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Continuing Appropriations Acts: Brief Overview of Recent Practices

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Sandy Streeter
Analyst in American National Government
Government and Finance Division

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Summary

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

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

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

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

Legislative action on 11 of the 13 FY2003 regular appropriations bills was not completed until February 20, 2003; over four and half months into the fiscal year. Therefore, eight interim FY2003 continuing resolutions became law that together extended funding from October 1, 2002, through February 20, 2003.

Another FY2003 continuing resolution, H.J.Res. 2, became the vehicle to complete final funding decisions on the 11 remaining regular bills. Although the House-passed version was an interim resolution extending funding through January 31, 2003, the Senate converted the bill into an FY2003 omnibus appropriations measure providing the full-text of each of the outstanding regular bills. On February 13, 2003, the House and Senate adopted the conference report to H.J.Res. 2, which provides the final funding decisions for the outstanding FY2003 regular appropriations bills. President George W. Bush signed the measure, the Consolidated Appropriations Resolution, 2003, on February 20, 2003.

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Continuing Appropriations Acts: Brief Overview of Recent Practices

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

Most Recent Developments: FY2003 Continuing Resolutions

Legislative action on 11 of the 13 FY2003 regular appropriations bills² was not completed until February 20, 2003; over four and half months into FY2003, which began October 1, 2002. Therefore, eight interim FY2003 continuing resolutions became law that together extended funding from October 1, 2002, through February 20, 2003.

Another FY2003 continuing resolution, H.J.Res. 2, became the vehicle to complete final funding decisions on the 11 remaining regular bills. Although the House-passed version was an interim resolution extending funding through January

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

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

Generally, appropriations are a type of budget authority. In addition to providing an agency with legal authority to make obligations, appropriations permit the agency to make the payments.

² The 11 outstanding FY2003 regular appropriations bills are: Agriculture; Commerce-Justice-State-the Judiciary; District of Columbia; Energy and Water Development; Foreign Operations; Interior; Labor-Health and Human Services-Education; Legislative Branch; Transportation; Treasury-General Government; and Veterans Affairs-Housing and Urban Development-Independent Agencies.

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

31, 2003, the Senate converted the bill into an FY2003 *omnibus appropriations measure*,³ providing the text of each of the 11 outstanding regular appropriations bills.

On February 13, 2003, the House and Senate adopted the conference report to H.J.Res. 2, which provides the final funding decisions for the 11 outstanding FY2003 regular appropriations bills. President George W. Bush signed the measure, the Consolidated Appropriations Resolution, 2003, on February 20, 2003. (For more details on congressional and presidential action on all the FY2003 continuing resolutions, see **Table 1**.)

Table 1. Current Status of FY2003 Continuing Resolutions

| Measure | House Report | House Passed | Senate Report | Senate Passed | Conference Report | Conference Report Approval | | Public Law |
|--------------|--------------|---------------------------|---------------|-----------------------------------|----------------------------|----------------------------|-------------------------|--------------------------|
| | | | | | | House | Senate | |
| H.J.Res. 111 | — | 09/26/02 Vote: 370-1 | — | 09/26/02 Vote: UC ^a | — | — | — | 09/30/02 P.L. 107-229 |
| H.J.Res. 112 | — | 10/03/02 Vote: 404-7 | — | 10/03/02 Vote: UC ^a | — | — | — | 10/04/02 P.L. 107-235 |
| H.J.Res. 122 | — | 10/10/02 Vote: 272-144 | — | 10/10/02 Vote: UC ^a | — | — | — | 10/11/02 P.L. 107-240 |
| H.J.Res. 123 | — | 10/16/02 Vote: 228-172 | — | 10/16/02 Vote: UC ^a | — | — | — | 10/18/02 P.L. 107-244 |
| H.J.Res. 124 | — | 11/13/02 Vote: 270-143 | — | 11/19/02 Vote: 92-2 | — | — | — | 11/23/02 P.L. 107-294 |
| H.J.Res. 1 | — | 01/08/03 Vote: Voice | — | 01/09/03 Vote: UC ^a | — | — | — | 01/10/03 P.L. 108-2 |
| H.J.Res. 2 | — | 01/08/03 Vote: Voice | — | 01/23/03 Vote: 69-29 | 02/13/03 H.Rept. 108-10 | 02/13/03 Vote: 338-83 | 02/13/03 Vote: 76-20 | 02/20/03 P.L. 108-7 |
| H.J.Res. 13 | — | 01/28/03 Vote: Voice | — | 01/29/03 Vote: UC ^a | — | — | — | 01/31/03 P.L. 108-4 |
| H.J.Res. 18 | — | 02/05/03 Vote: Voice | — | 02/05/03 Vote: UC ^a | — | — | — | 02/07/03 P.L. 108-5 |

