Congressional Research Service

Continuing Resolutions: Latest Action and Brief Overview of Recent Practices

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April 6, 2011

Congressional Research Service
7-5700
www.crs.gov
RL30343

CRS Report for Congress
Prepared for Members and Committees of Congress

Report Documentation Page

Form Approved
OMB No. 0704-0188

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1. REPORT DATE **06 APR 2011**	2. REPORT TYPE	3. DATES COVERED **00-00-2011 to 00-00-2011**

4. TITLE AND SUBTITLE **Continuing Resolutions: Latest Action and Brief Overview of Recent Practices**	5a. CONTRACT NUMBER 5b. GRANT NUMBER 5c. PROGRAM ELEMENT NUMBER
6. AUTHOR(S)	5d. PROJECT NUMBER 5e. TASK NUMBER 5f. WORK UNIT NUMBER
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) **Congressional Research Service,The Library of Congress,101 Independence Avenue SE,Washington,DC,20540-7500**	8. PERFORMING ORGANIZATION REPORT NUMBER
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)	10. SPONSOR/MONITOR'S ACRONYM(S) 11. SPONSOR/MONITOR'S REPORT NUMBER(S)

12. DISTRIBUTION/AVAILABILITY STATEMENT
Approved for public release; distribution unlimited

13. SUPPLEMENTARY NOTES

14. ABSTRACT

15. SUBJECT TERMS

16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT **unclassified**	b. ABSTRACT **unclassified**	c. THIS PAGE **unclassified**	**Same as Report (SAR)**	**22**	

Standard Form 298 (Rev. 8-98)
Prescribed by ANSI Std Z39-18

Summary

Most routine operations of federal departments and agencies are funded each year through the enactment of 12 regular appropriations acts. Because these bills are annual, expiring at the end of the fiscal year (September 30), regular appropriations bills for the subsequent fiscal year must be enacted by October 1. Final action on most regular appropriations bills, however, is frequently delayed beyond the start of the fiscal year. 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 generally enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or CRs).

CRs may be divided into two categories based on duration—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, if earlier. *Full-year continuing resolutions* provide funding in lieu of one or more regular appropriations bills *through the end of the fiscal year*.

Over the past 35 years, the nature, scope, and duration of continuing resolutions gradually expanded. From the early 1970s through 1987, CRs gradually expanded from being used to provide interim funding measures of comparatively brief duration and length to measures providing funding through the end of the fiscal year. The full-year measures included, in some cases, the full text of one or more 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 primarily been interim funding measures, and included major legislation less frequently.

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

Since Congress and the President have not completed action on any of the 12 FY2011 regular appropriations acts, several FY2011 interim CRs have been considered to provide more time to resolve differences within Congress and between Congress and the President. In 2010, Congress enacted four FY2011 interim CRs that sequentially extended funding from October 1, 2010, through March 4, 2011 (P.L. 111-242, P.L. 111-290, P.L. 111-317, and P.L. 111-322). These acts maintained funding at generally FY2010 discretionary spending levels. The Congressional Budget Office (CBO) estimates the total annualized discretionary spending level provided in these CRs at $1,247 billion, in budget authority (or BA). In 2011, President Barack H. Obama signed two additional FY2011 interim CRs, P.L. 112-4 and P.L. 112-6, that, in total, would reduce the amount provided in 2010 by $10 billion, in BA. The two acts sequentially extends spending through April 8, 2011. On April 4, 2011, Chairman Harold Rogers, House Appropriations Committee, introduced H.R. 1363 (112th Congress), which would continue funding for 11 FY2011 regular bills an additional week, through April 15, 2011, and provide full-year funding for the Defense regular appropriations bill. It would provide a net reduction of $6 billion.

On February 19, 2011, the House adopted a FY2011 full-year CR, H.R. 1 (112th Congress); on March 9, 2011, the Senate rejected the measure. This resolution would reduce the total discretionary spending level by an additional $58 billion, in BA.

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Introduction

Most routine operations of federal departments and agencies are funded each year through enactment of 12 regular appropriations acts.[1] Since regular bills are annual, expiring at the end of the fiscal year,[2] regular appropriations bills for the subsequent fiscal year must be enacted by October 1. Final action on most regular appropriations bills, however, is frequently delayed beyond the start of the fiscal year. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the regular appropriations bills 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 section provides the most recent information on the FY2011 continuing resolutions, including the status, funding levels as well as descriptions of selected provisions in each CR. The second segment focuses on the (1) history and recent trends, including the nature, scope, and duration of CRs during the past 35 years; (2) CR types by duration; (3) major substantive legislative provisions included in some CRs; and (4) funding gaps.[3]

FY2011 Continuing Resolutions

Congress and the President have not completed action on any of the 12 FY2011 regular appropriations acts. To provide more time to resolve differences within Congress and between Congress and the President, several temporary FY2011 CRs have been enacted and a new CR was introduced on April 4, 2011.[4] Additionally, Congress is considering a FY2011 full-year CR.

During 2010, Congress enacted four FY2011 interim CRs that sequentially extended funding from October 1, 2010, through March 4, 2011. The initial CR, P.L. 111-242,[5] established the basic spending rate at generally FY2010 spending levels, with a few modifications, and provided funding through December 3, 2010. The three remaining measures enacted in 2010 amended the initial CR. Two acts, P.L. 111-290[6] and P.L. 111-317,[7] sequentially extending funding through December 21, 2010. Subsequently, P.L. 111-322[8] was enacted that made a few spending

[1] The number of regular bills considered each year has recently ranged between 11 and 13. For almost 35 years (1971-2004), Congress generally considered 13 regular appropriations bills each year. As a result of two reorganizations of the House and Senate Committees on Appropriations in 2005 and, again, in 2007, the total number of bills changed twice. Congress considered 11 regular acts for FY2006 and FY2007 and 12 regular bills for each fiscal year since FY2007. (For more information, CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2011*, by Jessica Tollestrup.)

[2] The *fiscal year* of the federal government begins on October 1 and ends the following September 30.

