgetmaterials/fy17//overview.pdf.

[33] U.S. Congress, House Committee on Armed Services, Subcommittee on Readiness, *Aviation Readiness*, 114th Cong., 1st sess., July 6, 2016. Lieutenant General Mangum is the Deputy Commanding General, U.S. Army Training and Doctrine Command.

[34] FY2017 Continuing Resolution (CR) Appropriations Issues, September 2016, Bloomberg BNA, at http://src.bna.com/h5x.

[35] For more information on the 2015 OPM data breach see CRS Insight IN10327, *OPM Data Breach: Personnel Security Background Investigation Data*, by (name redacted) .

[36] FY2017 Continuing Resolution (CR) Authorization Issues, September 2016, Bloomberg BNA, at http://src.bna.com/h5x.

- temporary authority to use Air Force Reserve component personnel to provide training and instruction regarding pilot training; and
- authorities on transition of military dependent students among local educational agencies.

Issues for Congress

If a CR is used to fund a portion of FY2017 for DOD, Congress may consider including provisions to provide DOD with flexibility in the use of funds that is above and beyond what would normally be provided under a CR. A number of factors could influence the extent to which Congress decides to include such additional authorities or flexibilities for DOD. These include:

- **Duration of the CR.** In many cases, the degree of impact could be directly related to the length of time that DOD operates under a CR. Therefore, Congress might determine that some mitigation measures might not be needed under a short-term CR (90 days or less) while others might be needed regardless of duration.
- **Status of negotiations.** The extent to which total budgetary resources that might be available for DOD during a fiscal year is unknown/still being negotiated;
- **Anticipated resource levels.** The extent to which funding allocations in full year appropriations are expected to differ from what would be provided by the CR; and
- **Prior action.** The extent of flexibility Congress wishes to give DOD in light of previous use of such flexibility.

Should Congress wish to provide DOD additional flexibility while operating under a CR, Congress may consider including provisions that would provide exceptions or anomalies:

- to the **continuing level of funding for selected accounts**, subaccounts, programs, activities, and subactivities such as readiness-related subactivities in the O&M accounts;
- for **selected new starts**;
- for **selected programs proposed to increase substantially** in FY2017; and
- for **MILCON projects**, which could be approved through an anomaly that references a list that has been agreed to by the Armed Services and Appropriations committees.

Congress could also consider providing DOD with more flexibility in the use of funds appropriated by a CR through changes enacted as part of the annual appropriations process or the NDAA. These include such options as the following:

- **Increase transfer authority.** Increase general transfer authority, which would allow shifts of funds among existing accounts and programs, subject to normal reprogramming procedures.
- **Increase reprogramming thresholds.** Either in report language or in statute, increase thresholds that limit reprogramming of funds without advance congressional approval.
- **Expedite reprogramming procedures.** Either temporarily or permanently expedite reprogramming procedures, perhaps by establishing a time limit for

congressional approval, with approval assumed after a certain period, or through some other mechanism.

- **Permit expanded reprogramming and transfers of OCO funds.** Provide more flexibility for DOD to reallocate overseas contingency operation funding between accounts, through increased special transfer authority and, also or alternatively, through expedited reprogramming procedures for war-related funds. Expedited reprogramming procedures might include higher thresholds for congressional approval or other measures.

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