

# Report for Congress

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## **Continuing Appropriations Acts: Brief Overview of Recent Practices**

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# Continuing Appropriations Acts: Brief Overview of Recent Practices

## Summary

Normally, most of the operations of federal departments and agencies are funded each year through the separate enactment of 13 regular appropriations acts, which are scheduled to be enacted by October 1. Rarely, however, are all 13 bills enacted by the deadline. The affected departments and agencies usually are funded under continuing appropriations acts. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

Over the last 30 years, the nature, scope, and duration of continuing resolutions have fluctuated. From the early 1970s through 1987, continuing resolutions gradually expanded from interim funding measures of comparatively brief duration and length to full-year funding measures. From 1988 through 2002, the nature, scope, and duration generally contracted, except during 1995 and 1996. During this period expanded FY1996 continuing resolutions were enacted.

Continuing resolutions generally can be divided into two categories—those that provide temporary funding and those that provide funds through the end of the fiscal year. Temporary continuing resolutions provide interim funding until a specific date or until the enactment of the applicable regular appropriations acts. Full-year continuing resolutions provide continuing appropriations through the end of the fiscal year.

Over the years, delay in the enactment of regular appropriations measures and continuing resolutions after the beginning of the fiscal year has led to periods during which appropriations authority has lapsed. Such periods generally are referred to as *funding gaps*.

Legislative action on 11 of the 13 FY2003 regular appropriations bills has not been completed. Therefore, five FY2003 continuing resolutions have been enacted that together have extended funding from October 1, 2002, through January 11, 2003.

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# Continuing Appropriations Acts: Brief Overview of Recent Practices

This report is divided into two segments. The first segment provides the most recent developments regarding the FY2003 continuing resolutions. The second segment provides information on the history of continuing resolutions; the nature, scope, and duration of CRs during the last 30 years; the various types of CRs that have been enacted; and an overview of those instances when *budget authority*<sup>1</sup> has lapsed and a funding gap has resulted.

## Most Recent Developments: FY2003 Continuing Resolutions

Legislative action on 11 of the 13 FY2003 regular appropriations bills has not been completed.<sup>2</sup> Therefore, five FY2003 continuing resolutions have been enacted that together have extended funding from October 1, 2002, through January 11, 2003. (For more details on congressional and presidential action on these continuing resolutions, see **Table 1**.)

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<sup>1</sup> Congress provides budget authority instead of cash to agencies. Budget authority represents the legal authority for federal agencies to make obligations requiring either immediate or future expenditures (or outlays). These obligations (for example, entering into a contract to construct a ship or purchase supplies) result in outlays, which are payments from the Treasury, usually in the form of checks, electronic funds transfers, or cash disbursements.

For example, an appropriations act might provide \$3 billion in new budget authority for FY2003 to the Defense Department to construct four ships. That is, the act gives the department legal authority to sign contracts to build the ships. The department can not commit the government to pay more than \$3 billion. The outlays occur when the contractor cashes the government check for building the ships.

Generally, appropriations are a type of budget authority.

<sup>2</sup> On October 23, 2002, the President signed into law two FY2003 regular appropriations bills: Defense and Military Construction.

**Table 1. Current Status of FY2003 Continuing Resolutions**

| Measure      | House Report | House Adoption            | Senate Report | Senate Adoption                   | Conference Action | Public Law               |
|--------------|--------------|---------------------------|---------------|-----------------------------------|-------------------|--------------------------|
| H.J.Res. 111 | —            | 09/26/02<br>Vote: 370-1   | —             | 09/26/02<br>Vote: UC <sup>a</sup> | —                 | 09/30/02<br>P.L. 107-229 |
| H.J.Res. 112 | —            | 10/03/02<br>Vote: 404-7   | —             | 10/03/02<br>Vote: UC <sup>a</sup> | —                 | 10/04/02<br>P.L. 107-235 |
| H.J.Res. 122 | —            | 10/10/02<br>Vote: 272-144 | —             | 10/10/02<br>Vote: UC <sup>a</sup> | —                 | 10/11/02<br>P.L. 107-240 |
| H.J.Res. 123 | —            | 10/16/02<br>Vote: 228-172 | —             | 10/16/02<br>Vote: UC <sup>a</sup> | —                 | 10/18/02<br>P.L. 107-244 |
| H.J.Res. 124 | —            | 11/13/02<br>Vote: 270-143 | —             | 11/19/02<br>Vote: 92-2            | —                 | 11/23/02<br>P.L. 107-294 |

a. The continuing resolution was adopted by unanimous consent. That is, a unanimous consent request was proposed to adopt the measure and since no Senator objected, the resolution was adopted.

