

# CRS 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

Traditionally, most of the operations of federal departments and agencies are funded each year through separate enactment of several regular, annual appropriations acts. Since these measures expire at the end of the fiscal year, the regular, annual appropriations bills for the subsequent fiscal year must be enacted by October 1. However, final action on one or more regular appropriations bills is typically delayed beyond the deadline. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions become law. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or CRs).

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

Over the past 35 years, the nature, scope, and duration of continuing resolutions gradually expanded and, then, generally contracted. From the early 1970s through 1987, CRs gradually expanded from interim funding measures of comparatively brief duration and length to measures providing funding through the end of the fiscal year. 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). Since 1988, continuing resolutions have generally been interim funding measures with little substantive legislation.

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

As of September 26, 2006, Congress and the President have not completed action on any FY2007 regular appropriations bills. The conferees on the FY2007 Department of Defense Appropriations bill (Defense, H.R. 5631) included FY2007 continuing appropriations in the conference report to the bill (H.Rept. 109-676, Division B) and the House adopted the conference report on September 26.

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# Continuing Appropriations Acts: Brief Overview of Recent Practices

Most of the operations of federal departments and agencies are funded each year through enactment of 11 regular appropriations acts. The House considers 11 regular bills and the Senate initially considers 12 regular bills. During congressional consideration of these appropriations bills, the Senate combines two bills,<sup>1</sup> resulting in 11 enacted measures. Each of these bills may be enacted separately or some may be packaged together into an omnibus appropriations act.

The regular appropriations bills are annual, expiring at the end of the fiscal year. The regular appropriations bills for the subsequent fiscal year, therefore, must be enacted by October 1.<sup>2</sup> However, final action on several regular appropriations bills is typically delayed beyond the deadline. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions become law. Because continuing appropriations acts are, for the most part, enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or CRs).

This report is divided into two segments. The first segment provides the most recent developments regarding the FY2007 continuing resolution. The second segment provides information on the history of CRs; the nature, scope, and duration of CRs during the past 35 years; the types of CRs that have been enacted; and an overview of those instances when funding (or budget authority<sup>3</sup>) has lapsed and a funding gap has resulted.

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<sup>1</sup> The Senate adds the District of Columbia bill to the Transportation, Treasury, Housing and Urban Development, the Judiciary, and Related Agencies Appropriations bill. The coverage of this combined bill corresponds to the House's Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia and Independent Agencies Appropriations bill.

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

<sup>3</sup> Congress funds federal programs and activities by providing agencies *budget authority*, instead of cash. Budget authority refers to authority provided by law to enter into financial obligations requiring either immediate or future expenditures (or outlays) of government funds. An *appropriation* is generally a type of budget authority that not only provides authority to make financial obligations, but also provides authority to make payments from the Treasury for those purposes.

## FY2007 Continuing Resolution

### Most Recent Developments

As of September 26, 2006, Congress and the President have not completed action on any FY2007 regular appropriations bills. The conferees on the FY2007 Department of Defense Appropriations bill (Defense, H.R. 5631) included FY2007 continuing appropriations in the conference report to the bill (H.Rept. 109-676, Division B) and the House adopted the conference report on September 26 (see **Table 1**).

**Table 1. Action on FY2007 Continuing Resolution**

Measure	Committee Approval		House Passage	Senate Passage	Conference Report	Conference Report Approval		Public Law
	House	Senate				House	Senate	
H.R. 5631	a	a	a	a	H.Rept. 109-676	09/26/06	394-22	

a. Continuing appropriations were not included in H.R. 5631 as approved by the House and Senate Committees on Appropriations or passed by the House and Senate.

### Selected Provisions in the Conference Report

Division B of the conference report would continue funding for activities funded by discretionary spending and certain activities funded by mandatory spending through November 17, 2006, but mandatory payments due on or about December 1 could be made.<sup>4</sup> If an applicable regular appropriations bill becomes law prior to the relevant expiration date, the continuing appropriations would cease to fund activities associated with that act.

