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

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# Continuing Appropriations Acts: Brief Overview of Recent Practices

## Summary

Traditionally, most of the operations of federal departments and agencies are funded each year through separate enactment of 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 1. However, one or more regular appropriations bills are typically delayed beyond the deadline. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions are enacted. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

Over the last 30 years, the nature, scope, and duration of continuing resolutions gradually expanded and, then, generally diminished. 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. 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 of continuing resolutions generally diminished into interim funding measures with little substantive legislation.

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*.

Since only four FY2005 regular appropriations bills have become law, Congress and the President have completed action on two FY2005 CRs (P.L. 108-309 and P.L. 108-416), which sequentially extend funding for the nine outstanding FY2005 regular appropriations bills from October 1, 2004, through December 3, 2004. Congress completed action on a third continuing resolution (H.J.Res. 115), which would extend funding through December 8, 2004. The President has not acted on the measure.

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# Continuing Appropriations Acts: Brief Overview of Recent Practices

Traditionally, most of the operations of federal departments and agencies are funded each year through 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 1. However, one or more regular appropriations bills are typically delayed beyond the deadline. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions are enacted. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

This report is divided into two segments. The first segment provides the most recent developments regarding the FY2005 CRs. The second segment provides information on the history of CRs; the nature, scope, and duration of CRs during the last 30 years; the various types of CRs that have been enacted; and an overview of those instances when budget authority<sup>1</sup> has lapsed and a funding gap has resulted.

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

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

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

## FY2005 Continuing Resolutions

### Most Recent Developments

Since only four FY2005 regular appropriations bills have become law,<sup>2</sup> Congress and the President have completed action on two FY2005 CRs (P.L. 108-309 and P.L. 108-416), which sequentially extend funding for the nine outstanding FY2005 regular appropriations bills<sup>3</sup> from October 1, 2004, through December 3, 2004. Congress subsequently completed action on a third continuing resolution (H.J.Res. 115) that would extend funding through December 8, 2004. The President has not acted on the measure.

The nine outstanding FY2005 regular appropriations bills have been combined into an omnibus appropriations bill, referred to as the Consolidated Appropriations Act, 2005 (H.R. 4818).<sup>4</sup> Final congressional action on the omnibus measure was expected before Thanksgiving, but action has been delayed. While both the House and Senate adopted the conference report on November 20, 2004, no further action has occurred. The Senate is holding the conference report.

Several Senators objected to a provision in the conference report that would allow agents designated by the chairmen of either the House or Senate Appropriations Committees access to “Internal Revenue Service facilities and any tax returns or return information contained” in the facilities.<sup>5</sup> Some Members expressed concern that the provision exempted such individuals from existing statutory penalties for disclosing tax return information to unauthorized persons. In response, the Senate amended a House-adopted resolution (H.Con.Res. 528) and sent it back to the House. The amendment would strike the tax return provision before the bill is enrolled<sup>6</sup> and sent to the President. The House is expected to act on the resolution

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<sup>2</sup> The FY2005 regular appropriations bills that have become law are Department of Defense (P.L. 108-287), District of Columbia (P.L. 108-335), Homeland Security (P.L. 108-334), and Military Construction (P.L. 108-324).

<sup>3</sup> The nine outstanding FY2005 regular bills are Agriculture; Commerce, Justice, State, and the Judiciary; Energy and Water Development; Foreign Operations; Interior; Labor, Health and Human Services, and Education; Legislative Branch; Transportation and Treasury; and Veterans Affairs, Housing and Urban Development, and Independent Agencies.

<sup>4</sup> During conference on the FY2005 Foreign Operations bill (H.R. 4818), the eight other outstanding regular bills were included in the conference report to the Foreign Operations bill, creating the omnibus measure.

<sup>5</sup> Rep. C.W. Bill Young, remarks in the House, *Congressional Record*, daily edition, vol. 150, Nov. 19, 2004, p. H10352 (*Conference Report on H.R. 4818, Consolidated Appropriations Act, 2005*, (H.Rept. 108-792), Division H—Transportation, Treasury, Independent Agencies, and General Government Appropriations Acts, 2005, sec. 222).

<sup>6</sup> An “[e]nrolled bill is the final official copy of a bill or joint resolution that both houses have passed in identical form. An enrolled bill is printed on parchment. After it is certified by the chief officer of the house in which it originated and signed by the House Speaker and the Senate president pro tempore, the measure is sent to the president for his signature.”