[3] "The term 'funding gap' refers to a period of time between the expiration of an appropriation and the enactment of a new one." U.S. Government Accountability Office, *Principles of Federal Appropriations Law: Vol. II*, 3rd ed., GAO-06-382SP (Washington: February 2006), p. 6-146. For more information, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

[4] H.R. 1363 (112th Cong.).

[5] 124 Stat. 2607.

[6] 124 Stat. 3063.

[7] 124 Stat. 3454.

[8] 124 Stat. 3518.

adjustments and extended funding through March 4, 2011. The Congressional Budget Office (CBO) estimates the total annualized discretionary spending[9] level provided in these 2010 acts at $1,247 billion, in budget authority (or BA).[10]

In 2011, President Barack H. Obama signed two additional FY2011 interim CRs, P.L. 112-4[11] and P.L. 112-6,[12] which both amend P.L. 111-242. P.L. 112-4 extended spending through March 18, 2011, and P.L. 112-6 extends funding for an additional three weeks, through April 8, 2011. CBO estimates these acts, together, reduce the annualized total discretionary spending level provided in 2010, by $10 billion, providing a total level of $1,237 billion, in BA.

On April 4, 2011, Chairman Harold Rogers, House Appropriations Committee, introduced a new CR, H.R. 1363 (112th Congress). This measure would provide the FY2011 Defense regular appropriations bill as well as temporarily continue funding for the remaining 11 FY2011 regular bills for an additional week, through April 15, 2011. The measure would provide $1,231 billion in total discretionary spending. In the net, it would provide an additional $6 billion reduction.

Additionally, on February 19, 2011, the House passed a full-year CR, H.R. 1 (112th Congress), which the Senate subsequently rejected on March 9, 2011.[13] CBO estimates this measure would have reduced the annualized FY2011 total discretionary spending level provided in 2010 by $68 billion, in BA. P.L. 112-4 and P.L. 112-6 included only spending reductions originally included in H.R. 1. The new laws, therefore, effectively reduce the spending reductions provided in the House-passed bill to $58 billion, in BA. (Action on the CRs is provided in **Table 1**.)

[9] Congress divides budget authority and the resulting outlays into two categories: *discretionary* and *mandatory (or direct) spending.* Discretionary spending is controlled by annual appropriations acts, which are under the jurisdiction of the House and Senate Committees on Appropriations. Mandatory spending is controlled by legislative acts under the jurisdiction of the authorizing committees All discretionary spending (and some mandatory spending) are included in the annual appropriations measures. For more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

[10] *Budget authority* does not represent cash provided to, or reserved for, agencies. Instead, the term refers to authority provided by federal law to enter into contracts or other financial *obligations* that will result in immediate or future expenditures (or *outlays*) involving federal government funds.

[11] 125 Stat. 6.

[12] 125 Stat. 23.

[13] The Senate also rejected a full substitute amendment (S.Amdt. 149), sponsored by Chairman Daniel K. Inouye, Senate Appropriations Committee.

Table 1. Action on FY2011 Continuing Appropriations

Measure	Vote		Conference Report or Amendment Exchange	Vote		Public Law
	House	Senate		House	Senate	
H.R. 3081	—[a]	09/29/10 69-30[b]	—	09/30/10 228-194[c]	—	09/30/10 P.L. 111-242
H.J.Res. 101	12/01/10 239-178	12/02/10 UC[d]	—	—	—	12/04/10 P.L. 111-290
H.J.Res. 105	12/17/10 Voice vote	12/17/10 UC[d]	—	—	—	12/18/10 P.L. 111-317
H.R. 3082	—[e]	—[e]	Amendments	12/08/10 212-206[f] 12/21/10 193-165[h]	12/21/10 79-16[g]	12/22/10 P.L. 111-322
H.J.Res. 44	03/01/11 335-91	03/02/11 91-9[i]	—	—	—	03/02/11 P.L. 112-4
H.J.Res. 48	03/15/11 271-158	03/17/11 87-13[i]	—	—	—	03/18/11 P.L. 112-6
H.R. 1363j						
H.R. 1	02/19/11 235-189	03/09/11 44-56[k]				

a. On July 9, 2009, the House originally passed the bill as the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (FY2010 State and foreign operations act). At that time, no further action was taken on the measure, the final version of the FY2010 State and foreign operations act was included as Division F of the Consolidated Appropriations Act, 2010, P.L. 111-117 (123 Stat. 3034, 3312).

b. In 2010, the Senate revived the measure and replaced the text of the House-passed bill with the initial FY2011 continuing appropriations act

c. House agreed, without amendment, to the Senate-passed bill.

d. The Senate adopted, without amendment, the House-adopted version by unanimous consent. That is, an unanimous consent request was proposed to adopt the measure and since no Senator objected, the resolution was adopted.

e. In 2009, the House and Senate passed their respective versions of H.R. 3082 (111th Congress), Military Construction and Veterans Affairs Appropriations Act, 2010 (FY2010 Military construction and veterans affairs act), and the Senate sent their version of the bill back to the House in the form of a Senate amendment to the House-passed bill; at that time no further action was taken on the measure. The final version of the FY2010 Military construction and veterans affairs act was included as Division E of the Consolidated Appropriations Act, 2010 P.L. 111-117 (123 Stat. 3034, 3284).

f. In December 2010, the House revived the bill and adopted a House amendment to the Senate amendment that would have replaced the Senate text with the text of a FY2011 full-year CR.

g. The Senate adopted a Senate amendment to the House-adopted amendment, which replaced the text of the full-year CR with a temporary CR that expires March 4, 2011.

h. The House adopted the Senate amendment, sending the measure to the President.

i. The Senate adopted the House-adopted measure without amendment.

j. This bill was introduced on April 4, 2011.

k. The Senate rejected H.R. 1 (112th Congress). It also rejected, by a vote of 42-58, an amendment in the nature of a substitute (S.Amdt. 149), which was sponsored by Chairman Daniel K. Inouye, Senate Appropriations Committee.

