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TESTIMONY

Statement of

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Hearing on

"Terrible, No Good, Very Bad Ways of Funding Government: Exploring the Cost to Taxpayers of Spending Uncertainty Caused by Governing Through Continuing Resolutions, Giant Omnibus Spending Bills, and Shutdown Crises"

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Introduction

Chairman Paul, Ranking Member Peters, and distinguished members of the subcommittee, my name is Clint Brass. I am a Specialist in Government Organization and Management at the Congressional Research Service (CRS). Thank you for inviting CRS to testify on the topic of "Terrible, No Good, Very Bad Ways of Funding Government: Exploring the Cost to Taxpayers of Spending Uncertainty Caused by Governing Through Continuing Resolutions, Giant Omnibus Spending Bills, and Shutdown Crises."

As requested, this statement focuses on the subjects of interim continuing resolutions (CRs), their purposes and potential effects, and related subjects, including the possibility and potential effects of shutdowns of the federal government. I would like to acknowledge the work of multiple current and former CRS colleagues in producing related analysis and research for Congress, from which this statement benefits.

In serving Congress with nonpartisan and objective analysis and research, CRS does not make recommendations or take positions on the advisability of particular options. Rather, CRS is available to assist the subcommittee in its evaluation of these topics and the strengths and weaknesses of related options for legislation, oversight, and study.

Background

The Federal Budget Process

As discussed in another CRS product,[1] the "power of the purse" is a legislative power. The Constitution lists the power to lay and collect taxes and the power to borrow as powers of Congress. Further, the Constitution provides that funds may be drawn from the Treasury only pursuant to appropriations made by law. The Constitution does not state how these legislative powers are to be exercised, nor does it expressly provide for the President to have a role in the management of the nation's finances.

Over time, the process of federal budgeting has evolved considerably through actions taken by Congress, the President, and agencies, as they responded to pressures and priorities. The federal budget process as practiced in recent decades is highly complex.

- The process entails many sub-processes and procedures under the Constitution, statutory provisions, House and Senate rules, and the use of discretion within these constraints.
- Many actors are involved, including Members of Congress, appropriations and authorizing committees, congressional leaders, the President, the Office of Management and Budget (OMB) in the Executive Office of the President, agency political appointees, and agency career civil servants, not to mention stakeholders in the public who pursue their right to "petition the Government for a redress of grievances."[2]

If problems are perceived to reside with specific aspects of the overall budget process, it may be fruitful to look not only at the specific aspects, but also how they relate to the whole of the budget process. An observer may evaluate how the part and the whole fit together in law and practice. Notably, changes to the federal budget process may affect power relationships and influence policy outcomes. Proposals for change or for retaining current processes may therefore become controversial if different observers perceive different problems or support differing priorities.

[1] This paragraph draws on CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by James V. Saturno.

[2] U.S. Constitution, Amendment I, available at http://www.crs.gov/conan/constitutionannotated.

Annual Budget Negotiations and Choices[3]

The federal fiscal year begins on October 1. For agencies and programs that rely on discretionary funding through annual appropriations acts, Congress and the President must enact interim or full-year appropriations by this date if many governmental activities are to continue operating in the absence of such acts.[4] Yet, it has been said that "conflict is endemic to budgeting."[5] If conflict within Congress or between Congress and the President impedes the timely enactment of annual appropriations acts or enactment of temporary, stopgap funding through a CR, a government shutdown may occur.

Along these lines, several options may present themselves to Congress and the President during high-stakes negotiations over annual appropriations measures.[6] The options include

- coming to agreement on regular appropriations acts by October 1, the beginning of a new fiscal year;
- using one or more interim CRs to extend temporary funding beyond the beginning of a fiscal year for those regular appropriations bills that are not enacted,[7] until a point in time when negotiators make final decisions about full-year funding levels; or
- not agreeing on one or more full-year appropriations acts or interim funding in a CR, resulting in a temporary funding gap and a corresponding shutdown of affected federal government activities.[8]

If Congress and the President pursue the second or third options, they may agree on full-year appropriations after the beginning of the fiscal year. These agreements on full-year funding may provide funds through regular appropriations acts—singly or combined together in omnibus legislation [9]—or less commonly, through a full-year CR.

