

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

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January 5, 2017

Congressional Research Service

7-....

[www.crs.gov](http://www.crs.gov)

R44636

## Summary

This report provides a basic discussion of interim continuing resolutions (CRs) and highlights some specific issues pertaining to operations of 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.

On September 29, 2016, the President signed H.R. 5325, the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, and Zika Response and Preparedness Act, into law. Division C of H.R. 5325 is termed a "continuing resolution" (CR) which provided temporary funding in FY2017 for programs and activities typically covered by regular appropriations bills—including those of the DOD. Funding under the terms of the CR was effective October 1, 2016, through December 9, 2016. H.R. 5325 provided budget authority for FY2017 for most projects and activities at the rate at which they were funded during FY2016 minus 0.496%.

On December 10, 2016, H.R. 2028, the Further Continuing and Security Assistance Appropriations Act, 2017, was enacted to extend CR funding until April 28, 2017 at a funding rate of 0.1901% below the FY2016 appropriated level. H.R. 2028 also included a supplemental appropriation for Overseas Contingency Operations (Division B: Security Assistance and Appropriations Act, 2017), providing an additional \$11.6 billion for related DOD and Department of State activities.

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 challenges 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 that place limits on 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 12 of the last 16 years (FY2002-FY2017) 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. While the variance is comparatively small (0.4%), the variance in FY2016 enacted and FY2017 requested amounts by appropriation account may be considered significant under the 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. Under the CR, O&M levels are held at the reduced FY2016 rate. Additionally, 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 (provisions that enumerate exceptions to the duration, amount, or purposes for which those funds may be used for certain appropriations accounts or activities).

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## Background

### Coverage and Funding Rate

An interim continuing resolution (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 the referenced account, 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 has been 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 of operations as provided in the applicable appropriations Acts for fiscal year 2015."

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%. CRs have provided that the funding rates for certain accounts are to be calculated with reference to the funding rates in

- the previous year;
- the President's pending budget request;
- the appropriations bill for the pending year as passed by the House or Senate;
- the bill for the pending year as reported by a committee of either chamber; or
- the lowest amount provided by any of the sources listed above.

### 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.<sup>1</sup> 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.<sup>2</sup> In addition, Congress may limit certain contractual actions such as multi-year procurement contracts.<sup>3</sup>

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 could occur 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*.<sup>4</sup> 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.<sup>5</sup>

## Anomalies

Even though CRs typically provide funds at a particular 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.<sup>6</sup>

For example, an anomaly might be included to stipulate a set rate of operations for a specific activity.<sup>7</sup> 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

<sup>1</sup> CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by (name redacted) .

<sup>2</sup> 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 year 2015."

<sup>3</sup> 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."

<sup>4</sup> 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.

<sup>5</sup> 31 U.S.C. §1341.

<sup>6</sup> CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by (name redacted) .

<sup>7</sup> 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."

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. 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 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.<sup>8</sup>

When operating under a CR, agencies encounter generally unquantifiable consequences that can include additional obligatory paperwork, need for additional 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.

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<sup>8</sup> CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by (name redacted) .



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 operations.<sup>9</sup> 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.<sup>10</sup> Should final action on the NDAA be delayed, Congress may consider addressing expiring authorities through the inclusion of relevant 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.”<sup>11</sup>

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 U.S. security. The Obama Administration’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.”<sup>12</sup> To accomplish this, DOD has argued that it depends heavily on stable but flexible funding patterns and new start activities to maintain a modernized force ready to meet future threats. Defense Secretary Ashton Carter recently posited that CRs put commanders in a “straight-

<sup>9</sup> 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 enactment of a FY2017 NDAA is also delayed.

<sup>10</sup> 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.

<sup>11</sup> 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>.

<sup>12</sup> *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](https://www.whitehouse.gov/sites/default/files/docs/2015_national_security_strategy.pdf).



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.<sup>13</sup>

## 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 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 amid 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 received funding exclusively for RDT&E in previous fiscal years.<sup>14</sup> In FY2017, however, the budget request for the *Columbia* class program includes not only RDT&E funding, but also advance procurement (AP) funding. Without an anomaly, there would be no AP funding for the program under a CR.

Military construction (MILCON) appropriations may also be uniquely affected 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.