Discretionary Spending Comparisons Between Selected FY2011 CRs

Table 2 includes data on and comparisons of certain discretionary spending levels, in BA, provided by several FY2011 continuing resolutions. These measures are

- FY2011 interim continuing resolutions enacted in 2010, P.L. 111-242 and P.L. 111-322;
- FY2011 interim CRs enacted, so far, in 2011, P.L. 112-4 and P.L. 112-6;
- FY2011 interim CR, as introduced, H.R. 1363 (112th Congress);
- FY2011 full-year CR, as passed by the House, H.R. 1 (112th Congress); and
- FY2011 full-year CR offered in the Senate as a full substitute amendment, S.Amdt. 149 (112th Congress),[14] to H.R. 1 (112th Congress).

The spending levels in **Table 2** are based on cost estimates prepared by CBO on each legislative proposal and provide non-emergency discretionary spending,[15] emergency discretionary spending, and total discretionary spending, in budget authority.

In 2010, Congress enacted two FY2011 interim CRs, P.L. 111-242 and P.L. 111-322,[16] that provided spending for accounts[17] generally funded in FY2010 appropriations acts at FY2010 funding levels, with adjustments for certain accounts and programs. CBO estimates P.L. 111-242, as amended by P.L. 111-322, provided net annualized discretionary spending levels of $1,087 billion in non-emergency discretionary spending and $1,247 billion in total discretionary spending, in BA.

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[14] Senate amendment 149. Sen. Daniel K. Inouye, "Text of Amendments," remarks in the Senate, *Congressional Record*, vol. 157 (March 4, 2011), pp. S1265-S1306.

[15] Under the congressional budget process, annual spending ceilings are established for appropriations measures. Since 1990, various procedural mechanisms have been established that exempt from the ceilings spending designated as emergency spending or for overseas operations. Almost all the emergency funds provided by the FY2011 CRs are funds designated for overseas operations and other activities, generally for operations in Iraq and Afghanistan. For more information on emergency designated funds, see, CRS Report R41564, *Emergency Designation: Current Budget Rules and Procedures*, by Bill Heniff Jr.

[16] Two additional FY2011 interim CRs became law in 2010, P.L. 111-290 and P.L. 111-317, but they did not change any spending levels. They only extended the deadline provided in the initial FY2011 CR, P.L. 111-242.

[17] The basic unit of a regular or supplemental appropriations act is the *account*. Under these acts, funding for each department and large independent agency is itemized for specific accounts. Each account, generally, includes similar programs, projects, or items, such as a "research and development" account or "salaries and expenses" account. For small agencies, a single account may fund all of the agency's activities. These acts typically provide a lump-sum amount for each account. A few accounts include a single program, project, or item, which the appropriations acts fund individually. Continuing resolutions typically provide a general funding rate for accounts funded in the applicable regular or supplemental appropriations from the previous fiscal year, with specified exceptions.

So far, in 2011, two additional FY2011 interim continuing resolutions have become law; P.L. 112-4 and P.L. 112-6. CBO estimates these CRs, in total, provide net annualized non-emergency and total discretionary spending levels of $1,077 billion and $1,237 billion, respectively. These CRs together reduced the non-emergency and total discretionary spending levels provided in 2010 by $10 billion each.

On April 4, 2011, Chairman Harold Rogers, House Appropriations Committee, introduced H.R. 1363 (112th Congress), which would provide a FY2011 Defense regular appropriations bill and temporarily extend funding for the remaining 11 FY2011 regular appropriations bills. In the net, this measure would provide a $6 billion reduction of non-emergency as well as total discretionary spending (see **Table 2** for the total spending levels). If enacted, the total net reduction of P.L. 112-4, P.L. 112-6, and H.R. 1363 would be $16 billion of non-emergency and total discretionary spending provided in 2010.

For comparison purposes, data on two FY2011 full-year legislative proposals are also provided: H.R. 1 (112th Congress), as passed by the House, and Senate full substitute amendment (S.Amdt. 149) to the House bill, as offered by Chairman Daniel K. Inouye, Senate Appropriations Committee. The Senate rejected both proposals (see **Table 1**). Comparing the FY2011 non-emergency and total discretionary spending levels included in the Senate amendment to those provided in 2010, the amendment would have provided less. It would have reduced the budget authority levels by $9 billion in non-emergency discretionary spending and $10 billion in total discretionary spending.

The House passed H.R. 1 (112th Congress), on February 19, 2011, before the chamber considered either P.L. 112-4 or P.L. 112-6. At that time, CBO estimated the bill would have reduced the discretionary spending levels enacted in 2010, by $61 billion in non-emergency spending and $68 billion in total spending. Both CRs enacted afterward as well as H.R. 1363 include only spending reductions originally provided in H.R. 1. Congress enacted a total $10 billion of the bill's reductions in the two public laws. An additional $6 billion in reductions would be provided in H.R. 1363.

Table 2. Discretionary Spending Levels in Selected FY2011 Continuing Resolutions: Comparisons

(Budget authority, in billions of dollars)

Measures or Amendment	Non-Emergency	Emergency[a]	Total[b]
Net Annualized or Annual Total Spending Level			
CRs enacted in 2010[c]	1,087.465	159.378	1,246.843
CRs enacted in 2011, so far[d]	1,077.447	159.378	1,236.825
H.R. 1363 (112th Cong.)	1,071.341	159.565	1,230.906
H.R. 1 (112th Cong), as House passed	1,025.976	153.026	1,179.002
Senate amendment 149, as offered[e]	1,078.798	157.897	1,236.695
Difference			
CRs enacted in 2010:			
—Effect of CRs enacted in 2011	-10.018	0.000	-10.018
—Effect of CRs enacted in 2011 plus H.R. 1363	-16.124	0.187	-15.937

Measures or Amendment	Non-Emergency	Emergency[a]	Total[b]
H.R. 1, as House passed			
—Impact on CRs enacted in 2010	-61.489	-6.352	-67.841
After CRs enacted in 2011	-51.471	-6.352	-57.823
After CRs enacted in 2011 and H.R. 1363 introduced	-45.356	-6.165	-51.904
Senate amendment 149, as offered			
—Impact on CRs enacted in 2010	-8.667	-1.481	-10.148

Source: U.S. Congressional Budget Office, *Continuing Resolutions for 2011 in the 112th Session*, dated March 15, 2011, http://www.cbo.gov.

a. Almost all emergency funding is spending designated for overseas deployments and other activities, generally for operations in Iraq and Afghanistan.

b. Amounts may not equal due to rounding.

c. P.L. 111-242 and P.L. 111-322.

d. P.L. 112-4 and P.L. 112-6.

e. During Senate consideration of H.R. 1 (112th Congress), Chairman Daniel K. Inouye, Senate Appropriations Committee, offered an amendment in the nature of a substitute to the House bill.

