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AIR COMMAND AND STAFF COLLEGE

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PASS THE BUDGET! HOW CONGRESS' FAILURE AFFECTS THE UNITED STATES

WHAT STEPS, IF ANY, CAN CONGRESS INITIATE TO AVOID A GOVERNMENT
SHUTDOWN EACH FISCAL YEAR



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ABSTRACT

This research discusses the effects of a government shutdown on the United States. The explanatory case study framework will be used to conduct this research. This study will give a review of the steps required to ensure a budget proposal is approved in time for a new fiscal year to begin. Additionally, to answer the question of why budgets do not make it through Congress, an investigation of Congressional disagreements, which stagnates the budget proposals from moving through Congress, will be exposed. Specifically, a case study will evaluate the events of the fiscal year (FY) 2014 proposed budget and the failures that led to a government shutdown. Further research in the budget process will reveal an alternate route from budget approval called a Continuing Resolution Authority (CRA). There are pros and cons of the CRA process. Specifically, the cons of a CRA and the Department of Defense appropriation will be revealed. Finally, information from this case study will lead to conclusions as to why the American people should be concerned about Congress's inefficiency in the budget approval process.

INTRODUCTION

The United States faces a potential government shutdown each fiscal year as Congress is faced with many political challenges causing shortened deadlines for getting a budget approved. Under the Congressional Budget Act, the House Appropriations Committee should report the last annual appropriation bill by June 10, and the House should complete all action on appropriation bills by June 30. The Congressional Budget Act envisions completion of the process by October 1, the beginning of the new fiscal year. The ultimate goal being a full fiscal-year approved budget. However, “In the past 26 years, Congress and the President have agreed to a year-long budget only three times, in 1989, 1995 and 1997, according to a report from the nonpartisan Congressional Research Service.”¹

The U.S. Government’s greatest challenges in the budget process are getting the Executive Branch to submit the President’s Budget by the deadline and getting both political parties to agree on a budget. The inability of congressional leaders to agree on political issues have led to missed budget deadlines resulting in funding gaps. The latest extensive funding gap (shutdown) lasted 16 days, when Congress failed to ensure a budget was passed on October 1, 2013.

The Government can continue operating into the new fiscal year utilizing a Continuing Resolution Authority (CRA), which is a measure to prevent a shutdown. Unfortunately, running government appropriations, specifically the Department of Defense appropriation, based on the prior year’s budget is not an effective means for operating. A CRA prevents “new starts” and other programs from getting funded until the actual budget is passed. An extensive CRA will lead to wasteful government spending.

This research provides a background on the damaging effects of a government shutdown on government employees, U.S. citizens, and the Department of Defense. It highlights how costly a shutdown is to government agencies and the man-hours spent on preparing for a potential shutdown. It also highlights the negative effects on government employees caused by furlough actions.

The paper also summarizes the budget process including the timelines required to get an annual budget approved. It highlights how one missed deadline in the budget process can put other fiscal year deadlines at risk. These missed deadlines can result in the passing of a CRA or a lapse in appropriations.

An analysis is provided on how the CRA is used as a measure to keep the government running after a lapse in appropriations. Pros and cons of the CRA are presented. Although, the passing of a CRA can be a pro as it keeps the government running, a con is that the CRA does not allow certain new government programs to begin which is very costly to the tax payers. Examples from the Department of Defense (DOD) will illustrate how costly a CRA is to the military.

A case study of the 2013 government shutdown is presented to demonstrate the negative effects of the 2013 shutdown. Failed political negotiations reveal the reasons for the lapse in appropriations. Finally, a recommendation will be drawn from conclusions to prevent future government shutdowns.

BACKGROUND

Article 1, section 9, clause 7 of the United States Constitution declares, “no Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”² This article was directed at Congress, who per the Constitution, has the power of the purse. The 2014 fiscal

year (FY) proposed budget for the United States failed to make it through Congress and caused a government shutdown on October 1, 2013. Unfortunately, it has become familiar territory to the American public that the President and Congress has typically surpassed the deadlines for keeping the government running with a new budget each year. The October 1, 2013 shutdown was an apt illustration of just how devastating it can be to government employees, United States citizens, and the Department of Defense.

The budget process and 31 U.S. Code 1105 requires the President to submit a budget by the first Monday in February each fiscal year and the Congress has until April 15 of that year to approve or modify it. The budget request is obligatory, due to the Budget and Accounting Act of 1921. The President's budget is a request to Congress and does not contain any binding language. It includes the President's estimates on spending and policy recommendations. The President's budget gives Congress guidance on what the executive branch is requesting in the upcoming fiscal year's budget. In 2013, President Obama missed the Monday deadline for submitting a budget to Congress, marking the fourth time in five years he has been late.³

The five-step budget process is a road map for Congress to follow to assure the American public that a lapse in appropriation does not take place. Congress was not able to stay on course with the rigid timelines in the budget planning process in 2013 causing the shutdown. The FY2014 proposed budget started out behind the timeline when President Obama submitted his proposal two months late. The missed deadline by the President left little time for the House and Senate to agree on a budget and meet their April 15 deadline. If Congress doesn't have time to review the President's budget, the policy recommendations and estimates on spending from the executive branch will not be developed in a budget resolution. Congress has frequently missed

the April 15 deadline in the past, and failed to pass a budget resolution at all in seven of the last 15 years.⁴