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

³ An omnibus appropriations measure provides funding through the end of a fiscal year for several regular appropriations measures. They typically include the full text of each regular appropriations bill or enact by reference the full text of or conference report to individual regular bills. In FY2001, two so-called “mini-omnibus” bills became law. One covered two regular bills and the other covered three regular bills.

Consolidated Appropriations Resolution (H.J.Res. 2)

Both the conference report version (H.Rept. 108-10) and the Senate-passed version of H.J.Res. 2 provide funding for the 11 outstanding regular appropriations bills, which are not defense regular appropriations bills. *Discretionary spending*⁴ is provided for each regular bill and *mandatory (or direct) spending*⁴ is provided for some of the regular bills. (For the text, see Divisions A-K of both versions of H.J.Res. 2.)

In addition, the conference report and the Senate-passed measure provide additional discretionary funding for: defense; election reform; wildland fire emergency; and fisheries. Both provide across-the-board reductions of most FY2003 discretionary budget authority in order to offset part of the cost of the measure. (For the defense text see Division M of both versions and, for the other discretionary spending and offsets, see Division N of both versions.)

The Senate Appropriations Committee estimates the total discretionary spending provided in the conference report is \$397.855 billion. This includes both FY2003 budget authority as well as *advance appropriations*.⁵

Both the conference report and the Senate-passed version provide additional mandatory spending for emergency agricultural assistance and Medicaid revisions. The Congressional Budget Office (CBO) estimates the FY2003 budget authority for emergency agricultural assistance is \$3.1 billion and for Medicaid revisions is \$1.2 billion. (For the text, see Division N of both versions.)

Discretionary Spending Distribution. The discretionary spending levels provided below are those calculated by CBO for certain scorekeeping purposes under the *congressional budget process*.⁶ CBO compares the funding available for the fiscal year of an appropriations measure, in this case FY2003, to the House and Senate appropriations subcommittees' spending ceilings for that fiscal year. Funding provided in the appropriations measure that does not become available in FY2003 is excluded, while funding enacted previously that first becomes available in FY2003 is included. Most of the FY2003 budget authority discussed below was provided in H.J.Res. 2. CBO bases its estimates on specified scorekeeping conventions.

⁴ Congress has divided budget authority and outlays into two categories: discretionary and mandatory spending. Discretionary spending is budget authority (and the resulting outlays) provided and controlled in annual appropriations acts. Mandatory spending is budget authority (and the resulting outlays) controlled in non-appropriations acts.

⁵ Appropriations measures generally make budget authority available for obligation at the start of the fiscal year covered by the measure. However, there are exceptions. For example, advance appropriations becomes available one or more fiscal years after the fiscal year covered by the act. An advance appropriation in an FY2002 appropriations act could have provided that the budget authority for specified activities would not become available until Oct.1, 2002—the start of FY2003—or later.

⁶ For information on this process, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter.

Table 2 provides the total net FY2003 discretionary spending estimates of both versions of the consolidated appropriations resolution. Under the Senate-passed version, CBO estimates a total net FY2003 discretionary spending level of \$387 billion, of which \$392 billion is for the 11 regular bills, \$6 billion is for the additional discretionary spending, and -\$11 billion from the across-the-board reduction. Under the conference report, the estimate of the total net FY2003 discretionary spending level is \$398 billion, of which \$388 billion is for the 11 regular bills, \$12 billion is for the additional discretionary spending, and -\$3 billion is from the across-the-board reduction. (The totals may not equal due to rounding.)

The table also provides CBO's estimates of the total net FY2003 discretionary spending that includes H.J.Res 2 funding plus spending in the two previously enacted FY2003 regular appropriations bills: defense and military construction. The total amount of the Senate-passed version of H.J.Res. 2 and the previously enacted regular bills is \$752 billion in FY2003 discretionary spending. The total amount of the conference report and the previously enacted bills is \$763 billion in FY2003 discretionary spending, a net increase of \$11 billion over the Senate-passed total.