(continued...)

the week of December 6, 2004. The Senate, meanwhile, is holding the conference report until the House adopts H.Con.Res. 528, as amended.

## Content of FY2005 Continuing Resolutions

The first FY2005 continuing resolution (P.L. 108-309) provided temporary funding rates for the outstanding bills, an expiration date (November 20, 2004), and other provisions. The last two CRs sequentially extend the expiration date. P.L. 108-416 continues funding through December 3, 2004, and H.J.Res. 115 would extend funding through December 8. H.J.Res. 115 is pending Presidential action.

P.L. 108-309 sets different spending rates for discretionary and mandatory (or direct) spending activities.<sup>7</sup> Under the CR, the discretionary spending rate is generally the amount of budget authority available in FY2004 for activities, projects, or objects.<sup>8</sup> This spending rate excludes budget authority that may be needed to fund additional costs, such as the increased costs of supplies due to inflation. Therefore, this rate may result in less services provided under the activity (project or object) for the duration of the continuing resolution.

In contrast, the mandatory spending level is the amount needed to maintain FY2004 program levels under current law. The CR provides sufficient funds for direct spending programs to pay for all costs.

The CR also includes a provision continuing funding for miscellaneous and supplemental appropriations laws (supplementals) enacted during FY2004.<sup>9</sup> Another

<sup>6</sup> (...continued)

Congressional Quarterly, *Congressional Quarterly's American Congressional Dictionary* (Washington: CQ Press, 2001), p. 90, available at [<http://www.crs.gov/products/guides/glossary/e.shtml>], visited Nov. 29, 2004.

<sup>7</sup> Congress divides budget authority and the resulting outlays into two categories: *discretionary* and *mandatory (or direct) spending*. Appropriations measures include both types of spending. Discretionary spending is controlled by annual appropriations acts, which are under the jurisdiction of the House and Senate Appropriations Committees. Mandatory spending is controlled by legislative acts under the jurisdiction of the authorizing committees (principally the House Ways and Means and Senate Finance Committees).

<sup>8</sup> Technically, discretionary spending is at a *rate of operations not exceeding the current rate*. OMB explains that the annualized spending levels for activities, projects, or objects funded in the CR are the net of (1) the amount enacted in the FY2004 regular appropriations acts; (2) plus the few supplemental amounts allowed; (2) minus rescissions, such as across-the-board reductions; (4) plus or minus transfers mandated by law; (5) plus funds carried over into FY2004; and (6) minus funds still available but not used at the end of FY2004. (Congress frequently provides budget authority for specified purposes that is available for more than one fiscal year.) U.S. Office of Management and Budget, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2005*, OMB Bulletin No. 04-05, available at [<http://www.whitehouse.gov/omb/>], visited Oct. 25, 2004.

<sup>9</sup> See P.L. 108-309, sec. 103. The affected miscellaneous and supplemental appropriations acts include: FY2004 Emergency Supplemental Appropriations Act for Defense and for the  
(continued...)

provision in P.L. 108-309 requires agencies to use the most limited funding permitted in the CR.<sup>10</sup> The Office of Management and Budget (OMB) interprets the CR to exclude “one-time non-recurring projects and activities that were funded in FY2004, which includes most projects and activities funded by FY2004 supplemental appropriations.”<sup>11</sup> Executive branch agencies are required to follow OMB’s interpretation because of preexisting legal requirements for budget execution.

P.L. 108-309 also extends funding for the outstanding bills under terms and conditions provided in the applicable FY2004 regular appropriations acts. For example, a provision in an FY2004 regular appropriations act, which applied to a single account, prohibiting funds for a specified activity or project would generally remain in effect.

The Chairman of the House Committee on Appropriations, Representative C.W. Bill Young, explained other provisions in the CR, some of which are mentioned here.

It includes provisions that allow for the continuation of programs and fee collections that would otherwise expire, such as entitlements under the food stamp program, Medicare part B premium assistance, certain child nutrition programs, the WIC program, and certain SBA loan programs.<sup>12</sup>

The CR extends certain Department of Defense authorities that expired on September 30, such as authority to pay for travel and transportation benefits for family members of military personnel injured during operations in Iraq and Afghanistan and authority to provide prepaid phone cards to all of U.S. troops in certain combat zones. P.L. 108-309 reallocates certain Iraq reconstruction funds in response to a request from the Secretary of State. It also ensures sufficient funding for the Election Assistance Commission and for presidential transition staff, if necessary, which would be available immediately following the presidential election.<sup>13</sup>

For the current status on the FY2005 continuing resolution, see **Table 1**.