To complicate matters, the United States was reaching its debt ceiling in 2013. The U.S. debt is created when there are more bills to pay than taxes collected. When this shortfall in revenue occurs, the U.S. Treasury has to borrow money. This was the second time since 2011 the United States was placed in a position to raise its debt ceiling or risk hitting the borrowing limit which meant bills could not be paid and would eventually force a government shutdown. The Congressional Budget Office (CBO) stated, Congress had until mid-October (2013) to raise the debt ceiling and avoid an economic disaster.⁵

Another piece of legislature, the Budget Control Act (aka Sequestration) had a negative effect on the approval process for the FY2014 budget. The Budget Control Act was passed to combat raising the debt ceiling. Many top defense officials have warned that the cuts will lead the military to be “hollowed out.”⁶ Many industries that are dependent on federal spending for defense contracts and jobs will suffer financial losses. At the same time, if legislators try to avoid sequestration without replacing it with real deficit reduction, the United States could face another credit downgrade.⁷ Missed budget process deadlines, approaching the debt limit ceiling, and mandatory cuts in the Budget Control Act set FY2014 budget approval up to fail.

Through the Constitution, the framers provided that the legislative branch—the Congress—has power to control the government’s purse strings.⁸ In simple terms, providing funding to keep the federal government operational is their responsibility. If federal funding has not been agreed upon by the beginning of the fiscal year, then the government must be shut down. Although there is another piece of legislature called a Continuing Resolution Authority (CRA) which will keep the government running in the case of a lapsed appropriation, the CRA

was not approved to begin FY2014. Thus, on October 1, 2013 the United States government shutdown all non-essential operations. A CRA was eventually signed into law on October 17, 2013 allowing the government to reopen.

Effects on Government Employees

During a shutdown, some government employees must report to work because they perform work that involves safety to human life or the protection of property. They are called “excepted” employees and must report per law, during a lapse in appropriation. These employees will get paid when the shutdown is over. Those that are “non-excepted” are sent home on furlough. These employees may or may not get paid depending on Congress’ decision. For the FY2014 shutdown, the Bureau of Economic Analysis “reported that federal worker furloughs over the course of the shutdown were equivalent to 6.6 million work days, peaking at 850,000 workers furloughed at the beginning of the shutdown.”⁹ Office of Management and Budget (OMB) Director Sylvia Mathews Burwell said, “There was a lot of preparation that went into taking care of preparing for the shutdown and actually doing the shutdown, so those were thousands and thousands of man hours across all the agencies and departments, and as we moved to reopen things, we had those costs too.”¹⁰

OMB also reports that the government loses its competitive advantage for hiring when there is talk of a furlough. Federal jobs give employees competitive pay and benefits along with a pension. The discussion of furlough can cause instability of federal job seekers which affects recruiting and retention of federal government employees. Congressmen that allow shutdowns to occur by voting against a budget are fueling the instability of the government. National Treasury Employees Union President Colleen Kelley stated, “Those who used federal employees as political pawns and shut down the government to try and score political points need to be held

accountable, and responsible members of Congress need to make sure it does not happen again.”¹¹ The 2014 Federal Employee Viewpoint Survey that is administered by OMB each year revealed a workforce that overall was more ‘unhappy’ in 2013 after a year of turmoil that included furloughs and a disruptive government shutdown.¹²

Effects on United States Citizens

There were numerous negative economic effects of the FY2014 government shutdown. As a result of the furlough, there was a reduction in Gross Domestic Product (GDP). A review of third-party estimates of the effects of the shutdown on the economy found a predicted reduction in GDP growth of at least 0.1 percentage points for each week of the shutdown, with a cumulative effect of up to 0.6 percentage points in the fourth quarter of 2013.¹³ To put this into context, 1% of GDP is equivalent to about \$170 billion. But since quarterly growth figures are reported on an annual basis, a percentage point change in quarterly growth is equivalent to about \$40 billion.¹⁴

There is additional indirect cost to the GDP including a number of private employees that were laid off as a result of the government shutdown. This number is more difficult to pinpoint but certainly had an effect on the economy. An example of a potential indirect effect is a reduction in private consumption or business investment because of a decline in consumer confidence.¹⁵ National Parks and the communities that rely on those tourists for their welfare also felt the effects of the shutdown. Since the Small Business Administration was shut down, small business loans were not processed or approved. Government agency closures impacted direct services for veterans, public health, product safety, environmental protection, worker’s rights and safety, and international trade and relations. Social Security cards could not be issued. With the EPA not working, ninety-four percent of the employees at the Environmental Protection

Agency were furloughed.¹⁶ Americans did not have an agency to enforce rules for lead-based paint or safe drinking water. Consumer confidence went down sharply during the shutdown. The University of Michigan's consumer confidence index reportedly fell to a 10-month low in October 2013.¹⁷ With this 16 full-day work stoppage, it was estimated that the government shutdown has taken at least \$24 billion out of the United States economy.¹⁸ The economy around the Washington D.C. area was hit the hardest, especially the state of Maryland, where many federal workers live. Maryland lost up to \$5 million per day in income and sales tax revenue.¹⁹