Congress and the President frequently agree on full-year or interim funding without coming to an impasse. On other occasions, however, Congress and the President may not come to an accommodation in time to prevent a temporary funding gap. If a funding gap begins and funding does not appear likely to resume during the first, full calendar day of the gap, the federal government generally begins a

[3] This section draws on CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[4] Discretionary funding refers to budget authority (i.e., authority to incur financial obligations that result in government expenditures) that is provided in and controlled by annual appropriations acts. By contrast, mandatory funding refers to budget authority that is provided in and controlled by laws other than annual appropriations acts. Some budget authority provided in annual appropriations acts for certain programs is treated as mandatory, however, because the relevant authorizing legislation entitles beneficiaries to receive payment or otherwise obligates the government to make payment. See U.S. Government Accountability Office (hereinafter GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 46, 66; and CRS Report RS20129, *Entitlements and Appropriated Entitlements in the Federal Budget Process*, by Bill Heniff Jr.

[5] Irene S. Rubin, "Understanding the Role of Conflict in Budgeting," in Roy T. Meyers, ed., *Handbook of Government Budgeting* (San Francisco, CA: Jossey-Bass, 1999), p. 30.

[6] For discussion of the annual appropriations process, see CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, coordinated by James V. Saturno.

[7] For discussion of the potential functions and impacts of interim CRs, seeCRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno; and CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[8] For discussion of funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by James V. Saturno. For discussion of shutdowns, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[9] For discussion of omnibus appropriations acts and selected issues, see CRS Report RL32473, *Omnibus Appropriations Acts: Overview of Recent Practices*, by James V. Saturno.

"shutdown" of affected activities. The criteria for determining which activities are affected by a shutdown are complex.

To elaborate on these matters, the sections below highlight selected aspects of CRs and shutdowns.

Components of an Interim CR and Potential Effects

CRs are commonplace in the modern federal budget process.[10] During the 25 fiscal years covering FY1952-FY1976, one or more CRs were enacted for all but one fiscal year (FY1953).[11] From FY1977 to present, all of the regular appropriations acts were completed before the start of the fiscal year in four instances—FY1977, FY1989, FY1995, and FY1997.[12] The sections below focus on the details of more recent practice in the past 20 years.[13]

Main Components of an Interim CR

Congress has used interim CRs to protect its prerogative to set full-year funding levels by restricting and guiding agency activities in multiple ways. In recent practice, CRs typically include as many as six main components.[14]

- **Coverage.** CRs provide funding for certain activities, which are typically specified with reference to the prior or current fiscal year's appropriations acts. This may be referred to as the CR's *coverage*.
- **Duration.** CRs provide budget authority for a specified *duration* of time.[15] For an "interim CR," this duration may be as short as a single day or as long as several weeks or months. If a CR extends for the full remainder of the fiscal year (i.e., until September 30), it may be referred to as a "full-year CR."
- **Funding rate.** CRs usually fund activities under a formula-type approach that provides budget authority at a restricted pace over time but not a specified amount. This method of providing budget authority is commonly referred to as the *funding rate*, also known as a *rate for operations*. Under a funding rate, the amount of budget authority for most accounts[16] is calculated as the total amount of budget authority annually available—based on a reference level (usually a dollar amount or calculation)—multiplied by the fraction

[10] It may be no coincidence that CRs have been pursued with such frequency. In high-stakes negotiations on matters of strong underlying disagreement, a frequently employed technique is to use time as a source of leverage. See, e.g., G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (New York: Penguin, 1999), pp. 89-114.

[11] The structure and mechanics of CRs have evolved over time. For related discussion, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno.

[12] Ibid.