The conference report would generally continue funding for accounts,<sup>5</sup> programs, or activities (accounts or activities) funded in the FY2006 regular

<sup>4</sup> Congress divides budget authority and the resulting outlays into two categories: *discretionary* and *mandatory (or direct) spending*. Appropriations measures include both types of spending. Discretionary spending is controlled by annual appropriations acts, which are under the jurisdiction of the House and Senate Appropriations Committees. Mandatory spending is controlled by legislative acts under the jurisdiction of the authorizing committees (principally the House Ways and Means and Senate Finance Committees). For more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

<sup>5</sup> The basic unit of a regular appropriations act is the *account*. An account typically funds several items within a lump-sum amount; in a few cases, an account funds a single item. Congress divides funding for each department and large independent agency into several accounts, while it typically funds small agencies with a single account.

appropriations acts; not new accounts, programs or activities included in FY2007 regular appropriations bills. Funding would be available under terms and conditions provided in the applicable FY2006 regular appropriations acts. For example, a provision in an FY2006 regular appropriations act prohibiting the use of funds in an account for a specified activity or project would generally be in effect.

The report would set different spending rates for (1) discretionary spending accounts or activities, and (2) mandatory spending accounts or activities and the Food Stamp Program. The spending rates for the Food Stamp Program and mandatory spending accounts or activities, primarily entitlement programs, would be the amounts needed to maintain current program levels under existing law. This is generally designed to provide additional funding, if needed, to continue current services for eligible beneficiaries.

The spending rates for discretionary spending accounts or activities would be determined by formulas, which would be based on the status of the FY2007 regular appropriations bills as of October 1, 2006. In cases in which both chambers pass their versions of a regular appropriations bill by October 1, each account or activity would generally be funded at the lower of the amounts: (1) provided in the House-passed version of the bill; (2) provided in the Senate-passed version of the bill; or (3) used in FY2006.<sup>6</sup> An account or activity funded by only one chamber would be protected. The funding level would not be zero, instead it would be the lower of the amount provided by the chamber or the FY2006 level. Accounts or activities funded in FY2006 that are not funded by either chamber for FY2007, however, would not be protected. No funding for these accounts or activities would be provided under the conference report.

As of September 26, this formula, if enacted, may apply to the FY2007 Department of Homeland Security Appropriations bill (H.R. 5441) and a portion of the House-passed FY2007 Military Construction, Military Quality of Life and Veterans Affairs Appropriations bill (Military Quality of Life, H.R. 5385). The House-passed Military Quality of Life bill funds selected activities<sup>7</sup> that were also included in the Senate-passed Defense bill. The final funding decisions for these activities will be included in the Military Quality of Life act.

The formula for bills that only the House passes as of October 1, 2006, would be the lower of the amount that is provided in the House-passed bill or the amount used in FY2006. In cases in which the House does not provide funding for an

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<sup>6</sup> Technically, the conference report stated the amount would be at a *rate of operations not exceeding the current rate*. This phrase refers to the total amount of funds that were available in the previous fiscal year, less any unobligated balances carried over into the present year. (Congress frequently provides appropriations for specified activities that are available for more than one fiscal year.) After continuing appropriations are enacted, OMB typically provides more detailed instructions to agencies on the method for calculating this rate.

<sup>7</sup> These Department of Defense activities follow (1) basic allowance for housing activities; (2) facilities sustainment, restoration and modernization activities; (3) "Environmental Restoration" accounts; and (4) "Defense Health Program" account.

account or activity that was funded in FY2006, funding would be provided at the FY2006 level. Most of the FY2007 regular appropriations bills are expected to be under this formula.<sup>8</sup>

The final formula would apply to the only bill neither chamber is expected to pass as of October 1, FY2007 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations bill (H.R. 5647, S. 3708). Accounts or activities funded in FY2006 would be funded at the FY2006 spending level.