Effects on the Department of Defense

The Department of Defense was greatly affected by the 16-day government shutdown. According to the Office of Management and Budget estimate, “the Defense Department lost the most days, 1.6 million, followed by the departments of Treasury (985,000), Agriculture (737,000) and Interior (646,000).”²⁰ The DOD spent nearly \$400 million to pay salaries for those members that did not work but were called back after furlough and received back pay according to defense news. Some conservative members of Congress questioned whether government employees should be paid when they had not worked. The government shutdown cost the Defense Department at least \$600 million in lost productivity.²¹ The shutdown affected individual services differently. For example, the shutdown grounded Air Force planes at key locations across the country as furloughs and the absence of a budget began to take a toll on a service working to sustain its operational tempo in support of combatant commanders worldwide.²² The Army left a web page of information for soldiers to seek out assistance if affected by the shutdown. The web site included contacts such as Military One Source, Employee Assistance Program, and financial and stress counseling. There were numerous other wasted funds from the shutdown such as interest penalties from vendors being paid late.

Members in training had classes cancelled and were forced to fly home. Then fly back again after the shutdown was over. Many government contractors were left to pay their own people while they waited for government contracts to get paid. This put a strain on small business contractors.

Defense Secretary Hagel was facing huge cuts to the military under the Budget Control Act. The DOD was facing sequestration levels that would have a readiness impact across all services. However, the biggest issue Hagel was facing at this time was the morale of his troops. Hagel was asked by one troop if there was a future in the military for him and his family. He did not directly answer the question but he did say that the government shutdown was “an unwelcome and unnecessary distraction from our critical work of keeping the country safe.”²³ A government shutdown is a distraction and is a threat to national security. Although, the military reported to work and kept getting a pay check, other employees who were sent home play an important role in the operation of the defense department. The intelligence agencies will be operating with less staff which means our ability to monitor the enemy will be diminished. The domestic nuclear detection office, for example, will only retain six of its 115 employees.²⁴ Agencies reduced to minimal staffing will have a negative effect on the stability of our National Security.

BUDGET PROCESS

Having an understanding of the budget process is paramount for our congressional leaders because, as stated earlier, the Constitution gives Congressmen the “power of the Purse”. Congressional leaders make financial decisions that shape the immediate needs of the United States. They decide on how tax payer dollars are collected and spent by funding appropriations. By funding appropriations, the federal government continues to operate. If not done timely and

sufficiently, Congressmen have not done their jobs. The budget process is the framework for Congress to follow and can be simplified in five major steps. (See Figure 1)

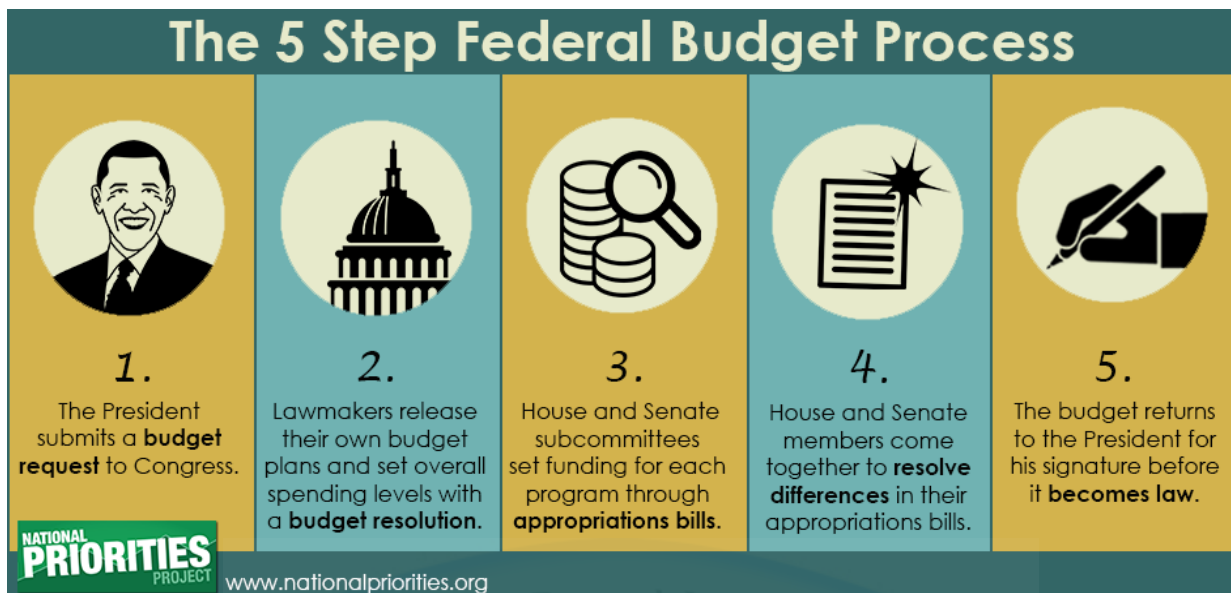


Figure 1. The five step budget process. *Reprinted from National Priorities Project.*²⁵