[13] For recent history, see the CRS Appropriations Status Table, at http://www.crs.gov/AppropriationsStatusTable/Index.

[14] This enumeration draws in part on CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno; and CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[15] As noted earlier, appropriations bills provide agencies with *budget authority*, which is defined as authority provided by federal law to enter into contracts or other financial *obligations*. The obligations, in turn, will result in immediate or future expenditures (or *outlays*) involving federal government funds. See GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, pp. 20-21. For the purposes of this testimony, the terms *budget authority* and *funding* are used interchangeably.

[16] Regular appropriations bills contain a series of unnumbered paragraphs with headings, generally reflecting a unique budget "account." Elements within budget accounts are divided by "program, project or activity" based upon the table "Comparative Statement of New Budget Authority" in the back of the report accompanying the appropriations bill.

of the fiscal year for which the funds are made available in the CR. [17] This is in contrast to regular and supplemental appropriations acts, which generally provide specific amounts for each account.

- **Prohibition on new activities.** The budget authority provided in a CR typically is prohibited for use in *new activities*. Specifically, 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. Alternatively stated, the CR may prohibit what are sometimes called "new starts."[18]
- **Anomalies.** The duration and amount of funds in the CR, and the purposes for which they may be used for specified activities, may be adjusted through so-called *anomalies*. Congress, the President, and agencies sometimes negotiate for the inclusion of these anomalies, or exceptions, to the formulas and restrictions in a CR, to accommodate what they perceive as needed exceptions for an agency, program, or policy. Anomalies typically are included to prevent what some or all stakeholders and parties to CR negotiations perceive as major programmatic, operational, or management problems that would be caused if an otherwise "cookie cutter" approach were used to provide funding at a uniform rate and with uniform restrictions. However, when measured against the typical coverage of interim CRs, anomalies tend to be rare.
- **Legislative provisions.** CRs do not necessarily provide only stopgap or full-year funding. Some interim and full-year CRs have included "substantive" *legislative provisions*—that is, provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees—covering a wide range of subjects. These provisions may create, amend, or extend other laws. CRs may become attractive vehicles for such provisions, because they are considered must-pass legislation on which Congress and the President eventually will reach agreement.[19]

An interim CR that does not contain any anomalies or substantive legislative provisions is sometimes referred to as a "clean" CR. Typically, CRs of short duration (e.g., a few days) are less likely to include anomalies and more likely to be viewed as clean. However, an observer may describe a CR as clean if the

[17] A frequently asked question concerns what happens when an interim CR is superseded by a full-year appropriation. In this situation, an appropriations account may receive a full-year amount of budget authority. At that point in time, the interim CR's funding rate is no longer relevant. For purposes of accounting, any spending that previously occurred under the interim CR's rate would be treated as if the spending had occurred under the full-year amount. To illustrate, suppose an agency's appropriations account received $365 million for the prior fiscal year. Further suppose that an interim CR provides the prior-year level as the current year's funding rate. Therefore, the rate for operations for the account would be $365 million. Further suppose that the interim CR has a 30-day duration. If the interim CR continued to be in effect until its expiration, the agency generally would be expected to obligate up to a total of around $30 million over the 30-day duration of the CR, because the interim CR authorized the agency to obligate funds at that pace. Further suppose the interim CR is superseded immediately upon its expiration with a full-year appropriation of $350 million, $15 million less than the previous year. In that case, the agency's total obligations under the interim CR would be applied to the full-year amount. For example, if the agency obligated $30 million during the 30-day interim CR, the agency would have $320 million available for obligation going forward, after the expiration of the CR (i.e., $350 million full-year appropriation minus $30 million obligated under the CR equals $320 million available for obligation from that point forward).

[18] For example, see Section 104 of P.L. 110-92 (121 Stat. 990).