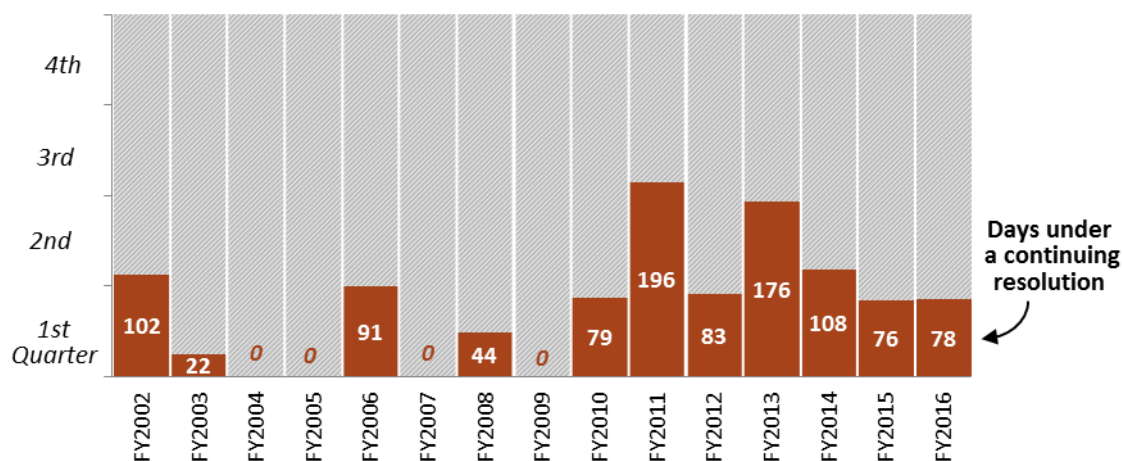
<sup>13</sup>U.S. Department of Defense, "Statement from Secretary of Defense Ash Carter on Omnibus Bill Negotiations," press release, December 8, 2015, <http://www.defense.gov/News/News-Releases/News-Release-View/Article/633403/statement-from-secretary-of-defense-ash-carter-on-omnibus-bill-negotiations?source=GovDelivery>.

<sup>14</sup> The *Columbia* class Ballistic Missile Submarine Program has also be referred to the *Ohio* Replacement Program or SSBN(X).

## Managing with an Expectation of a CR

DOD has started the fiscal year under a CR for 12 of the last 16 years (FY2002-FY2017) and every year since FY2010 and the average number of days of operation under a CR has increased over that same period. DOD has operated under a CR for an average of 114 days per year during the period FY2010-FY2016 compared to an average of 32 days per year during the period FY2002-FY2009 (see **Figure 1**).

**Figure 1. Days Under a Continuing Resolution: Department of Defense**  
FY2002-FY2016



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

**Note:** FY2017 (not shown) began with a continuing resolution.

Since 2010, DOD has spent over 26 months operating under the budget uncertainty of a CR, compared to less than 9 months during the preceding eight years. 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.<sup>15</sup> 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.”<sup>16</sup>

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.<sup>17</sup> 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 would be 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

<sup>15</sup> Discussion with Under Secretary of Defense (Comptroller) Mike McCord, August 8, 2016.

<sup>16</sup> U.S. Congress, Senate Committee on Armed Services, *Long-term Military Budget Challenges*, 114th Cong., 2nd sess., September 15, 2016.

<sup>17</sup> Ibid.

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.”<sup>18</sup> 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.<sup>19</sup>

## FY2017 Defense Spending and the Two CRs: H.R. 5325 and H.R. 2028

The first CR for FY2017 (H.R. 5325) provided budget authority for FY2017 projects and activities at a *funding rate* of 0.496% below the FY2016 appropriated level through December 9, 2016 (pursuant to Section 101(b) of Division C). This funding rate is implemented by taking the total amount of budget authority made available — FY2016 appropriated levels reduced by .0496% — and pro-rating it based on the fraction of time in FY2017 that the interim CR is in effect.

Not having reached an agreement on an annual budget by the December 9, 2016 expiration of the first CR, Congress passed H.R. 2028 (P.L. 114-254, the Further Continuing and Security Assistance Appropriations Act, 2017) which amended H.R. 5325 by extending CR funding until April 28, 2017, at a funding rate of 0.1901% below the FY2016 appropriated level.

In many cases, the degree a CR’s impact can be directly related to the length of time that DOD operates under a CR. While some mitigation measures might not be needed under a short-term CR, such as H.R. 5325, extended delays in passing a full-year defense appropriations bill may increase management challenges and risks for DOD. In such circumstances, Congress may consider including provisions to provide additional flexibilities—*anomalies*—in the use of funds that are above and beyond what is generally provided in a short-term CR.