The initial resolution, P.L. 107-229, sets forth the spending levels for the various purposes covered in the outstanding regular appropriations bills, with certain exceptions, and P.L. 107-240 provides additional exceptions.

P.L. 107-229 provides a funding level for each purpose at generally the total amount of budget authority that was available for use (obligation) in FY2002, excluding funds that were available for use in the FY2002, but were not used and remained available. (Congress frequently provides budget authority that is available for more than one *fiscal year*<sup>3</sup> for specified purposes.) *Funds available for obligation in FY2002* include the net amount appropriated for FY2002, such as adding supplemental appropriations and subtracting *rescissions*.<sup>4</sup>

It also includes the level of budget authority enacted before FY2002 that was available and used in FY2002, with an important exception. Half of the \$40 billion provided in the FY2001 supplemental appropriations act immediately responding to the September 11th attacks is specifically excluded (P.L. 107-38; approved September 18, 2001). This continuing resolution includes the remaining \$20 billion, which was not available for obligation until January 10, 2002.

P.L. 107-240 excludes funding for activities that the Office of Management and Budget (OMB) has identified as one-time non-recurring activities totaling \$16 billion.<sup>5</sup> The general purpose of continuing resolutions is to fund on-going projects or activities until the regular appropriations bills are enacted. OMB states that the activities listed are not on-going activities, instead they are one-time non-recurring

<sup>3</sup> Appropriations measures provide funding by fiscal year, instead of calendar year. Fiscal years begin on Oct. 1 and end the following Sept. 30. For example, fiscal year 2003 (or FY2003) began on Oct. 1, 2002.

<sup>4</sup> Rescissions cancel previously enacted budget authority.

<sup>5</sup> For a list of these activities, see Attachment C of “OMB Bulletin No. 02-06, Supplement No. 1, Apportionment of the Continuing Resolution(s) for Fiscal Year 2003” (Oct. 4, 2002), [<http://www.whitehouse.gov/omb/bulletins>], visited Oct. 17, 2002.

activities, which therefore should not be funded. Some of the activities OMB identified were those Congress distributed on January 10, 2002 (mentioned above).

Regarding a related issue, P.L. 107-229 provides funding for the 11 regular appropriations bills under terms and conditions provided in the applicable FY2002 regular appropriations acts. For example, a provision in an FY2002 regular appropriations act that was applied to one account, which prohibited funds for a specified activity or project would generally remain in effect.

The fifth continuing resolution (P.L. 107-294) allows the secretary of the new Department of Homeland Security, with the approval of OMB, to reallocate (or *transfer*) up to \$500 million appropriations for unforeseen homeland security requirements. It also allows OMB to reallocate up to \$140 million of certain unused budget authority that is still available for establishing the new department.

The five FY2003 continuing resolutions are provided below:

- ! P.L. 107-229 set forth spending levels and continued funding from October 1, 2002, through October 4, 2002;
- ! P.L. 107-235 extended the initial continuing resolution for one week, through October 11, 2002;
- ! P.L. 107-240 modified and extended the initial continuing resolution for another week, through October 18, 2002;
- ! P.L. 107-244 continued provisions in the previous continuing resolutions through November 22, 2002; and
- ! P.L. 107-294 extends provisions in the previous continuing resolutions through January 11, 2003 and provides a few additional provisions.