[19] House Standing Rules XXI, clause 2, and XXII, clause 5, prohibit legislative provisions or unauthorized appropriations in general appropriations measures, but these restrictions do not apply to continuing resolutions. The House typically adopts special rules restricting amendments to continuing resolutions. Comparable Senate restrictions on legislative provisions and unauthorized appropriations, located in Senate Rule XVI, apply in the case of continuing resolutions. For further discussion of related legislative procedures, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by James V. Saturno.

CR includes a limited number of such provisions that the observer views as acceptable. The level of cleanliness of a CR, therefore, is typically in the eye of the beholder.

Potential Purposes and Effects

Interim CRs may be considered and enacted in the context of ongoing and high-stakes budget negotiations within Congress and between Congress and the President. In general, interim CRs typically are intended to simultaneously (1) preserve congressional prerogatives to make final decisions on full-year funding levels and (2) prevent a funding gap and corresponding government shutdown during negotiations within Congress and between Congress and the President.[20] Consequently, interim CRs provide relatively restrictive funding levels for agencies.

Moreover, an interim CR may be structured purposefully as less than optimal from the perspective of many stakeholders, in order to retain sufficient incentive for negotiating parties to come to an accord for final decisions.[21] Participants in a negotiation also may find it necessary to compromise, purposefully accepting what they perceive as some undesirable impacts in an interim CR (e.g., temporary constraints on funding) in order to achieve what they perceive as more important, desirable objectives (e.g., achievement of budget policy goals or avoidance of a government shutdown).[22] In other words, some effects of interim CRs may be a product of intentional concessions and compromises in negotiations, in order to achieve other impacts.

After enactment of an interim CR, OMB provides detailed directions to executive agencies on the availability of funds and how to proceed with budget execution, typically in a bulletin.[23] The bulletin includes an 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.[24] 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.[25] An interim CR typically also directs that for programs that would otherwise have high rates of operation at

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[20] CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[21] According to one observer, interim CRs might be seen as devices that set "spending levels ... high enough to let agencies function but not so high that they removed the incentive for Congress and the president to agree on regular authorization and appropriations bills." Joe White, "The Continuing Resolution: A Crazy Way to Govern?" *Brookings Review*, vol. 6 (summer 1988), p. 30. GAO also has discussed how incentives for policymakers "to negotiate seriously and reach agreement" may be affected by proposals for budget process changes like an automatic continuing resolution. See GAO, *Budget Process: Considerations for Updating the Budget Enforcement Act*, GAO-01-991T, July 19, 2001, p. 12; and CRS Report R41948, *Automatic Continuing Resolutions: Background and Overview of Recent Proposals*, by Jessica Tollestrup (James V. Saturno is available to answer questions about this report).

[22] For related discussion, see G. Richard Shell, *Bargaining for Advantage*, pp. 156-175.

[23] For example, see U.S. Executive Office of the President, Office of Management and Budget (hereinafter "OMB"), OMB Bulletin No. 17-02, "Apportionment of the Continuing Resolution(s) for Fiscal Year 2018," September 28, 2017, at https://www.whitehouse.gov/omb/bulletins/. This bulletin directed agencies how to operate during the interim CR for the period October 1, 2017, through December 8, 2017, as provided for by P.L. 115-56. For further discussion, see CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[24] The Antideficiency Act (31 U.S.C. §§1341-1342, 1511-1519) requires the President to "apportion," in writing, an executive agency's appropriation by specific time periods, activity, or a combination of time periods and activities, in order to prevent the agency from spending at a rate that would exhaust the appropriated funds before the end of the fiscal year. OMB implements the requirement on the President's behalf. During an interim CR, Congress may provide some flexibility on the timing requirements in apportioning funds. For example, see Section 108 of P.L. 110-92 (121 Stat. 990).