Table 2 indicates two additional funding shifts. First, the conference report reduces the across-the-board discretionary spending reduction. Both the conference report and the Senate-passed measure provide across-the-board percentage reductions of most FY2003 discretionary budget authority in order to partly offset the cost of the legislation. The conference report reduces the across-the-board percentage reduction in the Senate-passed bill from 2.852%, to 0.65%. CBO estimates that this will result in a \$9 billion reduction in offsets.

Second, the conference report increases defense discretionary spending by \$6 billion. The defense spending provided in both the conference and the Senate-passed measure were requested by the Bush administration.

Across-the-Board Discretionary Spending Reduction. Division N of the conference report provides a 0.65% across-the-board reduction of most FY2003 discretionary spending. CBO estimates the reduction will offset the cost of the conference report by \$3 billion.

Table 2. Congressional Budget Office's FY2003 Discretionary Spending Estimates of Consolidated Appropriations Resolution, 2003

(in billions of dollars)

| Regular Bill/Other Funding | Senate Passed | Conference Report | Difference |
|---|---------------|-------------------|------------|
| Consolidated Resolution — Regular Bill | | | |
| Agriculture | 18.350 | 17.995 | -0.355 |
| Commerce-Justice-State-the Judiciary | 41.505 | 41.387 | -0.118 |
| District of Columbia | 0.512 | 0.512 | — |
| Energy and Water Development | 26.164 | 26.164 | — |
| Foreign Operations | 16.429 | 16.300 | -0.129 |
| Interior | 18.952 | 19.057 | 0.105 |
| Labor-Health and Human Services-Education | 136.519 | 133.399 | -3.120 |
| Legislative Branch ^a | 3.362 | 3.362 | — |
| Transportation | 21.574 | 21.200 | -0.374 |
| Treasury-General Government | 18.220 | 18.326 | 0.106 |
| Veterans Affairs-Housing and Urban Development-Independent Agencies | 90.349 | 90.350 | 0.001 |
| Subtotal — Regular Bills | 391.936 | 388.052 | -3.884 |
| Additional Discretionary Spending | | | |
| Defense | 3.895 | 10.000 | 6.105 |
| Election Reform | 1.500 | 1.500 | — |
| Wildland Fire Emergency | 0.825 | 0.825 | — |
| Fisheries | 0.100 | 0.100 | — |
| Across-the-Board Reduction | -11.392 | -2.622 | 8.770 |
| Total — Consolidated Resolution | 386.864 | 397.855 | 10.991 |
| Defense Appropriations Act | 354.830 | 354.830 | |
| Military Construction Appropriations Act | 10.499 | 10.499 | |
| Total — Discretionary Spending | 752.193 | 763.184 | 10.991 |

Sources: Congressional Budget Office, Scorekeeping Unit, Jan. 27, 2003, and Feb. 14, 2003, and summary tables.

a. The Senate-passed version provided \$2 million for the U.S.-China Trade Review Commission under the Legislative Branch bill, while the conference report provided the \$2 million separately. It is included under the Legislative Branch in this table.

The across-the-board reduction applies to certain discretionary budgetary resources provided for FY2003 in the conference report as well as certain discretionary budget authority provided for FY2003, which was previously enacted. The cut applies to discretionary spending budget authority and *obligation limitations*⁷ provided in the 11 regular appropriations bills in the conference report. It also applies to *contract authority*⁸ provided for FY2003 previously enacted that is associated with the obligation limitations. And, it applies to advance appropriations for FY2003 that were provided in previously enacted appropriations measures.

The across-the-board reduction does not apply to the Additional Discretionary Spending in Table 2, such as the \$10 billion in defense spending. The conference report also provides specific exemptions for four activities funded under the regular-bills portion of the conference report, the activities are: Head Start; medical care under the Veterans Affairs Department; Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) under the Agriculture Department; and the shuttle program under the National Aeronautics and Space Administration.

The 0.65% reduction applies proportionally to each *account*,⁹ and each program, project, or activity within each account.

For more detailed information on each of the FY2003 regular appropriations bills, see the CRS reports listed below, *For Additional Reading, FY2003 Regular Appropriations Bills*.