## Recent Practices Regarding Continuing Resolutions

### Background

Under the Constitution and federal law, no funds may be drawn from the U.S. Treasury or obligated by federal officials unless appropriated by law.<sup>6</sup> Normally, most of the operations of federal departments and agencies are funded each year through the separate enactment of 13 *regular appropriations acts*.<sup>7</sup> Since these measures expire at the end of the fiscal year, the regular appropriations bills for the subsequent fiscal year must be enacted by October 1<sup>st</sup>. However, it is not unusual for the enactment of one or more of these acts to be delayed beyond the deadline (for

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<sup>6</sup> See Article I, Section 9 of the Constitution, and 31 U.S.C. 1341.

<sup>7</sup> There are three types of appropriations measures. *Regular appropriations acts* provide most of the funding that is provided in all appropriations measures for a fiscal year. *Supplemental appropriations acts* are generally considered after the regular appropriations bills are enacted and provide additional appropriations. *Continuing resolutions* are discussed in this report. For more information on regular and supplemental appropriations measures and the appropriations process, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

data on the FY1977-FY2002 period, see **Table 2**). When this occurs, affected departments and agencies usually are funded under continuing appropriations acts. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

## History and Recent Trends

Continuing resolutions date from at least the late 1870s, and have been a regular part of the annual appropriations process in the post-World War II period. In fact, with the exception of 3 fiscal years,<sup>8</sup> at least one continuing resolution has been enacted for each fiscal year since FY1954. From FY1977 through FY2002, Congress enacted on average four continuing resolutions per year (for detailed information, see **Table 2**).

Over the last 30 years, the nature, scope, and duration of continuing resolutions have varied.<sup>9</sup> From the early 1970s through 1987, continuing resolutions gradually expanded from interim funding measures of comparatively brief duration and length to measures providing funding through the end of the fiscal year (referred to as *full-year continuing resolutions*). In many cases, the full-year measures included the full text of several regular appropriations bills and contained substantive legislation (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees). From 1988 through 2002, the nature, scope, and duration generally contracted,<sup>10</sup> except during 1995 and 1996.<sup>11</sup>

Until the early 1970s, continuing resolutions principally were limited in scope and duration, and rarely exceeded a page or two in length. They were used almost exclusively to provide temporary funding at a minimum, formulaic level, and contained few provisions unrelated to the interim funding.

Beginning in the early 1970s, conflict between the President and Congress over major budget priorities, triggered in part by rapidly increasing deficits, greatly increased the difficulty of reaching final agreement on regular appropriations acts. This conflict led to protracted delay in their enactment. Continuing resolutions, because they historically have been viewed as “must-pass” measures in view of the constitutional and statutory imperatives, became a major battleground for the resolution of budgetary and other conflicts. Consequently, the nature, scope, and duration of continuing resolutions began to change.

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<sup>8</sup> The exceptions were FY1989; FY1995; and FY1997.

<sup>9</sup> For a discussion of trends involving the use of continuing resolutions through the mid-1980s, see U.S. Congress, House Committee on the Budget, *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*, committee print, prepared for the Task Force on the Budget Process by Allen Schick, 100th Cong., 1st sess., CP-3 (Washington: GPO, 1987).

<sup>10</sup> There were no continuing resolutions for FY1995 and FY1997.

<sup>11</sup> During this period, expanded FY1996 continuing resolutions were enacted.