Selected Provisions in Each CR

Continuing Appropriations Act, 2011, P.L. 111-242

The initial FY2011 CR, P.L. 111-242,[18] extended appropriations[19] for accounts generally funded in the FY2010 regular appropriations acts, through December 3, 2010, or until enactment of FY2010 regular measure(s), if earlier.[20]

Under the CR, funding is provided in the form of spending rates. In contrast to regular and supplemental appropriations acts, CRs do not generally provide specific amounts for each account. Most CRs, instead, provide spending (or funding) rates across accounts in the regular appropriations bill(s) funded in the CR (for examples, see section "Types of Continuing Resolutions by Duration" below). The CRs may also include funding adjustments for specified accounts or activities.

Continuing Appropriations Act, 2011, provides separate funding rates for discretionary and mandatory spending. It continues entitlements and other mandatory payments that were funded in FY2010 appropriations acts as well as payments for activities under the Food and Nutrition Act of 2008[21] at spending levels that would maintain existing program levels under current law.[22] Such a

[18] 124 Stat. 2607.

[19] An *appropriation* is generally a type of budget authority that also provides legal authority to make the subsequent payments from the Treasury for specified purposes. Another type of appropriation, *liquidating appropriations*, only provides the statutory authority to make payments from the Treasury for specified purposes, not the authority to make financial obligations. Most appropriations provided in annual appropriations measures, including continuing resolutions, are the first type.

[20] P.L. 111-242, §106.

[21] 7 U.S.C. § 2011 et seq.

provision is designed to provide additional funding, if needed, to continue benefits for eligible beneficiaries. Spending levels would accommodate, for example, increased costs due to an unexpected increase in the number of beneficiaries.

Regarding discretionary spending, this CR extends spending for accounts across the board at generally amounts provided in the applicable FY2010 regular appropriations acts. It also continues certain supplemental appropriations, such as $29 billion for Defense Department war operations, that was provided in the Supplemental Appropriations Act, 2010, P.L. 111-212;[23] and $0.129 billion for the United States Patent and Trade Office, which was provided in the United States Patent and Trademark Office Supplemental Appropriations Act, 2010, P.L. 111-224.[24]

Funding rates for selected programs and accounts are adjusted. The Senate Appropriations Committee advises that the act, for example, provides an additional $0.624 billion regarding the Strategic Arms Reductions Treaty (START) and $0.965 billion for the Foreign Military Financing (FMF) Program to continue certain security assistance to Israel, Egypt, and Jordan.[25] Additionally, the CR reduces funding for Census programs by approximately $6 billion and for a certain Defense Department base closure account by approximately $5 billion.[26]

This CR also extends authorizations or agency authority for certain programs. Examples provided by the House Appropriations Committee include (1) extending Temporary Assistance for Needy Families (TANF) and related programs through the expiration date of the CR; and (2) "allowing the National Cord Blood inventory, the Interagency Council on Homelessness, and the Commission on Public Diplomacy to continue operations."[27]

Making Further Continuing Appropriations for FY2011, and For Other Purposes, P.L. 111-290

This act, P.L. 111-290,[28] amended the initial CR by extending the December 3, 2010, expiration date two weeks, through December 18, 2010.

Making Further Continuing Appropriations for FY2011, and For Other Purposes, P.L. 111-317

Under this act, P.L. 111-317,[29] the expiration date was extended through December 21, 2010.

(...continued)

[22] P.L. 111-242, §111.

[23] Chapter 3 of Title I of the Supplemental Appropriations Act, 2010 (P.L. 111-212; 124 Stat. 2302, 2305).

[24] 124 Stat. 2385. P.L. 111-242, §101.

[25] For information on the Foreign Military Financing Program, see CRS Report R40213, *Foreign Aid: An Introduction to U.S. Programs and Policy*, by Curt Tarnoff and Marian Leonardo Lawson.

[26] U.S. Congress, Senate Committee on Appropriations, *Senate Passes Continuing Resolution*, press release, September 29, 2010, at http://appropriations.senate.gov/.

[27] U.S. Congress, House Committee on Appropriations, *Continuing Resolution*, press release, September 29, 2010, at http://appropriations.house.gov/.

[28] 124 Stat. 3063.

[29] 124 Stat. 3454.

Continuing Appropriations and Surface Transportation Extensions Act, 2011 P.L. 111-322

This act, P.L. 111-322,[30] amends the initial FY2011 CR[31] and extends certain surface transportation programs.[32] The amendments to the initial CR changed the expiration date to March 4, 2011,[33] and inserted several additional provisions.[34] For example, the act prohibits statutory pay adjustments[35] that would otherwise become effective for federal civilian employees[36] in executive agencies[37] from January 1, 2011, through December 31, 2012. The law also provides that senior executive[38] or senior-level employees may not receive an increase in basic pay during this time period, absent a change of position that results in a substantial increase in responsibility, or a promotion. The law further provides that the provisions of the Non-Foreign Area Retirement Equity Assurance Act of 2009,[39] related to allowance rates in the nonforeign areas (Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands), shall be applied using the appropriate locality-based comparability payments established by the President as the applicable comparability payments. The law authorizes the President to issue guidance to executive agencies to implement the provision.[40]

Other examples include increasing funding for specific programs or accounts, such as (1) Veterans Affairs Department, Department of Administration, General operating expenses account (new amount $2,546 million);[41] (2) Interior Department, Minerals Management Service, Royalty and offshore minerals management account (new amount $200 million);[42] (4) Commerce Department, National Telecommunications and Information Administration, Salaries and expense

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[30] 124 Stat. 3518.

[31] Title I, Continuing Appropriations Amendments, §1(a)(1) and (2).

[32] Title II, Extension of Current Surface Transportation Programs.

[33] Title I, §1(a)(1).