The five-step process begins when the President builds his budget upon receiving the budget requests from all federal agencies. The President also builds into the budget items from his own priorities and agenda. This budget is then sent to Congress by the first Monday in February. The House and Senate Committees on the Budget write and vote on their budget resolutions. A budget resolution is not a binding document, but it provides a framework for Congress to make budget decisions about spending and taxes. It sets overall annual spending limits for federal agencies, but does not set specific spending amounts for particular programs.²⁶ Subcommittees in both houses conduct hearings in which they pose questions to leaders of the relevant federal agencies about each agency's requested budget. Based on all of this information, the chair of each subcommittee writes a first draft of the subcommittee's appropriations bill, abiding by the spending limits set out in the budget resolution. All subcommittee members then consider, amend, and finally vote on the bill. Once it has passed the subcommittee, the bill goes

to the full Appropriations Committee.²⁷ The bill then goes to the full House and Senate where a vote is taken on the budget. If the bill is passed by both houses, a reconciliation is done between both versions of the bill. Once both houses agree upon the budget, it moves to the final step in the five-step process: the President signs the appropriation bill. When the president has signed each of the 12 individual appropriations bills, the budget process is complete.²⁸

Life Cycle of an Appropriation

An appropriation goes through five phases in its life cycle:²⁹

- **Formulation:** Formulation of an appropriation can take several years.
- **Congressional action:** Congress must take action on the appropriation in the year it becomes law.
- **Budget Education and Control:** must take place in the year the appropriation becomes law.
- **Audit and review:** Audit and review are required based several acts or laws including the Federal Managers' Financial Integrity Act, Chief Financial Officers Act, and most recently, Financial Improvement and Audit Readiness (FIAR). Audits and reviews continue through the life cycle of the appropriation.
- **Closure:** Lastly, the appropriation goes through closure. During closure, the appropriation loses its obligation authority at midnight on the last day of the fiscal year that it became law. The expired appropriation remains available for five years for the purpose of paying obligations incurred prior to the account's expiration and adjusting obligations that were previously unrecorded or under recorded. After five years, the expired account is closed and the balances remaining are canceled.³⁰

Appropriations can be formulated for three different time periods:

- **One-year:** One year appropriations are the following 12 standard appropriations that must be approved each fiscal year. (See Figure 2)
- **A multi-year appropriation,** for example is the procurement appropriation which is available for obligation lasting up to three years.
- **A no-year appropriation** is available for obligation until the funds are exhausted. An example of a no-year appropriation is the social security program.

| | |
|--|--|
| Agriculture, Rural Development, FDA Appropriations | Interior and Environment Appropriations |
| Commerce, Justice, Science Appropriations | Labor, HHS, Education Appropriations |
| Defense Appropriations | Legislative Branch Appropriations |
| Energy and Water Development Appropriations | Military Construction, Veterans Appropriations |
| Financial Services and General Government Appropriations | State Foreign Operations Appropriations |
| Homeland Security Appropriations | Transportation and HUD Appropriations |

Figure 2: Current one year appropriations. *Compiled from Congress.gov appropriations table 2017.*³¹

During the budget cycle, the one year appropriations must go through the approval process. The one-year appropriations can be regular, supplemental, or, in the event a budget isn't signed, a continuing resolution (CR) can be approved to keep the government running.

- Regular: The 12 bills that must be approved annually.
- Supplemental: An act to appropriate additional funds to those appropriations already enacted in the current fiscal year
- Continuing Resolution: Can be enacted when the annual appropriations fail to make it through approval. More information on the CR will be provided later.

Summary of Congressional Process

Congress is empowered by the Constitution to ensure the government has the funds required to operate. In exercising the broad discretion granted by the Constitution, Congress can approve funding levels contained in the President's budget request, increase or decrease those levels, eliminate proposals, or add programs not requested by the administration.³² For example, President Trump's budget included a request to fund the Mexican border wall. Congress can agree to the President's request, increase or decrease the amount of the request, or eliminate the proposal all together.

There is a timetable that Congress follows to ensure suspense's are met. By the first Monday of each February, Congress should receive the President's annual budget request for the upcoming fiscal year. By February 15, the Congressional Budget Office submits to the House and Senate its required annual report. The House and Senate Budget Committees then hold hearings and prepare their respective versions of a concurrent resolution, which is intended to be the overall budget plan against which individual appropriation bills are to be evaluated.³³ On or before April 15, Congress completes action and provides a budget estimate for each major budget area. By June 10, House Appropriations Committee completes the process of reporting out the individual appropriation bills.³⁴ By June 15, Congress completes action on any reconciliation legislation stemming from the concurrent resolution.³⁵ By June 30, House of Representatives completes action on annual appropriation bills.³⁶ It's important to note that per Article I, section 7, clause 1 of the U.S. Constitution, "All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills."³⁷

During this time, there are many subcommittees reviewing individual budget bills. Once approved by the House, each of the 12 bills are sent to the Senate for review. If Senate approves the House version, the appropriations are sent to the President for his signature. If not approved, the House and Senate work through their differences. When both houses agree on the budget, the appropriations are sent back to the President for signature. The process is intended to be complete by September 30. Thus, a new fiscal year begins with an approved budget.

No money can be paid out of the Treasury unless it has been appropriated by an act of Congress. If Congress fails to get the appropriations bill passed and on the President's desk in a timely manner, the one-year appropriations can lapse and the federal government can shut down.