## 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>9</sup> Traditionally, most of the operations of federal departments and agencies are funded each year through separate enactment of several regular, annual appropriations acts.<sup>10</sup> Because these measures expire at the end of the fiscal year, the regular appropriations bills for the subsequent fiscal year must be enacted by October 1. However, final action on

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<sup>8</sup> These bills follow: (1) FY2007 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations bill (H.R. 5384); (2) FY2007 Energy and Water Appropriations bill (H.R. 5427); (3) House FY2007 Foreign Operations, Export Financing, and Related Programs Appropriations bill and Senate FY2007 Department of State, Foreign Operations, and Related Programs Appropriations bill (H.R. 5522); (4) FY2007 Department of the Interior, Environment, and Related Agencies Appropriations bill (H.R. 5386); (5) FY2007 Legislative Branch Appropriations bill (H.R. 5521); (6) remaining portions of the House FY2007 Military Construction, Military Quality of Life and Veterans Affairs Appropriations bill and Senate FY2007 Military Construction and Veterans Affairs and Related Agencies Appropriations bill (H.R. 5385); (7) House FY2007 Science, State, Justice, Commerce, and Related Agencies Appropriations bill and Senate FY2007 Departments of Commerce and Justice, Science, and Related Agencies Appropriations bill (H.R. 5672); and (8) House FY2007 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations bill; Senate FY2007 Transportation, Treasury, Housing and Urban Development, the Judiciary, and Related Agencies Appropriations bill (H.R. 5576); and Senate FY2007 District of Columbia Appropriations bill (S. 3660).

<sup>9</sup> Article I, Section 9 of the Constitution, and 31 U.S.C. 1341. A major exception to this concept is *contract authority*. Congress enacts legislation providing an agency with authority to make obligations (budget authority). After the obligations are made, Congress provides the appropriations providing the authority to make the payments in another law (appropriations). Such appropriations are not considered budget authority.

<sup>10</sup> For almost 40 years (FY1968-FY2005), Congress considered 13 regular appropriations bills each year. Beginning with FY2006, the number of bills considered was reduced due to separate reorganizations of the House and Senate Appropriations Committees. Now, the House initially considers 11 regular bills and the Senate 12 bills.

one or more regular appropriations bills is typically delayed beyond the deadline (for data on the FY1977-FY2006 period, see **Table 2**). When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions are enacted. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as continuing resolutions (or CRs).

## History and Recent Trends

Continuing resolutions date from at least the late 1870s, and have been a regular part of the annual appropriations process for over 50 years. In fact, with the exception of three fiscal years, at least one continuing resolution has been enacted for each fiscal year since FY1954.<sup>11</sup> (Although all 13 FY1977 regular appropriations bills became law on or by the deadline, two CRs were enacted. These CRs generally provided funding for certain unauthorized activities that had not been included in the regular appropriations acts.) From FY1978 through FY2006, Congress enacted on average five continuing resolutions per year (for detailed information, see **Table 2**).

During the past 35 years, the nature, scope, and duration of continuing resolutions expanded and, then, generally contracted. 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 2005, the continuing resolutions generally contracted into interim funding measures that did not include the full text of the bills or much substantive legislation.

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

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

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<sup>11</sup> The three exceptions were FY1989, FY1995, and FY1997. In the first two instances, all 13 regular appropriations bills were enacted individually on or by the deadline. In the last instance, the deadline was met by adding five regular bills to a sixth bill, forming an omnibus appropriations act, and enacting seven bills individually.



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 two 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 (see P.L. 99-591 and P.L. 100-202).

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)<sup>12</sup> was established. From FY1988 through FY1995, there was a period of relative agreement on overall budget priorities and, therefore, agreements on regular appropriations acts came more readily. Continuing resolutions, when necessary, generally were more limited, contained far less substantive legislation, and were used mainly to provide interim funding for relatively brief periods.

Although the multi-year agreements and enforcement mechanisms remained in effect from FY1996 through FY2002, conflict within Congress and between Congress and the President on funding and policy issues generally delayed action on regular appropriations bills. In particular, there were significant conflicts between the Democratic President and Republican Congress from FY1996 through FY2001.

Instead of resolving these differences in expanded continuing resolutions, Congress and the Administration generally resolved them in omnibus regular appropriations bills (or in separate appropriations bills). Omnibus regular appropriations bills were generally developed by attaching outstanding regular appropriations bills and substantive legislation to another regular appropriations bill in conference. During this period, continuing resolutions, when needed, provided interim funding for short periods of time and included little substantive legislation. This practice has continued through FY2005.