Interim Continuing Resolutions

Of the eight FY2003 interim continuing resolutions, the initial resolution, P.L. 107-229, set forth a general spending rate for the various purposes covered in the 11 outstanding regular appropriations bills, with certain exceptions. The third interim resolution, P.L. 107-240, modified this general rate. (Subsequent interim resolutions continued the general rate and, in some cases, provided a few individual exceptions.)

P.L. 107-229 provided a funding level for each purpose at generally the total amount of budget authority that was available for use (obligation) in FY2002, excluding funds that were available for use in the FY2002, but were not used and remained available. (Congress frequently provides budget authority that is available

⁷ An obligation limitation sets a ceiling on the amount of budget authority that can be obligated; thereby, precluding the obligation of budget authority that would otherwise be available for obligation.

⁸ Contract authority is a type of budget authority. It provides an agency with the authority to make government commitments prior to obtaining appropriations for the purpose. Subsequently, appropriations are enacted to pay for the obligations.

⁹ An account is the basic unit of each regular appropriations bills. Similar activities are combined and a lump-sum amount is provided. Most of the regular appropriations bills include numerous accounts.

for more than one fiscal year for specified purposes.) *Funds available for obligation in FY2002* included the net amount appropriated for FY2002, such as adding supplemental appropriations and subtracting *rescissions*.¹⁰

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

P.L. 107-240 excluded funding for activities that the Office of Management and Budget (OMB) had identified as one-time non-recurring activities totaling \$16 billion.¹¹ The general purpose of continuing resolutions is to fund on-going projects or activities until the regular appropriations bills are enacted. OMB stated that the activities listed were not on-going activities, instead they were one-time non-recurring activities, which therefore should not be funded. Some of the activities OMB identified were those Congress distributed on January 10, 2002 (mentioned above).

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

Summary of All Continuing Resolutions

The nine FY2003 continuing resolutions are provided below:

- P.L. 107-229 set forth spending levels and continued funding from October 1, 2002, through October 4, 2002;
- P.L. 107-235 extended the initial continuing resolution for one week, through October 11, 2002;
- P.L. 107-240 modified and extended the initial continuing resolution for another week, through October 18, 2002;
- P.L. 107-244 continued provisions in the previous continuing resolutions through November 22, 2002;
- P.L. 107-294 extended provisions in the previous continuing resolutions through January 11, 2003 and provides a few additional provisions;
- P.L. 108-2 modified and extended funding through January 31, 2003,
- P.L. 108-4 extended funding through February 7, 2003;
- P.L. 108-5 continued funding through February 20, 2003; and
- P.L. 108-7 is the consolidated appropriations resolution.

¹⁰ Rescissions cancel previously enacted budget authority.

¹¹ For a list of these activities, see Attachment C of “OMB Bulletin No. 02-06, Supplement No. 1, Apportionment of the Continuing Resolution(s) for Fiscal Year 2003” (Oct. 4, 2002), [<http://www.whitehouse.gov/omb/bulletins>], visited Oct. 17, 2002.

Recent Practices Regarding Continuing Resolutions

Background

Under the Constitution and federal law, no funds may be drawn from the U.S. Treasury or obligated by federal officials unless appropriated by law (Article I, Section 9 of the Constitution, and 31 U.S.C. 1341). Traditionally, most of the operations of federal departments and agencies are funded each year through the separate enactment of 13 regular appropriations acts. Since these measures expire at the end of the fiscal year, the regular appropriations bills for the subsequent fiscal year must be enacted by October 1st. However, it is not unusual for the enactment of one or more of these acts to be delayed beyond the deadline (for data on the FY1977-FY2003 period, see **Table 3**). When this occurs, affected departments and agencies usually are funded under continuing appropriations acts. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

History and Recent Trends

Continuing resolutions date from at least the late 1870s, and have been a regular part of the annual appropriations process in the post-World War II period. In fact, with the exception of 3 fiscal years, at least one continuing resolution has been enacted for each fiscal year since FY1954. (The exceptions were FY1989; FY1995; and FY1997.) From FY1977 through FY2003, Congress enacted on average five continuing resolutions per year (for detailed information, see **Table 3**).

Over the last 30 years, the nature, scope, and duration of continuing resolutions have varied. From the early 1970s through 1987, continuing resolutions gradually expanded from interim funding measures of comparatively brief duration and length to measures providing funding through the end of the fiscal year (referred to as *full-year continuing resolutions*). In many cases, the full-year measures included the full text of several regular appropriations bills and contained substantive legislation (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees). From 1988 through 2003, the nature, scope, and duration generally contracted, except during 1995-1996 and 2002-2003. During each period, an expanded continuing resolution was enacted.