The Appropriations Clause, the first part of Article I, Section 9, Clause 7, has been described as “the most important single curb in the Constitution on Presidential power.”³⁸

Lapse in Appropriation

When a new fiscal year begins without an approved budget, the one-year appropriations are said to lapse. There are significant consequences to the government and the nation when there is a lapse in appropriations. A Government shutdown, being the most severe, causes every agency to create, modify, and/or implement shutdown actions. Agency heads develop an orderly shutdown plan and submit it to the Office of Management and Budget. For example, the Department of Energy (DOE) has a written order titled *Plan for Operating in the Event of a Lapse in Appropriations (DOE Order 137.1B)*. The Department of Housing and Urban Development (HUD) established *HUD Contingency Plan for Possible Lapse in Appropriations September 25*. The time spent preparing for a possible shutdown typically waste man-hours and funding. Most often, the shutdown doesn't take place. Thus, the agency spent useless man-hours for an event that didn't happen.

In the absence of appropriations: Federal officers may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law; and Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but funds may not be disbursed.³⁹ Although, obligations cannot be disbursed after a shutdown, some agencies, must continue operations at a reduced level to protect the public. The following information must be included in the agency shutdown plan:

- “A brief summary of significant agency activities that will continue and those that will cease during a lapse in appropriations.
- An estimate of the time (to the nearest half-day) needed to complete shutdown activities. To the extent that specific shutdown activities will not be completed within one-half day, specify the nature of each such activity, together with the time and the number of employees necessary to complete the activity.

- A statement of the total number of agency employees expected to be on-board before implementation of the plan.
- A statement of the total number of employees to be retained under the plan for each of the following categories:
 - Their compensation is financed by a resource other than annual appropriations;
 - They are necessary to perform activities expressly authorized by law;
 - They are necessary to perform activities necessarily implied by law;
 - They are necessary to the discharge of the President's constitutional duties and powers;
 - They are necessary to protect life and property.⁴⁰

The Office of Management and Budget maintains all agency shutdown plans. When getting close to a lapse in appropriations, OMB will notify agencies to review and update plans, and prepare for shutdown. If the lapse occurs, OMB will provide guidance to agencies directing the initiation of orderly shutdown activities. Each agency head must determine the specific actions that will be taken; however, all your actions must contribute to an orderly shutdown of the agency and give primary consideration to protecting life and safeguarding Government property and records.⁴¹ Each agency should have developed a process for notifying personnel of the furlough action that will take place. OMB will notify you when the lapse in appropriations has ended and you can begin implementing your plan to orderly resume agency activities.⁴²

HOW TO AVOID GOVERNMENT SHUTDOWN

As stated earlier, a government shutdown occurs when there is a lapse in appropriations. Congressional leaders are charged with appropriating dollars each year to keep the federal government operating. If Congress fails to get a budget through both the House and Senate and on the President's desk for signature prior to the start of the new fiscal year, the government will be forced to cease operations. There are several ways in which Congress can avoid a government shutdown: Learning from past mistakes, adhering to rigid timelines, and having a Continuing

Resolution Authority ready for the President's signature prior as a safety net well before the budgetary deadline.

Learn from Historical Failures

Current Congressional leaders should review those historical failures and develop processes to prevent future shutdowns. "There have been 18 government shutdowns in modern U.S. history. There were six shutdowns ranging from eight to 17 days in the late 1970s, but the duration of government shutdowns shrank dramatically beginning in the 1980s."⁴³ Congress can evaluate the steps that lead to the failure and create safe guards to prevent those steps from happening again.

There should also be consequences for those members of Congress that hold up a budget. For example, some members of the 113th Congress refused to support the continued funding of federal government operations unless parts of the Obamacare healthcare reform law were reversed or delayed.⁴⁴ Those members of congress were responsible for sending over 800,000 government employees home. However, members of Congress continued to work and get a paycheck. The reason being that members in the House and Senate are not paid through the annual budget process. Their pay is written into permanent law.

An act of Congress could change the law to prevent Congressman from getting paid during a shutdown, but that has not happened. For example, Representative Rick Nolan, a Democrat from Minnesota introduced a bill that would prevent members of Congress from getting paid in the event of a government shutdown. "It's time to put an end to government by crisis management," Nolan said in a statement. "And it's time for Congress to start living in the real world — where you either do your job — or you don't get paid. If hundreds of thousands of other federal employees are to go without their salaries — twisting slowly in the wind in a

government shutdown — then the Congress should not be paid either.”⁴⁵ Under this bill, members of Congress would go unpaid for the duration of a shutdown. Feeling the same affects as other government employees could prevent Congressman from allowing a government shutdown. There should only be one set of laws for everyone, not one for the leaders and a different set of laws for the populace.

Meet Rigid Timelines

One way that Congress can ensure a budget is passed on time is to meet the timeline established by the Congressional Budget Act of 1974. The first timeline that needs to be met is the President’s budget submission. If the President doesn’t get his submission in time, it shortens the deadlines for other congressional actions. For example, President Obama missed his deadline by 98 days in his first year in office. President Obama went on to miss four out of five budget submission deadlines and is the first President to deliver three of his budgets late in just one term. President Obama is also the first President to submit budgets late two years in a row.⁴⁶

The missed deadlines put stress on the Budget Committees by reducing the number of days they have to work a budget resolution which establishes discretionary spending. A budget resolution is a statement of the Republican or Democrat priorities and a blueprint on what the federal government should both spend and take in in revenue the next fiscal year. Having limited time to establish discretionary spending will negatively affect budget development.