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<sup>12</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*).

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

FY	Presidential Administration	Party in Control of Congress		Regular Appropriations Bills		CRs Enacted			
		Senate	House	Approved by or on October 1	Enacted in CRs				
1977	Gerald Ford	Democrats	Democrats	13	0	(2 <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	Ronald Reagan	Republicans	Democrats	1	7	2			
1984				4	3	2			
1985				4	8	5			
1986				0	7	5			
1987				0	13	5			
1988				0	13	5			
1989				13	0	0			
1990				George H.W. Bush	Democrats	Democrats	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				0	0 <sup>b</sup>	13			
1997				(13) <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	0	0	8			
2003		Republicans <sup>e</sup>		0	0 <sup>f</sup>	8			
2004				3	0	5			
2005				1	0	3			
2006				2	0	3			

**Sources:** U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, 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 - 108<sup>th</sup> Congress, 2<sup>nd</sup> session (Washington: GPO, 1995-2004).

- Although all 13 FY1977 regular appropriations bills became law on or by the deadline, two CRs were enacted. These CRs generally provided funding for certain unauthorized activities that had not been included in the regular appropriations acts.
- An FY1996 continuing resolution (P.L. 104-99) provided full-year funding for the FY1996 foreign operations regular bill; however, the continuing resolution provided that the foreign operations measure be enacted separately (P.L. 104-107). It is excluded from the amount.
- The deadline was met by adding five regular bills to a sixth regular bill, forming an omnibus appropriations act, and enacting seven bills individually.
- On June 6, 2001, the Democrats became the majority in the Senate. By that time, the Senate Appropriations Committee had not reported any FY2002 regular appropriations measures.
- The Democrats were the majority in the Senate in 2002, during initial consideration of the 13 FY2003 regular appropriations bills and final action on two of the regular bills. The Republicans were the majority in 2003, during which final action on the remaining 11 FY2003 regular bills occurred.
- One measure (P.L. 108-7) originated as a continuing resolution, but in conference it was converted into an omnibus appropriations resolution.

The change in the type of vehicle for omnibus appropriations measures from full-year continuing resolutions to regular appropriations bills was due, in part, to avoid floor amendments to regular appropriations bills and expedite completion of the regular bills. In the House and Senate, conference reports are not amendable. Some regular bills either were not considered on the House or Senate floors or were pulled before floor action was completed, thereby preventing action on certain floor amendments. By attaching these measures to a conference report to another regular bill, action on the amendments was avoided. An example of using an omnibus appropriations measure to expedite consideration occurred during consideration of the FY1997 regular appropriations bills. To ensure all the FY1997 regular appropriations bills became law by the October 1 deadline, five FY1997 regular bills were attached to a sixth FY1997 regular bill in conference. This action obviated the need for a continuing resolution.

## Types of Continuing Resolutions

Continuing resolutions generally can be divided into two categories — interim and full-year continuing resolutions.<sup>13</sup>

*Interim (or partial) continuing resolutions* provide temporary funding until a specific date or until the enactment of the applicable regular appropriations acts, if earlier. Since FY1988, they have remained fairly constant in form and structure. They have typically set formulas or rates to calculate the funding level for each account (and/or activities, project(s), or program(s) with each account). The initial FY2006 continuing resolution (P.L. 109-77), for example, generally provided two formulas. In the case of FY2006 regular bills passed by both the House and Senate as of October 1<sup>st</sup>, the amount for each account was the lower of the House-passed bill amount, Senate-passed bill amount, or the FY2005 spending level. For those bills that the Senate did not pass as of October 1<sup>st</sup>, the amount for each account was the lower of the House-passed amount or the FY2005 spending level. The initial FY2002 continuing resolution (P.L. 107-44) provided a rate: the previous year's amount.

In most cases, the funding rate or formula have applied to all or almost all the 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 1** provides the number of regular bills funded through the end of the fiscal year in continuing resolutions.) Full-year funding provisions have generally been of two types: (1) full text of the regular act; and (2) language

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<sup>13</sup> For more information, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Robert Keith.

that incorporates regular acts by reference to the latest stage of congressional action (usually the conference agreement, if one has been reached).