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.

Table 3. Regular Appropriations Bills Enacted by Deadline and Continuing Resolutions (CRs), FY1977-FY2003

| Fiscal Year | Presidential Administration | Party in Control of Congress: | | Regular Appropriations Bills: | | Continuing Resolutions Enacted |
|-------------|-----------------------------|-------------------------------|-------------|-------------------------------|----------------------------------|--------------------------------|
| | | Senate | House | Approved by or on October 1st | Enacted in Continuing Resolution | |
| 1977 | Gerald Ford | Democrats | Democrats | 13 | 0 | 2 ^a |
| 1978 | Jimmy Carter | Democrats | Democrats | 9 | 1 | 3 |
| 1979 | | | | 5 | 1 | 1 |
| 1980 | | | | 3 | 3 | 2 |
| 1981 | | | | 1 | 5 | 2 |
| 1982 | Ronald Reagan | Republicans | Democrats | 0 | 4 | 4 |
| 1983 | | | | 1 | 7 | 2 |
| 1984 | | | | 4 | 3 | 2 |
| 1985 | | | | 4 | 8 | 5 |
| 1986 | | Democrats | | 0 | 7 | 5 |
| 1987 | | | | 0 | 13 | 5 |
| 1988 | | | | 0 | 13 | 5 |
| 1989 | | | | 13 | 0 | 0 |
| 1990 | George H.W. Bush | Democrats | Democrats | 1 | 0 | 3 |
| 1991 | | | | 0 | 0 | 5 |
| 1992 | | | | 3 | 1 | 4 |
| 1993 | | | | 1 | 0 | 1 |
| 1994 | William Clinton | Democrats | Democrats | 2 | 0 | 3 |
| 1995 | | Republicans | Republicans | 13 | 0 | 0 |
| 1996 | | | | 0 | 5 ^b | 14 |
| 1997 | | | | 8 ^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 | 11 | 9 |

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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 - 107th Congress, 1st session (Washington: GPO, 1995-2001).

- a. The two CRs did not provide continuing funding for entire regular bills; instead, they provided funding for selected activities.
- b. An FY1996 continuing resolution (P.L. 104-99) provided full-year funding for the FY1996 foreign operations regular bill; however, the continuing resolution provided that the foreign operations measure be enacted separately (P.L. 104-107). It is excluded from the amount.
- c. The remaining five bills were enacted by October 1, but not as separate measures; therefore, they are excluded from this amount. The five bills were attached to the FY1997 Defense regular act.
- d. On June 6, 2001, the Democrats became the majority in the Senate. By that time, the Senate Appropriations Committee had not reported any FY2002 regular appropriations measures.
- 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 are the majority in 2003, during which final action on the remaining 11 FY2003 regular bills occurred.

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

Continuing resolutions began to be used to provide funds for longer periods, and occasionally for an entire fiscal year, when agreement on one or more regular acts could not be reached. Further, continuing resolutions became vehicles for substantive legislative provisions unrelated to interim funding, as it became clear that in some years continuing resolutions would be the most effective means to enact such provisions into law. These trends culminated in FY1987 and FY1988, following a period of persistently high deficits and sustained conflict over how to deal with them. For those two years, continuing resolutions effectively became omnibus appropriations measures for the federal government, incorporating all of the regular appropriations acts for the entire fiscal year as well as a host of substantive legislation covering a broad range of policy areas (see P.L. 99-591 and P.L. 100-202).

From FY1988 through FY1995, Congress and the President generally operated under multi-year deficit reduction agreements achieved through budget summits. For the FY1991-FY1995 period, an enforcement mechanism (referred to as *sequestration*¹²) was established. From FY1988 through FY1995, there was a period of relative agreement on overall budget priorities and, therefore, agreements on regular appropriations acts came more readily. Continuing resolutions, when necessary, generally were more limited, contained far less substantive legislation, and were used mainly to provide interim funding for relatively brief periods.