[34] Title I, §1(a)(2).

[35] Statutory pay adjustment means adjustments to base pay under 5 U.S.C. §5303, to locality-based comparability payments under 5 U.S.C. §5304 and 5 U.S.C. §5304(a), to Executive Schedule pay under 5 U.S.C. §5318, to Federal Wage System (blue-collar) pay under 5 U.S.C. §5343(a), and any similar adjustment required by statute.

[36] Employee has the meaning stated at 5 U.S.C. §2105—an officer and an individual who is (1) appointed in the civil service by one of the following acting in an official capacity: the President; a Member or Members of Congress, or the Congress; a member of a uniformed service; an individual who is an employee under this section; the head of a Government controlled corporation; or an adjutant general designated by the Secretary concerned under 32 U.S.C. §709(c); (2) engaged in the performance of a Federal function under authority of law or an Executive act; and 3) subject to the supervision of an individual named under (1) while engaged in the performance of the duties of his position. See 5 U.S.C. §2105 for application of the definition to other types of employees.

[37] Executive agency has the meaning stated at 5 U.S.C. §105—an Executive department, a Government corporation, and an independent establishment.

[38] Senior executive is defined to include a member of the Senior Executive Service (SES), the FBI-DEA SES, the Senior Foreign Service, and any other similar senior executive service positions in executive agencies.

[39] 5 U.S.C. §5304 note.

[40] The White House, Office of the Press Secretary, *Memorandum-Adjustment of Certain Rates of Pay*, December 22, 2010, available at, http://www.opm.gov/oca/compmemo/2010/2011freeze_attach2.pdf and Executive Order 13561, *Adjustments of Certain Rates of Pay*, December 22, 2010, available at http://edocket.access.gpo.gov/2010/pdf/2010-32960.pdf. P.L. 111-322, Title I, §1(a)(2)(a) added a new §147 to P.L. 111-242.

[41] P.L. 111-322, Title I, §1(a)(2) added a new §166 to P.L. 111-242.

[42] P.L. 111-322, Title I, §1(a)(2 added a new §159 to P.L. 111-242.

account (new amount $41 million);[43] and (4) Special Inspector General for the Troubled Asset Relief Program (TARP), Salaries and expenses account (new amount $36 million).[44]

Regarding the surface transportation extensions, most programs that are funded from the Highway Trust Fund are dependent on the authorization as well as appropriation legislation for their funding. They are funded through a form of budget authority[45] known as contract authority. The authorization was scheduled to expire on December 31, 2010, and needed to be extended in order for these programs to continue to receive funding. Thus, authority to spend from the Highway Trust Fund was also extended through March 4, 2011.[46]

Further Continuing Appropriations Amendments, 2011, P.L. 112-4

This act, P.L. 112-4,[47] amends the initial CR[48] by reducing total discretionary spending provided in the FY2011 CRs enacted in 2010 by $4 billion, in BA. It also extended funding through March 18, 2011.

Additional Continuing Appropriations Amendments, 2011, P.L. 112-6

P.L. 112-6[49] also amends the initial FY2011 CR. It extends funding through April 8, 2011, and reduces total discretionary spending BA by an additional $6 billion.

Department of Defense and Further Additional Continuing Appropriations Act, 2011, H.R. 1363 (112th Congress)

This measure would provide the FY2011 Defense regular appropriations bill and extend funding for the remaining 11 FY2011 regular bills through April 15, 2011. The temporary CR portion of the bill also amends P.L. 111-242 and would provide a total net discretionary spending reduction of $6 billion, in BA from the level provided in 2010.

Full-Year Continuing Appropriations Act, 2011, H.R. 1 (112th Congress)

The House-passed version of H.R. 1 (112th Congress) would provide an adjusted discretionary spending rate for 11 FY2011 regular appropriations bills as well as a separate Defense regular

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[43] P.L. 111-322, Title I, §1(a)(2) added a new §148 to P.L. 111-242.

[44] P.L. 111-322, Title I, §1(a)(2) added a new §152 to P.L. 111-242.

[45] *Budget authority* refers to "authority provided by federal law to enter into financial obligations that will result in immediate or future outlays involving federal government funds." The basic forms of budget authority include contract authority and appropriations (except liquidating appropriations). *Contract authority* means authority provided by law to enter into contracts or incur other obligations in advance of, or in excess of, funds available for that purpose. Although it is a form of budget authority, contract authority does not provide the funds to make payments. These funds must be provided later, usually in a subsequent appropriation act (in the form of a liquidating appropriation). Since liquidating appropriations do not provide authority to incur obligations, they are not considered budget authority.

[46] P.L. 111-322, Title II.

[47] 125 Stat. 6.

[48] P.L. 111-242.

[49] 125 Stat. 23.

appropriations bill, including separate amounts for each account. It would decrease the remaining discretionary spending by $58 billion.

Recent Practices Regarding Continuing Resolutions

This portion of the report focuses on the history and recent trends, including the nature, scope, and duration of CRs during the past 35 years; CR types by duration; substantive legislative provisions included in some CRs; and certain funding gaps.

Background

Under the U.S. Constitution, no funds may be drawn from the U.S. Treasury unless appropriated by law, giving Congress the "power of the purse."[50] The so-called Antideficiency Act strengthened the application of this section by, in part, explicitly prohibiting federal government employees and officers from making contracts or other obligations in advance of an appropriation, unless authorized by law; and providing administrative and criminal sanctions for those who violate the act.[51]

As mentioned previously, most routine operations of federal departments and agencies are funded each year through the enactment of several regular annual appropriations acts. There are 12 regular appropriations acts for FY2010.[52] Since regular bills expire at the end of the fiscal year, regular bills for the subsequent fiscal year must be enacted by October 1. If new funds are not provided, the affected departments and agencies can not make contracts or other obligations, and must promptly begin an orderly shutdown. Certain agency activities, however, are exempt, such as those involving the safety of human life or protection of property. Final action on most regular appropriations bills is usually delayed beyond the start of the new fiscal year (for data on the past 34 years, FY1977 through FY2010, see **Table 3**). To address this problem, Congress typically enacts temporary continuing resolutions, extending funding for affected departments and agencies until the regular bills become law.