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 interim resolutions typically are a few pages or less (in the case of a simple extension of a previous resolution, perhaps less than half a page).

Since FY1977, Congress has included across-the-board spending reductions in a few full-year and interim continuing resolutions. The continuing resolutions generally provided a specific percentage reduction for activities in the specified regular appropriations bills. The FY1992 full-year continuing resolution (P.L. 102-266), for example, required a 1.5% spending reduction in discretionary spending activities in the only outstanding FY1992 regular appropriations bill. Another example is the FY1982 interim continuing resolution (P.L. 97-92), that included a 4% across-the-board reduction, with certain exceptions, for specified FY1982 regular appropriations bills. A subsequent FY1982 full-year continuing resolution extended this provision through the end of the fiscal year.

During consideration of the FY1996 continuing resolutions, Congress also used a another type of continuing resolution: *targeted appropriations*. A single continuing resolution traditionally provides funding for all activities in the outstanding regular appropriations and generally provides the same expiration date for all these bills. In January 1996, Congress separated activities from the six outstanding regular bills and distributed them among three FY1996 continuing resolutions (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 interim and full-year continuing resolutions.

House Rules XXI, Clause 2, and XXII, Clause 5, prohibit legislative provisions or unauthorized appropriations<sup>14</sup> in general appropriations measures, but these

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<sup>14</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 exceeds the ceiling authorized (for more information, see CRS Report 97-684, *The* (continued...)

restrictions do not apply to continuing resolutions. (The House typically adopts special rules restricting amendments to continuing resolutions, in part for this reason.) Comparable Senate restrictions, in Senate Rule XVI, on legislative provisions and unauthorized appropriations do apply in the case of continuing resolutions.

Substantive provisions in continuing resolutions have included comprehensive measures that establish major new policies and amend permanent provisions of law, such as omnibus crime control legislation (in FY1985). They have also included narrower provisions focused on temporary or one-time problems, such as providing a temporary extension of statutory authority to pay for travel and transportation benefits for family members of military personnel injured during operations in Iraq and Afghanistan (in FY2005). These provisions vary in length from less than one page to more than 200 pages (in the case, for example, of the Comprehensive Crime Control Act of 1984).

## Funding Gaps

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

Funding gaps are not a recent phenomenon. In fact, by the 1960s and 1970s, delay in the enactment of appropriation acts, including continuing resolutions, beyond the beginning of the fiscal year had become almost routine. Notably, according to a 1981 GAO report, “most Federal managers continued to operate during periods of funding gaps while minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down while the appropriations measures were being passed.”<sup>15</sup>

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>16</sup>

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<sup>14</sup> (...continued)

*Congressional Appropriations Process: An Introduction*, by Sandy Streecher).

<sup>15</sup> U.S. Government Accountability Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31, Mar. 3, 1981, p. i.

<sup>16</sup> U.S. Department of Justice, Office of the Attorney General, Memorandum to the President, Apr. 25, 1980, reprinted in *Funding Gaps Jeopardize Federal Government Operations*, App. IV, pp. 63-67.

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>17</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>18</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). From 1981 through 1994, there were nine funding gaps, varying in duration from only one to three days, some of which occurred over weekends. Most of these gaps occurred after the beginning of the fiscal year, meaning that they were not caused because of a failure to enact an initial continuing resolution, but because of delay in enacting a further extension.

On August 16, 1995, Assistant Attorney General Walter Dellinger, in a memorandum for the Director of the Office of Management and Budget (OMB), stated that “the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations.”<sup>19</sup> The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

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<sup>17</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>18</sup> P.L. 101-508 Section 13213(b), 31 U.S.C. 1342.

<sup>19</sup> U.S. Department of Justice, Office of Legal Counsel, *Government Operations in the Event of a Lapse in Appropriations*, Memorandum for Alice Rivlin, Director, Office of Management and Budget, Aug. 16, 1995.

## For Additional Reading

### Congressional Document

U.S. Congress. House. Committee on the Budget. *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*. Committee print, prepared for the Task Force on the Budget Process by Allen Schick, 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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