Although the multi-year agreements and enforcement mechanisms remained in effect through FY2002, the President and Congress were in conflict from FY1996 through FY2002. As a result of disagreements over the 1995 balanced budget plan and spending and policy priorities in the FY1996 appropriations measures, two funding gaps occurred in 1995-1996; 14 FY1996 continuing resolutions were enacted; and action was not completed on all 13 FY1996 regular appropriations bills until almost seven months into the fiscal year. The final continuing resolution provided funding through the end of the fiscal year for the five outstanding regular appropriations bills, incorporating the full text of each bill, and included substantive legislation. (For information on funding gaps, see *Funding Gaps* below.)

¹² The Budget Enforcement Act of 1990 (P.L. 101-508) established spending ceilings for each fiscal year (FY1991-FY1995) for funding provided in appropriations measures and controlled by the House and Senate Appropriations Committees (referred to as *discretionary spending*). If appropriations measures were enacted that in total exceeded the spending ceilings, the Act provided for an automatic across-the-board reduction in discretionary spending to eliminate the additional spending (referred to as *sequestration*).

From FY1997 through FY2002, budgetary conflicts have continued between the President and Congress. Instead of resolving these differences in expanded continuing resolutions, they have generally been resolved in omnibus regular appropriations bills. During conference on a regular appropriations bill, other outstanding regular appropriations bills and substantive legislation have been attached to the bill—creating an omnibus regular appropriations bill. During this period, continuing resolutions, when needed, provided interim funding for short periods of time and included little substantive legislation.

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

Budgetary conflict continued during consideration of the FY2003 regular appropriations bills. Final action on the 11 outstanding FY2003 regular bills was not completed until over four and half months into the fiscal year. A significant reason for the conflict and delay was the absence of agreed spending ceilings.

Congress used an omnibus continuing resolution to complete action on the 11 outstanding regular appropriations bills. Under a *closed rule*,¹³ the House adopted a temporary continuing resolution that continued funding through January 31, 2003. The Senate subsequently converted the resolution into a full-year, omnibus resolution. One of the procedural effects of this approach was to prohibit floor amendments in one chamber, while allowing them in the other. Attaching the outstanding regular bills to a bill in conference would have prohibited floor amendments in both chambers.

Types of Continuing Resolutions

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

Interim (or temporary) continuing resolutions provide temporary funding until a specific date or until the enactment of the applicable regular appropriations acts, if earlier. They have remained fairly constant in form and structure in recent years. They have typically established formulas or rates that have provided funding levels for agencies and activities. For example, the initial FY1991 continuing resolution

¹³ A closed rule is a special rule reported by the House Rules Committee that prohibits floor amendments to specific measure. After the House adopts the special rule, it considers the measure.

(P.L. 101-403) generally provided a formula for specified regular bills. The funding level for a purpose in a regular bill was the lower of the amounts provided in the House- and Senate-passed versions of the regular bill. The initial FY2002 continuing resolution (P.L. 107-44) provided a rate: the previous year's amount. Since FY1998, this general rate, with specific modifications, has been used.

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

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

Full-year continuing resolutions provide continuing appropriations through the end of the fiscal year. (**Table 3** provides the number of regular bills funded through the end of the fiscal year in continuing resolutions.) Recently, full-year funding provisions have generally been of three types: (1) full text of the regular act; (2) language that incorporates regular acts by reference to the latest stage of congressional action (usually the conference agreement, if one has been reached); and (3) language that incorporates by reference a new, compromise version of the regular acts.

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

Since FY1977, Congress has included across-the-board spending reductions in at least two full-year continuing resolutions and one interim continuing resolution, which was subsequently extended through the end of the fiscal year. The continuing resolutions generally provided a specific percentage reduction for each purpose in the specified regular appropriations bills. The FY1992 full-year continuing resolution (P.L. 102-266) required a 1.5% spending reduction in discretionary spending purposes in the only outstanding FY1992 regular appropriations bill. An FY1982 interim continuing resolution (P.L. 97-92) provided a 4% across-the-board reduction, with certain exceptions, for specified FY1982 regular appropriations bills. A subsequent FY1982 full-year continuing resolution extended this provision through the end of the fiscal year. For a discussion of the across-the-board reduction in the FY2003 full-year resolution, see *Across-the-Board Discretionary Spending Reduction* above.