**Table 2. Regular Appropriations Bills Enacted by Deadline and Continuing Resolutions (CRs), FY1977-FY2002**

| Fiscal Year | Presidential Administration | Party in Control of Congress: |                          | Regular Appropriations Bills: |                                  | Continuing Resolutions Enacted |
|-------------|-----------------------------|-------------------------------|--------------------------|-------------------------------|----------------------------------|--------------------------------|
|             |                             | Senate                        | House                    | Approved by or on October 1st | Enacted in Continuing Resolution |                                |
| 1977        | Gerald Ford                 | Democrats                     | Democrats                | 13                            | 0                                | 2 <sup>a</sup>                 |
| 1978        | Jimmy Carter                | Democrats                     | Democrats                | 9                             | 1                                | 3                              |
| 1979        |                             |                               |                          | 5                             | 1                                | 1                              |
| 1980        |                             |                               |                          | 3                             | 3                                | 2                              |
| 1981        |                             |                               |                          | 1                             | 5                                | 2                              |
| 1982        | Ronald Reagan               | Republicans                   | Democrats                | 0                             | 4                                | 4                              |
| 1983        |                             |                               |                          | 1                             | 7                                | 2                              |
| 1984        |                             |                               |                          | 4                             | 3                                | 2                              |
| 1985        |                             |                               |                          | 4                             | 8                                | 5                              |
| 1986        |                             | Democrats                     | Democrats                | 0                             | 7                                | 5                              |
| 1987        |                             |                               |                          | 0                             | 13                               | 5                              |
| 1988        |                             |                               |                          | 0                             | 13                               | 5                              |
| 1989        |                             |                               |                          | 13                            | 0                                | 0                              |
| 1990        | George H.W. Bush            | Democrats                     | Democrats                | 1                             | 0                                | 3                              |
| 1991        |                             |                               |                          | 0                             | 0                                | 5                              |
| 1992        |                             |                               |                          | 3                             | 1                                | 4                              |
| 1993        |                             |                               |                          | 1                             | 0                                | 1                              |
| 1994        | William Clinton             | Democrats                     | Democrats                | 2                             | 0                                | 3                              |
| 1995        |                             |                               |                          | 13                            | 0                                | 0                              |
| 1996        |                             | Republicans                   | Republicans              | 0                             | 5 <sup>b</sup>                   | 14                             |
| 1997        |                             |                               |                          | 8 <sup>c</sup>                | 0                                | 0                              |
| 1998        |                             |                               |                          | 1                             | 0                                | 6                              |
| 1999        |                             |                               |                          | 1                             | 0                                | 6                              |
| 2000        |                             |                               |                          | 4                             | 0                                | 7                              |
| 2001        |                             |                               |                          | 2                             | 0                                | 21                             |
| 2002        | George W. Bush              | Democrats <sup>d</sup>        | Republicans <sup>d</sup> | 0                             | 0                                | 8                              |

**Sources:** U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, 94<sup>th</sup> Congress, 2<sup>nd</sup> session - 104<sup>th</sup> Congress, 1<sup>st</sup> session (Washington: GPO, 1976-1995). U.S. Congress, House, *Calendars of the U.S. House of Representatives and History of Legislation*, 104<sup>th</sup> Congress, 1<sup>st</sup> session - 107<sup>th</sup> Congress, 1<sup>st</sup> session (Washington: GPO, 1995-2001).



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**Notes:**

- a. The two CRs did not provide continuing funding for entire regular bills; instead, they provided funding for selected activities.
- b. An FY1996 continuing resolution (P.L. 104-99) provided full-year funding for the FY1996 foreign operations regular bill; however, the continuing resolution provided that the foreign operations measure be enacted separately (P.L. 104-107). It is excluded from the amount.
- c. The remaining five bills were enacted by October 1, but not as separate measures; therefore, they are excluded from this amount. The five bills were attached to the FY1997 Defense regular act.
- d. On June 6, 2001, the Democrats became the majority in the Senate. By that time, the Senate Appropriations Committee had not reported any FY2002 regular appropriations measures.

Continuing resolutions began to be used to provide funds for longer periods, and occasionally for an entire fiscal year, when agreement on one or more regular acts could not be reached. Further, continuing resolutions became vehicles for substantive legislative provisions unrelated to interim funding, as it became clear that in some years continuing resolutions would be the most effective means to enact such provisions into law. These trends culminated in FY1987 and FY1988, following a period of persistently high deficits and sustained conflict over how to deal with them. For those 2 years, continuing resolutions effectively became omnibus appropriations measures for the federal government, incorporating all of the regular appropriations acts for the entire fiscal year as well as a host of substantive legislation covering a broad range of policy areas.<sup>12</sup>

From FY1988 through FY1995, Congress and the President generally operated under multi-year deficit reduction agreements achieved through budget summits. For the FY1991-FY1995 period, an enforcement mechanism (referred to as *sequestration*) was established.<sup>13</sup> From FY1988 through FY1995, there was a period of relative agreement on overall budget priorities and, therefore, agreements on regular appropriations acts came more readily. Continuing resolutions, when necessary, generally were more limited, contained far less substantive legislation, and were used mainly to provide interim funding for relatively brief periods.