A number of factors could influence the extent to which Congress decides to include such additional authority or flexibility for DOD under a longer-term CR. The status of budget negotiations between Congress and the White House is a factor if the total budgetary resources available for DOD during a fiscal year are still unknown and being negotiated. Another influential factor is whether funding allocations in full-year appropriations differ from what would be provided by the CR. Prior actions concerning flexibility delegated by Congress to the DOD also influence the future decisions of Congress for providing additional authority to DOD under a longer-term CR.

H.R. 2028 lengthened the period of operation under a CR for DOD to 210 days in FY2017. It also provided three additional anomalies for DOD and included a supplemental appropriation for Overseas Contingency Operations (Division B: Security Assistance and Appropriations Act).

## Potential Impact on DOD FY2017 Programs

By the summer of 2016, DOD officials were preparing for a potential FY2017 CR. Secretary of the Air Force Deborah James stated in August 2016 that as many as 60 new start or upgrade Air

<sup>18</sup> 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%20Enactment%20Process%20April%202013.pdf>.

<sup>19</sup> Discussion with Under Secretary of Defense (Comptroller) Mike McCord, August 8, 2016.

Force programs could be impacted by an FY2017 CR.<sup>20</sup> Programs she cited included the 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 originally requested 15. If held to the lower FY2016 production rates through January 2017, the Air Force could have faced a cost increase of over \$331 million for the KC-46A program.<sup>21</sup>

An inability to execute funding as planned could also cause delays in accomplishing detailed design work for a program. Moreover, it can hinder the ability to meet already tight delivery schedules by constraining the ability to complete required testing before fielding. Accordingly, the DOD Comptroller expected that many DOD programs and activities would be affected by the enactment of a CR in lieu of a full-year appropriations act for FY2017.<sup>22</sup> The longer the DOD operates under a CR during FY2017, the greater these effects could be.

Although various programs cited by the Comptroller would be impacted by a CR, overall the primary issue with a CR is three-fold: (1) it provides no funding or authority for new starts, (2) it works against programs with projected cost increases, and (3) it mismatches the level of appropriations from the level of requests.

1. **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 are explicitly prohibited under Section 102 of Division C of H.R. 5325 and continued in H.R. 2028. Select DOD programs that would likely be restricted by Section 102 unless otherwise exempted:

- Littoral Combat Ship Anti-surface Warfare Module<sup>23</sup>
- E-4B (National Airborne Operations Center)
- A-10 replacement wings and planned depot maintenance to install the wings
- Stryker: Engineering Change Proposal 2<sup>24</sup>
- CH-53K (Lot 1)
- *John Lewis* (TAO-205) Class Oiler Shipbuilding Program<sup>25</sup>
- B-52 Radar Modernization Program<sup>26</sup>
- *Columbia* Class Ballistic Missile Submarine Program (*Ohio* Replacement), however Section 155 of H.R. 2028 provides an anomaly for the program.<sup>27</sup>

<sup>20</sup> Aaron Mehta, "60 US Air Force Programs Could Be Delayed by CR," *Defense News*, August 10, 2016.

<sup>21</sup> Discussion with Under Secretary of Defense (Comptroller) Mike McCord, August 8, 2016.

<sup>22</sup> Ibid.

<sup>23</sup> For more information see CRS Report RL33741, *Navy Littoral Combat Ship (LCS)/Frigate Program: Background and Issues for Congress*, by (name redacted) .

<sup>24</sup> Engineering Change Proposal 2, or ECP 2, is intended to address space, weight and power-cooling deficiencies in the current Stryker vehicle. 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) .

<sup>25</sup> For more information see CRS Report R43546, *Navy John Lewis (TAO-205) Class Oiler Shipbuilding Program: Background and Issues for Congress*, by (name redacted) .

<sup>26</sup> CRS Report R43049, *U.S. Air Force Bomber Sustainment and Modernization: Background and Issues for Congress*, by (name redacted) .

2. **Prior level of funding for programs scheduled to ramp up.** The FY2017 request included a number of programs for which increased funding was proposed. However, production rate increases, like new starts, are not permitted under Section 102 of Division C of H.R. 5325, and continued by H.R. 2028. Select DOD programs that would be restricted by Section 102, unless otherwise exempted:
- Joint Light Tactical Vehicle<sup>28</sup>
  - KC-46A aerial refueling aircraft, however Section 157 of H.R. 2028 provides an anomaly for the program<sup>29</sup>
  - 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
  - Standard Missile (shipborne guided missile program)
  - Various ammunition procurement including 20MM, 25MM, 30MM, 40MM, and 105 MM
  - European Reassurance Initiative<sup>30</sup>
3. **Mismatch between FY2016 appropriations and FY2017 request.** A misalignment in funding for O&M and procurement could have an impact on military readiness, even under a short-term CR. The Army would likely be more affected than the other services. The Army's FY2017 budget documents show that the Army's FY2017 budget request prioritized readiness over modernization.<sup>31</sup> 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 is what a CR would do, and expect those same units to operate in environments that require battalion level proficiency and flight skills."<sup>32</sup>

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(...continued)

<sup>27</sup> 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) .