Table 3. Regular Appropriations Bills Enacted by or on the Start of New Fiscal Year and Continuing Resolutions, FY1977-FY2010

Fiscal Year	Presidential Administration	Majority Party		Regular Appropriations Bills		CRs Enacted
		Senate	House	Approved by or on October 1	Enacted in CRs	
1977	Gerald Ford	Democrats	Democrats	13	0	(2[a])
1978	Jimmy Carter	Democrats	Democrats	9	1	3
1979				5	1	1
1980				3	3	2

50 Article I, Section 9, clause 7 of the U.S. Constitution.

51 31 U.S.C. §§ 1341(a)-1342 and 1349-1350.

52 Regular bills may become law as separate acts, or two or more regular bills may be combined in a single act. A package of several regular bills is referred to as an *omnibus* (or *consolidated*) *appropriations act.*

Fiscal Year	Presidential Administration	Majority Party		Regular Appropriations Bills		CRs Enacted
		Senate	House	Approved by or on October 1	Enacted in CRs	
1981				1	5	3
1982	Ronald Reagan	Republicans	Democrats	0	4	4
1983				1	7	2
1984				4	3	2
1985				4	8	5
1986				0	7	5
1987				0	13	5
1988		Democrats		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	0[b]	13
1997				(13)[c]	0	0
1998				1	0	6
1999				1	0	6
2000				4	0	7
2001				2	0	21
2002	George W. Bush	Democrats[d]	Republicans	0	0	8
2003		Republicans[e]		0	0[f]	8
2004				3	0	5
2005				1	0	3
2006				2	0	3
2007				1	9	4
2008		Democrats	Democrats	0	0	4
2009				(3)[g]	0[g]	2
2010	Barack H. Obama			1	0	2

Sources: U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, 94th Congress, 2nd session -104th Congress, 1st session (Washington: GPO, 1976-1995). U.S. Congress, House, *Calendars of the U.S. House of Representatives and History of Legislation*, 104th Congress, 1st session -108th Congress, 2nd session (Washington: GPO, 1995-2006).

a. Although all 13 FY1977 regular appropriations bills became law on or before the start of the fiscal year, two CRs were enacted. These CRs generally provided funding for certain unauthorized activities that had not been included in the regular appropriations acts.

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).

c. This number reflects six regular acts being combined to form an omnibus appropriations act, and enacting the other seven bills individually.

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.

e. 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.

f. One measure (P.L. 108-7) originated as a continuing resolution, but in conference it was converted into an omnibus appropriations resolution.

g. Three regular appropriations bills were packaged into a single act that also included the initial FY2010 CR (P.L. 110-329).

History and Recent Trends

CRs date from at least the late 1870s, and have been a regular part of the annual appropriations process for more than 50 years. In fact, with the exception of three fiscal years (FY1989, FY1995, and FY1997),[53] at least one continuing resolution has been enacted for each fiscal year since FY1955. (It is important to note that while Congress enacted two FY1977 CRs, these acts did not temporarily fund any FY1977 regular appropriations bills since all the bills became law on or by the start of the new fiscal year.)[54]

During the past 35 years, the nature, scope, and duration of CRs expanded. From the early 1970s through 1987, CRs gradually expanded from interim funding measures of comparatively brief duration and length to measures providing funding in lieu of one or more regular appropriations bills through the end of the fiscal year. These measures included, in some cases, the full text of one or more regular appropriations bills, and sometimes contained substantive legislation as well (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees). Since 1988, continuing resolutions have tended to be interim funding measures with less substantive legislation.[55]

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, conflicts between the President and Congress over major budget priorities, triggered in part by rapidly increasing deficits, greatly increased the difficulty of reaching final agreements on regular appropriations acts, even after the start of the fiscal year was

[53] In the first two instances, all 13 regular appropriations bills were enacted individually on or by the start of the fiscal year. In the last case, five of the regular bills were added to a sixth regular bill, forming an omnibus appropriations act; and seven other bills were enacted individually.

[54] The FY1977 CRs, instead, generally funded specific unauthorized activities that had been stricken from the applicable regular appropriations bills.

[55] Since 1988, there have been only two full-year CRs. An FY1992 continuing resolution provided full-year funding for one regular appropriations bill, and the FY2007 full-year measure continued funding for nine of the 11 regular bills.

shifted from July 1 to October 1;[56] these conflicts often led to protracted delays in their enactment. The view of continuing resolutions as "must-pass" measures because of the constitutional and statutory imperatives was given increased urgency due to the 1980 Department of Justice opinion prohibiting agencies from continuing all but minimal activities when funds were not available.[57] The result was that continuing resolutions became a major battleground for the resolution of budgetary conflicts and sometimes other policy conflicts as well. Consequently, the nature, scope, and duration of CRs began to change.

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, CRs became vehicles for substantive legislative provisions unrelated to interim funding, as it became clear that in some years CRs 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, CRs 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.[58]

From FY1989 through FY1995, Congress and the President generally operated under multi-year deficit reduction agreements achieved through budget summits, and beginning with FY1991, separate enforcement of appropriations measures through discretionary spending ceilings.[59] With relative agreement on overall budget priorities, conflicts over appropriations measures were generally narrower. CRs were typically more limited in scope, contained less substantive legislation, and were used mainly to provide interim funding for relatively brief periods. The only exception was FY1992, when Congress provided full-year funding in a CR for one FY1992 regular appropriations act, Foreign Operations.[60]

Significant budgetary conflict resumed in 1995. The conflicts over spending priorities occurred between Congress and the Administration, within Congress, and within the political parties as well. Due, in part, to these differences, there were two partial government shutdowns in the winter of 1995-1996; the first lasted for five days and the second, 21 days.[61] Instead of resolving

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[56] The Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344, 88 Stat. 297) shifted the date of the start of the fiscal year.

[57] For more information, see "Funding Gaps" section below.

[58] P.L. 99-591, 100 Stat. 3341; and P.L. 100-202, 101 Stat. 1329.