The Senate Budget Committee reports concurrency on budget resolution, which should be posted on April 1. That deadline can’t be met when a President submits a budget over three months late. The budget process spirals downhill when each deadline in the process is pushed back. As the new fiscal year approaches, it becomes obvious to members of Congress that a new

budget bill is in jeopardy. Typically, a discussion about passing a Continuing Resolution Authority begins as budget deadlines approach.

Receive Continuing Resolution Authority (CRA)

CRA's are passed to prevent a funding gap and to keep the government operating after a lapse in appropriation. Funding gaps occur quite often. In fact, multiple funding gaps can occur in a single fiscal year. Typically, these funding gaps are in the form of "next-day" CRA's which are passed the day after the previous CRA expires. Over the past several decades, 18 funding gaps have occurred. (See Figure 3.) To avoid funding gaps, proposals have previously been offered to establish an "automatic continuing resolution" (ACR) that would provide a fallback source of funding for activities, at a specified formula or level, in the event the timely enactment of appropriations is disrupted.⁴⁷ However, this proposal has not been enacted into law.

Congressman can use their voting power to create a government shutdown situation when legislature is not acted on in their favor. What normally results in this situation is the passing of a CRA. The CRA is a critical funding gap prevention measure to the federal government and the American people but has its pros and cons.

Pros

Having the ability to keep the government running utilizing the CRA when Congress fails to get a budget passed for the President's signature has some advantages. Not only does it prevent the government from shutting down, but, if approved in a timely manner, can save all agencies the man-hours and preparatory time taken for planning to shut down. The CRA can put government employees and their families at ease knowing that they will not be sent home due to an appropriation lapse. The CRA will allow government contracting payments to continue ensuring all contractor, especially those small business contractors to continue to get paid. A

CRA is enacted for specific amount of time giving agencies and government employees' stability during that period. A CRA can also be approved for a whole fiscal year if the House and Senate cannot agree upon a budget.

| Appropriations Funding Gaps Since FY1977 | | | |
|--|--------------------------------|---------------------|---------------------|
| Fiscal Year | Final Date of Budget Authority | Full Day(s) of Gaps | Date Gap Terminated |
| 1977 | Thursday, 09/30/76 | 10 | Monday, 10/11/76 |
| 1978 | Friday, 09/30/77 | 12 | Thursday, 10/13/77 |
| | Monday, 10/31/77 | 8 | Wednesday, 11/09/77 |
| | Wednesday, 11/30/77 | 8 | Friday, 12/09/77 |
| 1979 | Saturday, 09/30/78 | 17 | Wednesday, 10/18/78 |
| 1980 | Sunday, 09/30/79 | 11 | Friday, 10/12/79 |
| 1982 | Friday, 11/20/81 | 2 | Monday, 11/23/81 |
| 1983 | Thursday, 09/30/82 | 1 | Saturday, 10/02/82 |
| | Friday, 12/17/82 | 3 | Tuesday, 12/21/82 |
| 1984 | Thursday, 11/10/83 | 3 | Monday, 11/14/83 |
| 1985 | Sunday, 09/30/84 | 2 | Wednesday, 10/03/84 |
| | Wednesday, 10/03/84 | 1 | Friday, 10/05/84 |
| 1987 | Thursday, 10/16/86 | 1 | Saturday, 10/18/86 |
| 1988 | Friday, 12/18/87 | 1 | Sunday, 12/20/87 |
| 1991 | Friday, 10/05/90 | 3 | Tuesday, 10/09/90 |
| 1996 | Monday, 11/13/95 | 5 | Sunday, 11/19/95 |
| | Friday, 12/15/95 | 21 | Saturday, 01/06/96 |
| 2014 | Monday, 09/30/13 | 16 | Thursday, 10/17/13 |

Figure 3. Appropriation Funding Gaps: *Reprinted and Compiled by CRS with data from the Legislative Information System of the U.S. Congress.*⁴⁸

Cons

Although there are many good reasons to approve a CRA as stated above, there are just as many negative impacts from the CRA. For example, the Department of Defense cannot initiate a new program or a new weapons system under a CRA. Agencies have authority under

most continuing resolutions to engage in programs, projects, or activities for which the agency had authority during the previous year's appropriation. However, no "new starts" are authorized.

A new start is something the agency did not have budget authority to do under the last appropriations act.⁴⁹ "Secretary of the Air Force (SECAF) Deborah James recently stated that as many as 60 new start or upgrade Air Force programs could be impacted"⁵⁰ as a result of the CRA that began FY2017. "Programs she cited include MQ-9 Reaper unmanned systems, C-130 cargo transport and the B-52 and B-2 bombers. She also stated that development of the new B-21 bomber would be limited and the procurement rate for the KC-46A would be capped at 12, instead of the requested 15."⁵¹ Additionally, not having the ability to fund programs that were planned for by the services and built into the next fiscal year budget can create National Security issues. Some of the other new programs that could not start for the Department of Defense because of the CRA that began 2017 include: Littoral Combat Ship Anti-surface Warfare Module; E-4B (National Airborne Operations Center), A-10 replacement wings and planned depot maintenance to install the wings, and the B-52 Radar Modernization Program. The services rely on new and upgraded weapons systems to keep our advantage over other militaries. The CRA can jeopardize this advantage.

A CRA limits the ability to execute budgets as planned, which also causes program overruns. For example, Under Secretary of Defense (Comptroller) estimated that "if held to the lower FY2016 production rates through January 2017 the Air Force could face a cost increase of over \$331 million for the KC-46A program."⁵² This estimate was based on a three month CRA. The longer the CRA, the more costly to the Air Force and the tax-payer programs such as the KC-46A become.