<sup>28</sup> CRS Report RS22942, *Joint Light Tactical Vehicle (JLTV): Background and Issues for Congress*, by (name redacted).

<sup>29</sup> CRS Report RL34398, *Air Force KC-46A Tanker Aircraft Program*, by (name redacted) .

<sup>30</sup> European Reassurance Initiative is an Obama Administration effort to reinvest in U.S. military presence in Europe in order to, "reassure North Atlantic Treaty Organization (NATO) Allies and partners of the U.S. commitment to their security and territorial integrity." See European Reassurance Initiative, Department of Defense Fiscal Year 2017 Budget, at [http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2017/FY2017\\_ERI\\_J-Book.pdf](http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2017/FY2017_ERI_J-Book.pdf).

<sup>31</sup> Major General Thomas A. Horlander, Army FY2017 Budget Overview Briefing, February 2017, at <http://asafm.army.mil/Documents/OfficeDocuments/Budget/budgetmaterials/fy17/overview.pdf>.

<sup>32</sup> 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.



Further complicating things for DOD, the CR provided funds based on the FY2016 procurement level—not the requested FY2017 level—which was lower by \$8.1 billion. As a result, some procurement accounts will be overfunded during the period of the CR. Under a short-term CR, the effect may be relatively small. However, granted that the period of the CR was extended, this overfunding in certain accounts could pose management challenges for the Department.

## Anomalies in H.R. 5325 and H.R. 2028

In keeping with past practice, OMB reportedly drafted a list of anomalies for congressional consideration in development of the interim CR (H.R. 5325) for FY2017.<sup>33</sup> The only DOD-related item 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 stated that there could be a significant increase in the prices it charges its customers for security clearance investigations. OPM argued that a deferral in IT development caused by a CR could delay efforts to stand up more secure IT systems and would prolong NBIB’s reliance on existing systems that remain vulnerable to security breaches like the one experienced in 2015.<sup>34</sup> Section 121 of Division C of H.R. 5325 granted the requested anomaly.

In an effort to mitigate some of the effects of a CR for an extended period—210 days projected for FY2017—H.R. 2028 granted three additional anomalies for DOD.<sup>35</sup>

- **Section 155** funds *Columbia* Class Ballistic Missile Submarine Program (*Ohio* Replacement) at a rate for operations of \$773,138,000.
- **Section 156** allows funding to be made available for multiyear procurement contracts, including advance procurement, for the AH–64E Attack Helicopter and the UH–60M Black Hawk Helicopter. This relieves the Army of subsection (i)(1) of Section 2306b of Title 10, United States Code. This subsection covers “defense acquisitions specifically authorized by law” regarding multiyear contracts.
- **Section 157** provides funding for the Air Force’s KC–46A Tanker, up to the rate for operations necessary to support the production rate specified in the President’s FY2017 budget request.

## Division B - Security Assistance and Appropriations Act, 2017

The Security Assistance and Appropriations Act, 2017 (H.R. 2028) provides supplemental appropriations to Overseas Contingency Operations (OCO) accounts of DOD and DOS.<sup>36</sup> Title I provides \$5.8 billion DOD OCO generally aligned with the President’s November 2016 budget amendment. However, H.R. 2028 provides \$652.3 million for activities related to the European Reassurance Initiative (approximately one-half of the amounts requested for O&M and military

<sup>33</sup> *CQ Hot Docs*, “FY2017 Continuing Resolution (CR) Appropriations Issues (anomalies for a short CR).”

<sup>34</sup> For more information on the 2015 OPM data breach see CRS Report R44111, *Cyber Intrusion into U.S. Office of Personnel Management: In Brief*, coordinated by (name redacted)

<sup>35</sup> CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by (name redacted).

<sup>36</sup> For additional information on the FY2017 OCO budget request for DOD and DOS see CRS Report R44519, *Overseas Contingency Operations Funding: Background and Status*, coordinated by (name redacted) and (name redacted).

personnel) and a similar portion—approximately one-half—of procurement funding requested for certain missiles and ammunition (see **Table 1**).