[59] Increased focus on enforcement began with the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177, 99 Stat. 1037,1038) and Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 (P.L. 100-119, 101 Stat. 754), which were, in part, designed to balance the budget by FY1991 and FY1993, respectively. Both provided an automatic across-the-board reduction in selected spending if the deficit targets provided for each fiscal year covered by the acts were exceeded. Under the Budget Enforcement Act (BEA) of 1990 (P.L. 101-508, 104 Stat. 1388-573, 1388-574), the deficit reduction procedures above were effectively replaced by two other procedures affecting legislation considered by Congress that would increase spending and/or decrease revenues. The BEA (1) set separate discretionary spending limits for FY1991 through FY1995 enforced through across-the-board reductions in discretionary spending; and (2) required increases in mandatory spending and/or decreases in revenues to be offset so that the net deficit was not increased, enforceable by across-the-board reduction in selected mandatory spending. The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 107 Stat. 312, 683) extended these procedures through FY1998 and the Balanced Budget Act of 1997 (P.L. 105-33, 111 Stat. 251) extended them through FY2002.

[60] P.L. 102-266, 106 Stat. 92.

[61] During a *partial government shutdown*, departments and agencies funded in outstanding regular appropriations bills must begin to shut down, while those funded in regular bills that have already become law continue their normal operations. During the second partial government shutdown, departments and agencies covered under six FY1996 (continued...)

the FY1996 conflicts in the form of one or more continuing resolutions, Congress created an omnibus measure for FY1996.[62]

Since FY1997, conflicts over outstanding regular bills have generally been resolved in omnibus appropriations measures, rather than full-year continuing resolutions. The only exception was FY2007; for that year nine of 11 FY2007 regular bills were funded for the entire fiscal year in a continuing resolution.[63] During the FY1997-FY2009 period, omnibus regular appropriations bills were generally developed by attaching the language of outstanding regular appropriations bills, as well as substantive legislation, to the conference report on another regular appropriations bill.

The change in the type of legislative vehicle from full-year continuing resolutions to omnibus appropriations measures created at the conference stage of the legislative process was based on political and procedural considerations. Combining uncompleted appropriations bills, or even including those that had received no floor consideration in one or both chambers, into a single conference report, for example, made it possible to avoid floor consideration of certain controversial floor amendments to regular appropriations bills.[64] Creating an omnibus appropriations bill at the conference stage could also be used to expedite completion of the outstanding regular bills by reducing the number of votes and the number of opportunities for a presidential veto.[65]

It is important to note that during the FY1996 conflict Congress began using a new type of provision in CRs: *targeted appropriations*. It separated some specific activities from the six outstanding regular bills and distributed them among three FY1996 continuing resolutions.[66] Some of the activities were funded for the full year, whereas others were temporarily funded. A single continuing resolution traditionally provides funding for all activities in each regular appropriations bill it funds. Although CRs sometimes have provided a separate expiration date for activities funded in one or more regular appropriations bills, each date applied to all activities in the applicable regular appropriations bill.

Types of Continuing Resolutions by Duration

Continuing resolutions may be classified as "interim" or "full-year continuing resolutions."[67] CRs typically include an expiration date and provide that funding shall be extended for each regular

(...continued)

regular bills shut down and furloughed employees, while those agencies under the seven regular bill continued their activities. It is important to note that there are exceptions to the shutdown requirement for certain activities, such as protecting life or property, as described in CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

[62] P.L. 104-134, 110 Stat. 1321.

[63] P.L. 110-5, 121 Stat. 8.

[64] In certain years, selected regular bills were never considered on the floor or consideration was not completed. Since both House and Senate standing rules prohibit amendments to conference reports, some controversial amendments that might have been offered during initial floor consideration of an appropriations bill were never considered.

[65] To ensure all the FY1997 regular appropriations bills became law by the start of the fiscal year on October 1, for example, five FY1997 regular bills were attached to a sixth FY1997 regular bill in conference. This action obviated the need for a continuing resolution.

[66] See, for example, P.L. 104-91, 110 Stat. 7; P.L. 104-92, 110 Stat. 16; and P.L. 104-94, 110 Stat. 25.

[67] For more information, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup.

appropriations bill covered, until that date, or until enactment of each regular appropriations bill, if earlier. A *full-year continuing resolution* expires at the end of the fiscal year, while an *interim CR* expires earlier.

Interim continuing resolutions provide temporary funding to a specific date, providing more time to resolve final spending decisions. They have remained fairly constant in form and structure in recent years. In contrast to regular and supplemental appropriations acts, interim continuing resolutions do not generally provide specific amounts for each account, although they have done so for selected accounts and activities. Interim CRs generally provide spending (or funding) rates across accounts in regular appropriations bill(s) covered in the CR.

Spending rates have been provided in various forms. For example, they have provided funding across accounts at levels available in the previous fiscal year, providing no increase from the prior year. CRs have also provided spending, by contrast, at levels that maintained the existing program levels under current law. This rate could have the effect, for example, of increasing the spending level from the previous year to pay additional costs due to inflation as well as an increase in the number of beneficiaries. In some cases, the spending rate has been a formula. Some CRs, for example, have provided that the funding level for each account is the lower of the amounts provided in the (1) House-passed version of the applicable regular bill, (2) Senate-passed version, or (3) regular appropriations act for the previous fiscal year. CRs have also provided certain funding exceptions to the spending rate for specific accounts and/or activities, often providing a specific amount.

Within a single CR, Congress has sometimes provided more than one spending rate. First, interim continuing resolutions have recently set different funding rates for discretionary and mandatory spending. Second, a single CR may provide different discretionary spending rates for selected regular bills covered.

Recently, the spending rate for entitlements and other mandatory spending (as well as the Supplemental Nutrition Assistance Program)[68] funded in the regular bills covered have generally remained constant. CRs have extended funding at spending levels that maintained existing program levels under current law. This spending rate is designed to provide sufficient funding to continue benefits for all eligible beneficiaries. The resulting spending levels could reflect an increase necessary to accommodate, for example, increased costs due to an increase in the number of beneficiaries.

The spending rates for discretionary spending, by contrast, may vary within a single CR, providing different rates for selected regular bills as well as among fiscal years.