While the multi-year agreements and enforcement mechanisms remained in effect through FY2002,<sup>14</sup> the President and Congress were in conflict over the 1995 balanced budget plan and spending and policy priorities in the FY1996 appropriations measures in 1995 and 1996. As a result, two funding gaps<sup>15</sup> occurred; 14 FY1996 continuing resolutions were enacted; and action was not completed on all 13 FY1996 regular appropriations bills until almost seven months into the fiscal year. The final continuing resolution provided funding through the end of the fiscal year for the five regular appropriations bills, incorporating the full text of each bill, and included substantive legislation.

Since FY1997, budgetary conflicts have continued between the President and Congress. Instead of resolving these differences in expanded continuing resolutions, they have generally been resolved in omnibus regular appropriations bills. During conference on a regular appropriations bill, other outstanding regular appropriations bills and substantive legislation have been attached to the bill—creating an omnibus

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<sup>12</sup> See P.L. 99-591 and P.L. 100-202.

<sup>13</sup> The Budget Enforcement Act of 1990 (P.L. 101-508) established spending ceilings for each fiscal year (FY1991-FY1995) for funding provided in appropriations measures and controlled by the House and Senate Appropriations Committees (referred to as *discretionary spending*). If appropriations measures were enacted that in total exceeded the spending ceilings, the act provided for an automatic across-the-board reduction in discretionary spending to eliminate the additional spending (referred to as *sequestration*).

<sup>14</sup> The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) extended the discretionary spending ceilings through FY1998 and the Budget Enforcement Act of 1997 (P.L. 105-33) extended the discretionary spending ceilings through FY2002.

<sup>15</sup> For information on funding gaps, see *Funding Gaps* below.

regular appropriations bill.<sup>16</sup> During this period, continuing resolutions, when needed, have provided interim funding for short periods of time and included little substantive legislation.

The change in the type of vehicle for omnibus appropriations measures from continuing resolutions to regular appropriations bills was due, in part, to avoid floor amendments to regular appropriations bills<sup>17</sup> and to expedite completion of the regular bills.<sup>18</sup>

## Types of Continuing Resolutions

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

Interim (or temporary) continuing resolutions provide interim funding until a specific date or until the enactment of the applicable regular appropriations acts, if earlier. They have remained fairly constant in form and structure in recent years. They have typically established formulas or rates that have provided funding levels for agencies and activities. For example, the initial FY1991 continuing resolution (P.L. 101-403) generally provided a formula for specified regular bills. The funding level for a purpose in a regular bill was the lower of the amounts provided in the House- and Senate-passed versions of the regular bill. The initial FY2002 continuing resolution (P.L. 107-44) provided a rate: the previous year's amount. Since FY1998, this rate, plus various formulas for specified purposes, has been use.

In most cases, the funding method has applied to all or almost all programs or activities covered by a particular regular appropriations act. However, such funding methods also have been used to fund specific programs that were not covered by regular appropriations acts because they were not yet authorized by law or for other reasons (for example, Section 101 of P.L. 94-473).

Once a temporary continuing resolution is enacted, additional interim resolutions, if necessary, are enacted to extend the deadline. These subsequent continuing resolutions sometimes change the funding methods.

Full-year continuing resolutions provide continuing appropriations through the end of the fiscal year. (**Table 2** provides the number of regular bills funded through the end of the fiscal year in continuing resolutions.) Recently, full-year funding provisions have generally been one of two types: (1) provisions that incorporate

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<sup>16</sup>During this 6-year period, all 13 regular appropriations bills were enacted separately twice (FY1998 and FY2002).

<sup>17</sup>In the House and Senate, conference reports are not amendable. Some regular bills either were not considered on the House or Senate floors or were pulled before floor action was completed thereby preventing action on certain floor amendments. By attaching these measures to a conference report on another regular bill, action on amendments was avoided.