A CRA is also a wasteful way to spend tax-payer dollars. The 2017 CRA lasted over half the fiscal year. That left less than half the fiscal year to properly execute the government's \$1.1 trillion dollar budget. Passing a budget "is the only constitutionally mandated duty Congress has every single year," said Steve Ellis, vice president of the federal spending watchdog Taxpayers for Common Sense. "Yet they really fail at this fundamental task." He went on to state, "Continuing resolutions are wasteful, they force agencies or delay agencies from making decisions because it's harder to hire, harder to authorize travel or new budget expenses that might be necessary."⁵³

The CRA is an effective measure to keep the government running. A CRA keeps government employees working and paid. It allows government contracts to be paid even though a current budget is not passed. Most importantly, the CRA covers a lapse in appropriations preventing a government shutdown. However, as discussed above, the CRA can be costly to the United States. It creates wasteful government spending, prevents new startups, results in program overruns and can have National Security implications. An approved fiscal year budget is the preferred goal for operating the U.S. government.

CASE STUDY

FY2014 Government shutdown

This case study describes the steps leading up to the eventual shutdown. It discusses the impasse endured by Congress in the final few weeks of September, 2013 which resulted in the longest extensive government shutdown since the 1996 (21 days). Polls taken after the shutdown revealed how Americans felt about how Congressional leaders handled the situation.

The FY2014 shutdown was caused by bipartisan disagreements and a looming U.S. debt ceiling. Congressional differences became apparent in 2010 when Congress passed the

Affordable Care Act. Disagreements over the funding of the Affordable Care Act (ACA-aka Obamacare) with the credit limit approaching was the primary reason as congressional leaders could not agree to keep funding of the ACA in the FY2014 proposed budget. Specifically, the more conservative members of the Republican Party, referred to as the “Tea Party” were leading the charge to stop the FY2014 budget from including ACA funding. “While the health care law is not directly tied to funding the government, -- the CR -- or paying bills already incurred -- the debt ceiling -- it is being used as a powerful bargaining chip.”⁵⁴

The Tea Party members within the U.S. House of Representatives attached a provision to a spending bill that required eliminating funding for the implementation of the ACA in order to fund the rest of the Federal Government of the United States. The Senate declined to pass the bill with measures to delay the ACA, and the two houses did not develop a compromise bill by the end of September 30, 2013, causing the federal government to shut down. “The U.S. government has begun a partial shutdown for the first time in 17 years after Congress failed to break a partisan deadlock by a midnight deadline. The shutdown was spearheaded by tea party Republicans who backed a House bill tying continued government funding to a one-year delay of the Affordable Care Act and the repeal of a tax to pay for it.”⁵⁵

Congressional disagreement was the cause for the 2013 Government shutdown but what were the steps leading up to the shutdown and could it have been prevented? On September 20, 2013, the Republican-led House voted to keep government funded through Dec. 15, but only if the President agrees to defund the 2010 Affordable Care Act. On September 24, Senator Ted Cruz, delivered his filibuster speech.

A filibuster, in general, is a prolonged speech that obstructs progress in a legislative assembly. The Senate debates each bill and requires a 3/5 or 60% vote for new legislation before

it goes to floor for voting where it needs the majority vote before passing. This filibuster, which lasted 21 hours, was a rally against ACA and advocated for a shutdown unless Democrats made compromises on the healthcare law. The Democratic-led Senate eventually rejected the bill, which requested defunding of ACA, and sent the bill back to the House on September 27. On September 29, the House changed its demands from defunding ACA to delaying the implementation for one-year, including repealing its tax on medical devices. The Democratic-led Senate rejected the reworked House proposal. The bill returned to the House, where the Senate demands were reworked. This time, instead of the September 29 provisions, the House asked that the President delay for one year ACA's "individual mandate" to buy health insurance; and that the President require Congress and its staff to pay unsubsidized health insurance costs. The Senate rejected those provisions, and the result was the 2013 Government shutdown.

United States citizens were dissatisfied with Congressional leaders handling of the FY2014 budget proposal. Shortly after the FY2014 shutdown a news poll showed an "overall approval of Congress stood at just 12 percent in the survey, with 85 percent disapproving - 70 percent strongly (disapproving). That represents the most negative expression toward Congress in almost a quarter-century of Post-ABC polling."⁵⁶ The news poll also revealed widespread political fallout. "Dissatisfaction with Congress, elected officials and the workings of the political system has increased. An overwhelming majority of Americans say the budget dispute damaged the U.S. economy and the nation's image in the world"⁵⁷

Confidence in congressional leadership was low. "If there's one thing polls showed Americans agreed on, it's that they don't trust Congress."⁵⁸ There was also a "lack of trust between leaders dragging out (the) shutdown"⁵⁹ said Mike McCurry, who was White House

press secretary under Bill Clinton. He also talked about how the relationship between Clinton and then-House Speaker Newt Gingrich made it easier to end the 1995 and 1996 shutdowns.

On October 17, 2013 President Obama signed a bill that ended the 16-day shutdown. “Weeks of bitter political fighting gave way to a frenzied night in Washington as Congress passed the bill that would prevent the country from crashing into the debt ceiling.”⁶⁰ The 2013 government shutdown was over, however, the political struggle over the debt ceiling lingered on.