[25] For example, see Section 112 of P.L. 110-92 (121 Stat. 991) and OMB Bulletin No. 07-05, p. 4 (attachment, Section 6). OMB might apportion funds at, essentially, greater than a daily rate, as the period of time covered by an interim CR elapses. However, Congress may require that the "authority provided under this section shall not be used until after the department or agency has taken all necessary actions to reduce or defer non-personnel-related administrative expenses" (Section 112 of P.L. 110-92).

the beginning of a fiscal year (e.g., distributions of funding to states, foreign countries, grantees, etc.), such high initial rates of operation shall not be made that would impinge on final funding prerogatives.[26]

Apart from preserving congressional prerogatives and preventing shutdowns, CRs may have other significant effects. If impacts were viewed in general categories, an interim CR might be characterized as having several, general types of potential impacts on the operations of agencies.

- First, the *restrictive funding level* of an interim CR may have an impact upon an agency's activities, compared to receiving full-year appropriations. For example, agency personnel may reduce or delay a variety of actions, including hiring, awarding contracts and grants, and authorizing travel.
- Second, an agency funded by an interim CR may experience some *uncertainty* about what its final funding level will be. Uncertainty may cause an agency to alter its operations, rates of spending, and spending patterns over time, with potential ripple effects for internal management of the agency and its programmatic activities. This also may affect, for example, an agency's hiring, the awarding of contracts and grants, and authorizing travel. For agencies that expect increased appropriations (e.g., the Census Bureau when gearing up for the decennial census), uncertainty and restricted funding levels may affect planning and future operations.[27]
- Third, because an interim CR imposes tight restrictions on the obligation of funds for its entire duration, an interim CR may have an impact on an agency's *administrative work burden*. As one study of the potential impacts of interim CRs on the Department of Defense (DOD) summarized, "[t]he most visible effect" of a short-term CR is its impact on the time and paperwork necessary to manage the distribution of funds.[28]
- Fourth, a *prohibition on new projects and activities* may delay or disrupt an agency's ability to undertake planned activities or be nimble in responding to changed circumstances. For agencies with little need to engage in "new starts," this prohibition might not be significant in its implications. For agencies that typically engage in new projects or change their funding priorities from year to year, however, the prohibition might have more significant impacts on operations.

In 2008-2009, CRS and the Government Accountability Office (GAO) each explored specific examples of the potential and reported effects of interim CRs on agencies.[29] GAO also identified factors that may influence how agencies manage during CRs and what steps agencies take to mitigate the effects of uncertainty. While some common themes emerged across these analyses, the specific, reported impacts varied considerably among agencies and from year to year, as one might expect from agencies with highly varied missions, activities, and funding mechanisms. Elsewhere, Professor Philip Joyce drew on

[26] For example, see P.L. 115-56, Division D, Section 109 (131 Stat. 1141).

[27] For discussion, see CRS Report R44788, *The Decennial Census: Issues for 2020*, by Jennifer D. Williams.

[28] CRS Report 89-579, *Short-Term Continuing Resolutions: The Department of Defense Experience*, by Alice C. Maroni (archived and available upon request).

[29] CRS Congressional Distribution Memorandum, *Potential Impacts of Interim Continuing Resolutions (CRs) on Agency Operations and the Functioning of the Federal Government*, July 8, 2008, coordinated by Clinton T. Brass (available on request); and GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879, September 2009. The CRS memorandum was later condensed into a CRS report in October 2008 and subsequently updated (CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*).

interviews and journalistic accounts to provide additional perspectives on effects of CRs,[30] and Thomas Alexander Jacobs examined how interim CRs may influence expenditure patterns of federal agencies.[31]

Processes and Potential Effects of a Funding Gap and Government Shutdown

When federal agencies and programs lack funding after the expiration of interim or full-year appropriations, the agencies and programs experience a funding gap. If funding is not expected to resume in time to continue operations (i.e., during the first, full calendar day of the gap), then, under relevant law and guidance, an agency must cease operations, except in certain situations where law authorizes continued activity. The criteria that flow from law for determining which activities are "excepted" from shutting down and which personnel are "excepted" from furlough are complex, and the potential effects of a shutdown vary considerably among agencies and programs.