Not only have CRs continued funding within the same session of Congress in which the CRs became law, but they have extended spending into the following session or, in years in which the Congress adjourned sine die, into the next Congress. In the latter instances, a new bill to provide regular appropriations for the remainder of the fiscal year must be introduced in the new Congress, since all measures from the previous Congress will have died.

The initial temporary continuing resolution has language establishing a spending rate and the expiration date, among other provisions. Once it becomes law, further CRs may be sequentially

[68] This program was formerly referred to as the Food Stamp Program.

enacted to extend the expiration date. These subsequent continuing resolutions may sometimes change the spending rates as well as other provisions. From FY1978 through FY2009, on average, four CRs became law per fiscal year. (For detailed information, see **Table 3** these data include full-year as well as interim CRs.)

Full-year continuing resolutions provide funding in lieu of one or more regular appropriations bills *through the end of the fiscal year*. (**Table 3** provides the number of regular bills funded in each of the 13 full-year CRs enacted during the FY1978-FY2009 period.) Full-year funding rates have generally been provided in three forms; they have included (1) full text of the regular act; (2) language that incorporates regular acts by cross reference to the latest stage of congressional action (such as the conference agreement, if one has been reached); or (3) spending rates. Full-year CRs have also included various combinations of the three types.

From a functional perspective, full-year CRs that only include the full text of the regular act(s) or the full text by cross-reference may be considered by some as the equivalent of omnibus appropriations acts, rather than full-year CRs, even though these measures are entitled an act "making continuing appropriations" or "making further continuing appropriations." For purposes of this report, they are characterized as full-year CRs, since at the time the measures became law, they were referred to as full-year continuing resolutions.

Full-year continuing resolutions effectively replace 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 typically included in regular acts.[69] Consequently, they may be hundreds of pages in length, whereas interim resolutions have recently ranged from less than half a page (in the case of a simple extension of a previous resolution, for example) to 11 pages.

Some CRs have provided both interim and full-year funding. In these cases, typically, one regular bill was funded through the end of the fiscal year (September 30), while the other outstanding regular bills were provided temporary funding.[70]

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[71] in general appropriations measures (including amendments or conference report

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[69] See, P.L. 100-202, section 101, 101 Stat. 1329; and P.L. 99-591, section 101, 100 Stat. 3341.

[70] For an example, see P.L. 97-276, 96 Stat. 1186.

[71] *Unauthorized appropriations* are funds in an appropriations measure for agencies or programs whose authorization has expired or not been enacted, or whose budget authority exceeds the ceiling authorized (for more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter).

to such measures),[72] but these restrictions do not apply to continuing resolutions. Comparable Senate restrictions, in Senate Rule XVI, prohibit amendments, either on the Senate floor or amendments between the houses, that include legislative provisions or unauthorized appropriations. This rule does apply in the case of CRs.

Substantive provisions in continuing resolutions have included language that established major new policies and amended permanent provisions of law, such as the Comprehensive Crime Control Act of 1984.[73] 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.[74] These provisions vary in length from a small paragraph to more than 200 pages (in the case, for example, of the Comprehensive Crime Control Act of 1984). With the advent of omnibus appropriations acts, there have been fewer examples of major policy initiatives in CRs.

Funding Gaps

Over the years, delay in the enactment of regular appropriations measures by the start of a new fiscal year, and continuing resolutions at the start, or during, that fiscal year has led to periods during which agency appropriations authority has lapsed. Such periods are referred to as *funding gaps*.[75] 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.

From FY1977 through FY2008, there have been 17 funding gaps.[76] Most funding gaps occurred during the first half of this period; 15 funding gaps occurred between FY1977 and FY1992. During the latter half, there were only two funding gaps, the two partial government shutdowns in the winter of 1995-1996.

Prior to 1980, 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 waiting for the applicable regular appropriations bill or a CR to become law.[77] On April 25, 1980, however, Attorney General Benjamin Civiletti issued a formal opinion clarifying that maintaining nonessential operations in the absence of appropriations was

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[72] House Rule XXI, cl. 2, prohibits such language in general appropriations measures and applicable amendments. House Rule XXII, cl. 5, in effect, generally extends the House Rule XXI, cl. 2, prohibition to conference reports.

[73] FY1985 continuing resolution, P.L. 98-473, 98 Stat. 1837.

[74] FY2005 continuing resolution, P.L. 108-309, 118 Stat. 1137.

[75] "The term 'funding gap' refers to a period of time between the expiration of an appropriation and the enactment of a new one." These gaps most commonly occur when a regular appropriations bill has not been completed by the start of the fiscal year and a continuing resolution has not become law. The term also refers to instances in which an individual appropriation has been exhausted prior to the end of the fiscal year. U.S. Government Accountability Office, *Principles of Federal Appropriations Law: Vol. II*, 3rd ed., GAO-06-382SP (Washington: February 2006), p. 6-146.

[76] The source of this data is CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup. The enactment of a CR on the day after appropriations authority had expired is not counted as a funding gap.

[77] U.S. Government Accountability Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31, March 3, 1981, p. 2.

not permitted under the Antideficiency Act,[78] and that the Justice Department would enforce the criminal sanctions provided for under the act against future violations.[79]

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.[80] 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."[81]

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."[82] The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.[83]

Since 1981, whenever delay in the appropriations process has led to periods of lapsed appropriations, affected federal agencies and departments lacking appropriations have begun to shut down their agencies. A shutdown involves the curtailment of non-excepted activities and immediate furlough of employees performing such activities (although provisions of law have been enacted to ratify obligations and pay employees retroactively).[84] 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 they were not caused because of a failure to enact initial continuing resolutions, but because of delay in enacting a further extension. As mentioned previously, during the winter of 1995-1996, there were two funding gaps—one lasting five days and the other lasting 21 days. No funding gaps have occurred since 1996.

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[78] 31 U.S.C. § 1341(a).

[79] U.S. Department 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.

[80] U.S. Department of Justice, Office of the Attorney General, Memorandum to the President, January 16, 1981, reprinted in *Funding Gaps Jeopardize Federal Government Operations*, App. VIII, pp. 72-92.

[81] 31 U.S.C. 1342.

[82] 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, August 16, 1995.

[83] Interim CRs may also impact agency operations, see CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

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

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