Other Government Shutdowns

The FY1977 government shutdown was a result of the President exercising veto authority. The shutdown lasted 10 days under President Ford’s administration. The major budget conflict during this period came because President Ford vetoed a funding bill for the Departments of Labor and Health, Education, and Welfare (or HEW, today split into the Departments of Education and of Health and Human Services), arguing that it failed to adequately restrain spending. Congress overrode President Ford's veto October 1, 1976 so the spending bills took effect, but it wasn't until over a week later that the partial shutdown ended, as it was only on October, 11 that a continuing resolution ending funding gaps for other parts of government became law.⁶¹

Another extensive shutdown occurred in FY1978 under President Carter’s administration and lasted 12 days. The House insisted on continuing the ban on using Medicaid dollars to pay for abortions except in cases where the life of the mother was at stake. The Senate wanted to loosen this to include allowances for abortions in the case of rape or incest or when the mother's health was in danger. Because the issue had become tied to funding for Labor and HEW, failure to come to an agreement led those agencies to have a funding gap. The Medicaid ban was continued until October 13 and the shutdown ended by way of CRA, to give negotiators more

time to work out a deal.⁶² Unfortunately, Congress was unable to resolve the abortion issue and a government shutdown occurred again on October 31, 1977 and lasted 8 days.

The FY1996 shutdown occurred under President Clinton's administration and lasted 21 days. Republican leaders demanded that the White House propose a seven-year budget plan that balanced when using the CBO's economic forecasts, rather than the OMB's, which were more optimistic. The plan President Clinton proposed produced a \$115 billion deficit in seven years according to CBO numbers, even as the OMB estimated that it would balance the budget by then.⁶³ A previous CRA was in effect but the dispute was not resolved before the CRA expired in December 2015. Eventually, Republicans relented and passed legislation to keep the government open. President Clinton, in turn, submitted a budget plan that the CBO said balanced the budget within seven years.

Government shutdowns have taken place over many decades for various legislative reasons. Presidential veto, congressional filibuster, bipartisan differences, and Congress' disagreement with the President's budget are just a few examples of how our elected leaders can lead the government to shut down. Government shutdowns have a negative connotation with Americans, which was evident in disapproval rating polls.

CONCLUSION

Recommendations

There are some steps that the President and Congress can make to prevent a shutdown each fiscal year. First, the Executive and Legislative branches of the United States government must be held to the highest standard for keeping the federal government running. The President must lead the way by doing everything in his or her power to prevent the government from a

shutdown. Preventing a government shutdown begins with adhering to the five step budget process.

Secondly, the President must have the annual President's budget submitted by the first Monday in February as stated in step one of the budget process (See Figure 1). That also requires all federal agencies to have budget submissions to the President in time for creation of the President's budget. If not completed on time, the President forfeits current administrations priorities and agendas to the prior fiscal year's President's budget.

The next step is for both the House and Senate to immediately begin their versions of the new fiscal year budget as described in step two of the budget process immediately after the first Monday in February. Both houses must consider and include current administration priorities and agendas if the current year President's budget submission was submitted on time. But, if President's budget was not submitted on time, both houses must begin resolutions using their own version of a budget or utilize the previous year's President's budget submission. Congress must put budget legislation in motion with or without a President's budget.

Legislation must also be instituted that would prevent any member of Congress or a political party from shutting down the government as shutting down the government should be an agreement between Congress and the President. Shutting down the government should not be the result of political agendas that do not make it through Congress. An Automatic Continuing Resolution proposal must be reintroduced to Congress and enacted into law. When passing the budget fails, an ACR will be a final step to prevent a government shutdown.

Conclusions

The Executive and Legislative branches of the United States government will be faced with complex legislative issues each fiscal year. These complex issues, if not overcome earlier in

the fiscal year, will lead to a possible government shutdown. As a result, government workers, government contractors, and the American people will be forced to live under this unnecessary threat.

The five-step budget process was created to ensure appropriations quickly move through the fiscal calendar, but history has shown that the President and Congress were not always able to meet the suspense's each fiscal year. Congressional disagreement over political issues lead to deadlock in 1976, twice in 1977, 1996 and 2013. Congress requires as much time as possible in the budget process to work through differences in proposed budgets. During the above shutdown years, Congress and the President did not have enough time and the result was the occurrence of a funding gap.

Congressional leaders were not always efficient in getting a Continuing Resolution Authority passed when funding lapses approached, which led to government shutdowns. Historical failures to meet budget timelines should have been an indication to congressional leaders that a process change was needed. Government agencies wasted valuable time and resources building and updating shutdown plans. Planning for potential shutdown or a CRA is disruptive to the federal government. Also, relying on CRAs is not good for the United States as it cost an undefinable amount of money to the tax payers. CRAs lead to national security issues as DOD programs did not receive funding necessary to start new weapons platforms or fix older weapons platforms that relied on new fiscal year funds.

The Automatic Continuing Resolution was introduced to Congress as an avenue to continue government operations when a lapse in appropriations was imminent. However, the ACR legislation never made it through Congress. The unsuccessful ACR proposal not only presented a way to prevent future government shutdowns, but would put federal employees and

their families at ease knowing there is no risk of being sent home without a paycheck, when Congress fails to pass a budget.



Notes

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