Selected Processes

The Constitution, statutory provisions, court opinions, and Department of Justice (DOJ) opinions provide the legal framework for how funding gaps and shutdowns have occurred in recent decades.[32] Article I, Section 9 of the Constitution states that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Federal employees and contractors cannot be paid, for example, if appropriations in the first place have not been enacted. Nevertheless, it would appear possible under the Constitution for the federal government to award contracts or make other obligations if it lacked funds to pay for these commitments.[33] The Antideficiency Act generally prevents this, however. The act prohibits federal officials from obligating funds before an appropriations measure has been enacted, except as authorized by law.[34] The act also prohibits acceptance of voluntary services and employment of personal services exceeding what has been authorized by law.[35] Therefore, the Antideficiency Act generally prohibits agencies from continued operation in the absence of appropriations. Failure to comply with the act may result in criminal sanctions, fines, and removal. The act permits exceptions for "emergencies involving the safety of human life or the protection of property."

For years leading up to 1980, many federal agencies continued to operate during a funding gap, "minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down," while waiting for the enactment of annual appropriations acts or continuing

[30] Philip G. Joyce, *The Costs of Budget Uncertainty: Analyzing the Impact of Late Appropriations* (Washington, DC: IBM Center for the Business of Government, 2012), at http://www.businessofgovernment.org/report/costs-budget-uncertainty-analyzing-impact-late-appropriations.

[31] Thomas Alexander Jacobs, "Continuing Resolutions: The Influence of Temporary Spending Restrictions on Monthly Expenditure Patterns of Federal Agencies" (Ph.D. diss., University of Kentucky, 2014), at https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1012&context=msppa_etds.

[32] For legal analysis of funding gaps, see GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. II, GAO-06-382SP, February 2006, chapter 6, pp. 6-146 – 6-159.

[33] For discussion, see prepared statement of Walter Dellinger, Assistant Attorney General, in U.S. Congress, Senate Committee on the Budget and House Committee on the Budget, *Effects of Potential Government Shutdown*, hearing, 104th Cong., 1st sess., September 19, 1995, S.Hrg. 104-175 (Washington: GPO, 1995), p. 18. Some commentators, however, have expressed a contrary view. See Jim Schweiter and Herb Fenster, *Government Contract Funding under Continuing Resolutions*, 95 Fed. Cont. Rep. 180, note 17 (February 15, 2011).

[34] 31 U.S.C. §1341. The Antideficiency Act (31 U.S.C. §§1341-1342, 1511-1519) is discussed in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al., pp. 93-97. GAO provides information on the act, at http://www.gao.gov/legal/lawresources/antideficiencybackground.html.

[35] 31 U.S.C. §1342; see also §1515.

resolutions.[36] In 1980 and 1981, however, U.S. Attorney General Benjamin R. Civiletti issued two opinions that more strictly interpreted the Antideficiency Act, along with the law's exceptions, in the context of a funding gap.[37] The Attorney General's opinions stated that, with some exceptions, the head of an agency could avoid violating the Antideficiency Act only by suspending the agency's operations until the enactment of an appropriation. Generally speaking, the Civilletti opinions guided subsequent developments and marked a significant change in the potential effects of shutdowns and the effect of CRs in preventing shutdowns.

Potential Effects of a Shutdown

Effects of a shutdown may occur at various times, including in anticipation of a potential funding gap (e.g., planning), during an actual gap (e.g., furlough and curtailed operations), and afterwards (e.g., addressing backlogs of work). The longest such shutdown lasted 21 full days during FY1996, from December 16, 1995, to January 6, 1996, after a shorter shutdown in November 1995. More recently, a funding gap commenced on October 1, 2013, the first day of FY2014, after funding for the previous fiscal year expired. Because funding did not resume on October 1, affected agencies began to cease operations and furlough personnel that day. A 16-full-day shutdown ensued, the first to occur in over 17 years. Another funding gap commenced during FY2018, on January 20, 2018, after the expiration of an interim CR.[38] Funding resumed on January 22, 2018, after a two-full-day funding gap and three-day shutdown.[39]