<sup>18</sup>By attaching five of the FY1997 regular appropriations bills to a sixth FY1997 regular bill in conference, all the regular bills were enacted by the Oct. 1 deadline, which obviated the need for a continuing resolution.

regular appropriations acts by reference to the latest stage of congressional action (usually the conference agreement, if one has been reached); or (2) the full text of the regular act.

Full-year continuing resolutions effectively become regular appropriations acts for the fiscal year. Further, when continuing resolutions have included the full text of one or more regular appropriations acts, they also have included all the myriad general and administrative provisions (so-called *riders*) typically included in regular acts (see, for example, Section 101 of P.L. 100-202 and Section 101 of P.L. 99-591). Consequently, they may be hundreds of pages in length, whereas temporary resolutions typically are a few pages or less (in the case of a simple extension of a previous resolution, perhaps only one page).

Since FY1977, Congress has included across-the-board spending reductions in at least one full-year continuing resolution and one temporary continuing resolution, which was subsequently extended through the end of the fiscal year. The continuing resolutions provided a specific percentage reduction for each purpose in specified regular appropriations bills. The FY1992 full-year continuing resolution (P.L. 102-266) required a 1.5% spending reduction in discretionary spending purposes in the only outstanding FY1992 regular appropriations bill. An FY1982 temporary continuing resolution (P.L. 97-92) provided a 4% across-the-board reduction, with certain exceptions, for specified FY1982 regular appropriations bills. A subsequent FY1982 full-year continuing resolution extended this provision through the end of the fiscal year.

During consideration of the FY1996 continuing resolutions, Congress also used a another type of continuing resolution—*targeted appropriations*. Traditionally, a single continuing resolution provides funding for all activities in the outstanding regular appropriations and generally provides the same expiration date for all these bills. In January 1996, Congress separated activities from the six outstanding regular bills and distributed them among three FY1996 continuing resolutions (P.L. 104-91, P.L. 104-92, and P.L. 104-94). Some of the activities were full-year funded, while others were temporarily funded.

**Substantive Legislative Provisions.** Substantive legislative provisions (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees) covering a wide range of subjects also have been included in some continuing resolutions. Continuing resolutions are attractive vehicles for such provisions because they are considered must-pass legislation on which the President and Congress eventually must reach agreement. Such provisions have been included both in temporary and full-year continuing resolutions.

House rules<sup>19</sup> that prohibit the consideration of general appropriations measures containing legislative provisions or *unauthorized appropriations*<sup>20</sup> do not apply to

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<sup>19</sup> House Rules XXI, Clause 2, and XXII, Clause 5.

<sup>20</sup> Unauthorized appropriations are funds in an appropriations measure for agencies or programs whose authorization has expired or was never granted, or whose budget authority (continued...)

continuing resolutions (though the House typically adopts special rules restricting amendments to continuing resolutions, in part for this reason). Comparable Senate restrictions<sup>21</sup> on legislative provisions and unauthorized appropriations do apply in the case of continuing resolutions.

Substantive provisions in continuing resolutions have included comprehensive measures, such as omnibus crime control legislation (in FY1985), foreign affairs reform and restructuring assistance legislation (FY1999), Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (FY2001), that establish major new policies and amend permanent provisions of law.<sup>22</sup> They have also included narrower provisions focused on temporary or one-time problems, such as special House and Senate procedures for considering certain presidential requests for funding, temporary increases in the statutory limit on the public debt, and adjustments to the requirements of the 1985 Balanced Budget and Emergency Deficit Control Act (or *Gramm-Rudman-Hollings*). These provisions vary in length from less than one page to over 200 pages (in the case, for example, of the Comprehensive Crime Control Act of 1984).

## Funding Gaps

Over the years, delay in the enactment of regular appropriations measures and continuing resolutions after the beginning of the fiscal year has led to periods during which appropriations authority has lapsed. Such periods generally are referred to as *funding gaps*.<sup>23</sup> Depending on the number of regular appropriations that have yet to be enacted, a funding gap can affect either a few departments or agencies or most of the federal government.