Title II provides \$4.3 billion for State, Foreign Operations and Related programs. A comparison of the additional amounts requested by the Administration in its amendment of November 10, 2016 and those provided by Congress are shown in **Table 2**. Note that some amounts are available until the end of FY2017, while others are available until expended.

**Table 1. Security Assistance Appropriations Act, 2017: Department of Defense**

H.R. 2028, Division B, Title I

dollars in millions

Account	Budget Amendment Increase (Nov 2016)	Counter- terrorism Operations	European Reassurance Initiative	Total
<b>Military Personnel</b>				
Army	\$94.0	\$94.0	\$102.9	\$197.0
Navy	\$7.4	\$7.4	\$3.1	\$10.5
Air Force	\$37.6	\$37.6	\$14.2	\$51.8
Marine Corps	\$5.8	\$5.8	—	\$5.8
<b>O&amp;M</b>				
Army	\$2,934.3	\$2,735.0	\$438.7	\$3,173.7
Navy	\$95.5	\$95.5	\$2.4	\$97.9
Air Force	\$382.5	\$382.5	\$45.6	\$428.0
Marine Corps	\$168.4	\$168.4	\$12.1	\$180.5
Defense-wide	\$413.0	\$413.0	\$33.3	\$446.3
<b>Procurement</b>				
Missile Procurement, Army	\$46.5	\$229.1	—	\$229.1
Other Procurement, Army	\$98.5	\$72.0	—	\$72.0
Procurement of Ammunition, Air Force		\$201.6	—	\$201.6
Missile Procurement, Air Force		\$83.9	—	\$83.9
Other Procurement, Air Force	\$137.9	\$137.9	—	\$137.9
<b>RDT&amp;E</b>				
RDT&E, Army	\$139.2	\$78.7	—	\$78.7
RDT&E, Defense-Wide	\$3.0	\$3.0	—	\$3.0
<b>Other</b>				
Joint Improvised Explosive Device Defeat Fund	\$99.8	\$87.8	—	\$87.8
Iraq Train and Equip Fund	\$289.5	\$289.5	—	\$289.5
<b>Total, DOD</b>	<b>\$5,775.0</b>	<b>\$5,122.7</b>	<b>\$652.3</b>	<b>\$5,775.0</b>

**Source:** Division B of H.R. 2028 (P.L. 114-254 ).

**Note:** All amounts appropriated are designated for OCO/GWOT pursuant to Section 251(b)(2)(A)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 and are not subject to the BCA caps.



**Table 2. Security Assistance Appropriations Act, 2017: State, Foreign Operations and Related programs**

H.R. 2028, Division B, Title II

dollars in millions

Account	November 2016 Budget Amendment Increase	Total Provided	Time of funding availability
D&CP	\$746.2	\$1,052.4	September 30, 2018
OIG/State	\$2.5	\$2.5	September 30, 2018
ESCM	\$1,024.0	\$654.4	until expended
MRA	\$260.4	\$300.0	until expended
INCLE	\$19.3	\$26.3	September 30, 2018
ESF	\$2,460.4	\$1,030.6	September 30, 2018
PKO	\$90.0	\$50.0	September 30, 2018
FMF	—	\$200.0	September 30, 2018
NADR	\$128.0	\$128.0	September 30, 2018
IDA	\$953.2	\$616.1	until expended
OE/USAID	\$15.0	\$5.0	September 30, 2018
TI	\$73.5	\$50.2	until expended
IG/USAID	\$2.5	\$2.5	September 30, 2018
CIF/USAID	—	\$25.0	until expended
AEECA	—	\$157.0	September 30, 2018
Total	\$5,775.0	\$4,300.0	

**Source:** Letter from the Executive Office of the President, Office of Management and Budget, *Amendments to the FY2017 Budget*, November 10, 2016, and P.L. 114-254, Div. B, Title II.

**Notes:** D&CP=Diplomatic and Consular Programs; OIG/State=State Department Office of Inspector General; ESCM=Embassy Security, Construction, and Maintenance; MRA=Migration and Refugees Assistance; INCLE=International Narcotics Control and Law Enforcement; ESF=Economic Support Fund; PKO=Peacekeeping Operations; FMF=Foreign Military Financing; NADR=Nonproliferation, Anti-terrorism, Demining and Related Programs; IDA=International Disaster Assistance; OE/USAID=USAID Operating Expenses; TI=Transition Initiatives; IG/USAID=USAID Inspector General; CIF/USAID=Capital Investment Fund/USAID; AEECA=Assistance for Europe, Eurasia and Central Asia.

All amounts appropriated are designated for OCO/GWOT pursuant to Section 251(b)(2)(A)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985 and are not subject to the BCA caps.

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