Insights into the effects of the most recent FY2018 shutdown are still emerging. That said, the experiences of FY1996 and FY2014 illustrate what may occur with respect to employee furloughs and government operations during a shutdown of relatively long duration.[40] More extensive information is available in a CRS report, which summarizes many of the effects.[41] Nonetheless, the shutdowns in those years involved the furloughs of hundreds of thousands of federal employees and the curtailing of many agencies activities. Immediately before the FY2014 shutdown, the Pay Our Military Act (P.L. 113-39) was enacted on September 30, 2013, in an effort to mitigate some effects of a shutdown on certain personnel and operations of the U.S. Armed Forces. This legislation was structured as an automatic continuing resolution (ACR) to provide funding for FY2014 pay and allowances for several categories of personnel. Notably, the process of legally determining which employees were authorized to be paid took several days, and the Departments of Defense and Homeland Security did not avoid furloughs for the first few days of the shutdown. Even with these staff present at work and being paid, their work was constrained to activities excepted under the Antideficiency Act. In the aftermath of the FY1996 and FY2014 shutdowns, OMB issued statements about the impacts of the shutdowns in categories that ranged

[36] GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, pp. i, 2, at http://archive.gao.gov/f0102/114835.pdf.

[37] 43 Op. Att'y Gen. 224 (Apr. 25, 1980), 43 Op. Att'y Gen. 293 (January 16, 1981). The Civiletti opinions are included in a GAO report as Appendices IV and VIII. See GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, at http://archive.gao.gov/f0102/114835.pdf. For a detailed discussion of exceptions to the Antideficiency Act, see U.S. GAO, *Principles of Federal Appropriations Law*, vol. II, pp. 6-146 – 6-159.

[38] OMB, "Status of Agency Operations," memorandum M-18-06 Revised, January 20, 2018, at https://www.whitehouse.gov/omb/memoranda/.

[39] OMB, "Reopening Departments and Agencies," memorandum M-18-07, January 22, 2018. Appropriations resumed in the evening of Monday, January 22, 2018, after most federal agencies would have closed for the day. Therefore, although funding technically was available that day, most agencies' non-excepted activities were effectively shut down for the day.

[40] Between the issuance of the Civiletti opinions in 1980-1981 and 1995, funding gaps were limited to three or fewer full days of duration. Consequently, they were of relatively short duration compared to those of FY1996 and FY2014.

[41] CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

from effects on federal employees to effects on government services, individuals in the public, and the U.S. economy.[42]

Potential Issues

Looking across these subjects, several illustrative questions and potential issues for Congress might be identified.

- **Congressional access to information.** In anticipation of a CR, especially one that may be in effect for an extended period of weeks or months, agencies typically send proposed anomalies to OMB, which the President may or may not propose to Congress for inclusion in legislation. To what extent may this be an issue for Congress and committees of jurisdiction in the annual appropriations process?
- **Agency planning for, and operations during, CRs and shutdowns.** When CRs or a shutdown appear to be possible or likely, how well are agencies planning for these circumstances? Is there a role for legislation in helping agencies structure their programs and operations to accommodate interim CRs, through anomalies in CRs or through changes in authorizing statutes? Is there a role for oversight in bringing attention to these issues?
- **Budget process changes.** Would budget process changes address root causes for CRs and shutdowns? To what extent are the root causes procedural rather than political and policy-based? Would changes in the budget process affect power relationships within Congress or between Congress and the President?

This concludes my statement. Thank you again for the opportunity to testify, and I will be pleased to respond to any questions the subcommittee may have.

Disclaimer

[42] For discussion and citations, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass, section titled "Effects on Government Operations and Services to the Public," at http://www.crs.gov/Reports/RL34680?source=search&guid=574186a4c1194eacb5f308129f5c8d44&index=0#_Toc499824066.