During consideration of the FY1996 continuing resolutions, Congress also used a another type of continuing resolution—*targeted appropriations*. Traditionally, a

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

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

House Rules XXI, Clause 2, and XXII, Clause 5, prohibit the consideration of general appropriations measures containing legislative provisions or *unauthorized appropriations*,¹⁴ but these restrictions do not apply to continuing resolutions. (The House typically adopts special rules restricting amendments to continuing resolutions, in part for this reason.) Comparable Senate restrictions, in Senate Rule XVI, on legislative provisions and unauthorized appropriations do apply in the case of continuing resolutions.

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

Funding Gaps

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

¹⁴ Unauthorized appropriations are funds in an appropriations measure for agencies or programs whose authorization has expired or was never granted, or whose budget authority exceeds the ceiling authorized (for more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*).

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

On April 25, 1980, Attorney General Benjamin Civiletti issued a formal opinion which stated in general that maintaining nonessential operations in the absence of appropriations was not permitted under the Antideficiency Act (31 U.S.C. 1341), and that the Justice Department would enforce the criminal sanctions provided for under the Act against future violations.¹⁶

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.¹⁷ 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.”¹⁸

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

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

¹⁶ U.S. Dept. of Justice, Office of the Attorney General, Memorandum to the President, April 25, 1980, reprinted in *Funding Gaps Jeopardize Federal Government Operations*, App. IV, pp. 63-67.

¹⁷ For additional information on the 1981 opinion of the Attorney General, and on the excepted activities outlined in that opinion, see U.S. General Accounting Office, *Principles of Federal Appropriations Law: Vol. II*, GAO/OGC-92-13, Dec. 1992, pp. 6-92–6-99.

¹⁸ P.L. 101-508 Section 13213(b), 31 U.S.C. 1342.

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.”¹⁹ The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

For Additional Reading

Congressional Documents

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

CRS Reports

Budget and Appropriations Process.

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

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

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

CRS Report RL30619. *Examples of Legislative Provisions in Omnibus Appropriations Acts*, by Robert Keith.

CRS Report RS20348. *Federal Funding Gaps: A Brief Overview*, by Robert Keith.

CRS Report 98-721. *Introduction to the Federal Budget Process*, by Robert Keith.

CRS Report 97-865. *Points of Order in the Congressional Budget Process*, by James V. Saturno.

CRS Report RL30339. *Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*, by Robert Keith.

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

CRS Report 98-844. *Shutdown of the Federal Government: Causes, Effects, and Process*, by Sharon S. Gressle.

FY2003 Regular Appropriations Bills.

CRS Report RL31309. *Appropriations for FY2003: Commerce, Justice, and State, the Judiciary, and Related Agencies*, by Susan B. Epstein, Coordinator.

CRS Report RL31313. *Appropriations for FY2003: District of Columbia*, by Eugene Boyd, Coordinator.

CRS Report RL31307. *Appropriations for FY2003: Energy and Water Development*, by Carl Behrens and Marc Humphries, Coordinators.

CRS Report RL31311. *Appropriations for FY2003: Foreign Operations, Export Financing, and Related Programs*, by Larry Nowels.

CRS Report RL31306. *Appropriations for FY2003: Interior and Related Agencies*, by Carol Hardy Vincent and Susan Boren, Coordinators.

CRS Report RL31303. *Appropriations for FY2003: Labor, Health and Human Services, and Education*, by Paul M. Irwin.

CRS Report RL31312. *Appropriations for FY2003: Legislative Branch*, by Paul E. Dwyer.

CRS Report RL31310. *Appropriations for FY2003: Military Construction*, by Daniel H. Else.

CRS Report RL31308. *Appropriations for FY2003: Transportation and Related Agencies*, by David Randall Peterman and John Frittelli, Coordinators.

CRS Report RL31302. *Appropriations for FY2003: Treasury, Postal Service, Executive Office of the President, and General Government*, by Sharon S. Gressle, Coordinator.

CRS Report RL31301. *Appropriations for FY2003: U.S. Department of Agriculture and Related Agencies*, by Ralph M. Chite, Coordinator.

CRS Report RL31304. *Appropriations for FY2003: VA, HUD, and Independent Agencies*, by Dennis W. Snook and Richard Bourdon, Coordinators.

CRS Report RL31305. *Authorization and Appropriations for FY2003: Defense*, by Stephen Daggett and Amy Belasco.

Other Sources

U.S. General Accounting Office. *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31. March 3, 1981.

—. *Principles of Federal Appropriations Law: Vol. II*, 2nd ed. GAO/OGC-92-13. December 1992, chap. 8, “Continuing Resolutions.”