Funding gaps are not a recent phenomenon. In fact, by the 1960s and 1970s, delay in the enactment of appropriation acts, including continuing resolutions, beyond the beginning of the fiscal year had become almost routine. Notably, according to a 1981 GAO report, “most Federal managers continued to operate during periods of funding gaps while minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down while the appropriations measures were being passed.”<sup>24</sup>

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<sup>20</sup> (...continued)

exceeds the ceiling authorized (for more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*).

<sup>21</sup> Senate Rule XVI.

<sup>22</sup> For numerous examples, see CRS Report RL30619, *Examples of Legislative Provisions in Omnibus Appropriations Acts*, by Robert Keith.

<sup>23</sup> For more information on funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Robert Keith; and CRS Report 98-844, *Shutdown of the Federal Government: Causes, Effects, and Process*, by Sharon S. Gressle.

<sup>24</sup> U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31, Mar. 3, 1981, p. i.

On April 25, 1980, Attorney General Benjamin Civiletti issued a formal opinion which stated in general that maintaining nonessential operations in the absence of appropriations was not permitted under the Antideficiency Act (31 U.S.C. 1341), and that the Justice Department would enforce the criminal sanctions provided for under the Act against future violations.<sup>25</sup>

In another opinion issued on January 16, 1981, the Attorney General outlined the activities that could be continued by federal agencies during a funding gap. Under that opinion, the only excepted activities include: (1) those involving the orderly termination of agency functions; (2) emergencies involving the safety of human life or the protection of property; or (3) activities authorized by law.<sup>26</sup> Activities authorized by law, for example, include funding for entitlement programs, such as Social Security and Medicare, that are permanently appropriated. In 1990, the Antideficiency Act was amended to clarify that “the term ‘emergencies involving the safety of human life or the protection of property’ does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”<sup>27</sup>

Since 1981, whenever delay in the appropriations process has led to periods of lapsed appropriations, federal agencies and departments lacking appropriations generally have shut down all nonessential operations and furloughed nonessential employees (although provisions of law have been enacted to ratify obligations and pay employees retroactively). During late 1995 and early 1996, there were two funding gaps—one lasting 21 days and the other lasting six (including weekends). In contrast, from 1981 through 1994, there were nine funding gaps, varying in duration from only one to three days, some of which occurred over weekends. Most of these gaps occurred after the beginning of the fiscal year, meaning that they were not caused because of a failure to enact an initial continuing resolution, but because of delay in enacting a further extension.<sup>28</sup>

On August 16, 1995, Assistant Attorney General Walter Dellinger, in a memorandum for the Director of the Office of Management and Budget (OMB), stated that “the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular

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<sup>25</sup> U.S. Dept. of Justice, Office of the Attorney General, Memorandum to the President, April 25, 1980, reprinted in *Funding Gaps Jeopardize Federal Government Operations*, App. IV, pp. 63-67.

<sup>26</sup> For additional information on the 1981 opinion of the Attorney General, and on the excepted activities outlined in that opinion, see U.S. General Accounting Office, *Principles of Federal Appropriations Law: Vol. II*, GAO/OGC-92-13, Dec. 1992, pp. 6-92-6-99.

<sup>27</sup> P.L. 101-508 Section 13213(b), 31 U.S.C. 1342.

<sup>28</sup> See CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Robert Keith.

appropriations.”<sup>29</sup> The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

## For Additional Reading

### Congressional Documents

U.S. Congress. House. Committee on the Budget. *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*. Committee print, prepared for the Task Force on the Budget Process by Allen Schick, 100<sup>th</sup> Congress, 1<sup>st</sup> session. CP-3. Washington: GPO, 1987.

### CRS Reports

#### **Budget and Appropriations Process.**

CRS Report 97-947. *The Appropriations Process and the Congressional Budget Act*, by James V. Saturno.

CRS Report 97-684. *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

CRS Report RS20095. *The Congressional Budget Process: A Brief Overview*, by James V. Saturno.

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