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<sup>9</sup> (...continued)

Reconstructions of Iraq and Afghanistan (P.L. 108-106), Title X of the FY2005 Department of Defense Appropriations Act (P.L. 108-287), and the Emergency Supplemental Appropriations for Disaster Relief Act, 2004 (P.L. 108-303).

<sup>10</sup> See P.L. 108-309, sec. 111.

<sup>11</sup> U.S. Office of Management and Budget, *Apportionment of the Continuing Resolutions(s) for Fiscal Year 2005*, Bulletin No. 04-05, available at [<http://www.whitehouse.gov/omb/>], visited Oct. 25, 2004.

<sup>12</sup> Rep. C.W. Bill Young, remarks in the House, *Congressional Record*, available at [<http://www.congress.gov/>], visited Sept. 30, 2004.

<sup>13</sup> *Ibid.*

**Table 1. Current Status of FY2005 Continuing Resolution**

| Measure      | House Report | House Adopted (Vote)     | Senate Report | Senate Adopted (Vote)          | Conference Report | Conference Report Approval |        | Public Law                 |
|--------------|--------------|--------------------------|---------------|--------------------------------|-------------------|----------------------------|--------|----------------------------|
|              |              |                          |               |                                |                   | House                      | Senate |                            |
| H.J.Res. 107 | —            | 09/29/04<br>(389-32)     | —             | 09/29/04<br>(UC <sup>a</sup> ) | —                 | —                          | —      | 09/30/04<br>(P.L. 108-309) |
| H.J.Res. 114 | —            | 11/20/04<br>(Voice Vote) | —             | 11/20/04<br>(UC <sup>a</sup> ) | —                 | —                          | —      | 11/21/04<br>(P.L. 108-416) |
| H.J.Res. 115 | —            | 11/24/04<br>(Voice Vote) | —             | 11/24/04<br>(UC <sup>a</sup> ) | —                 | —                          | —      |                            |

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

## 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 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 1. However, one or more regular appropriations bills are typically delayed beyond the deadline (for data on the FY1977-FY2004 period, see **Table 2**). When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions are enacted. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as continuing resolutions (or CRs).

### History and Recent Trends

Continuing resolutions date from at least the late 1870s, and have been a regular part of the annual appropriations process in the post-World War II period. In fact, with the exception of three fiscal years, at least one continuing resolution has been enacted for each fiscal year since FY1954.<sup>14</sup> (Although all 13 FY1977 regular appropriations bills became law on or by the deadline, two CRs were enacted. These CRs generally provided funding for certain unauthorized activities that had not been included in the regular appropriations acts.) From FY1978 through FY2004,

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<sup>14</sup> The three exceptions were: FY1989, FY1995, and FY1997.

**Table 2. Regular Appropriations Bills Enacted by Deadline and Continuing Resolutions (CRs), FY1977-FY2004**

| Fiscal Year | Presidential Administration | Party in Control of Congress: |             | Regular Appropriations Bills: |                                  | Continuing Resolutions Enacted |
|-------------|-----------------------------|-------------------------------|-------------|-------------------------------|----------------------------------|--------------------------------|
|             |                             | Senate                        | House       | Approved by or on October 1st | Enacted in Continuing Resolution |                                |
| 1977        | Gerald Ford                 | Democrats                     | Democrats   | 13                            | 0                                | (2 <sup>a</sup> )              |
| 1978        | Jimmy Carter                | Democrats                     | Democrats   | 9                             | 1                                | 3                              |
| 1979        |                             |                               |             | 5                             | 1                                | 1                              |
| 1980        |                             |                               |             | 3                             | 3                                | 2                              |
| 1981        |                             |                               |             | 1                             | 5                                | 2                              |
| 1982        | Ronald Reagan               | Republicans                   | Democrats   | 0                             | 4                                | 4                              |
| 1983        |                             |                               |             | 1                             | 7                                | 2                              |
| 1984        |                             |                               |             | 4                             | 3                                | 2                              |
| 1985        |                             |                               |             | 4                             | 8                                | 5                              |
| 1986        |                             |                               |             | 0                             | 7                                | 5                              |
| 1987        |                             | Democrats                     | Democrats   | 0                             | 13                               | 5                              |
| 1988        |                             |                               |             | 0                             | 13                               | 5                              |
| 1989        |                             |                               |             | 13                            | 0                                | 0                              |
| 1990        |                             |                               |             | George H.W. Bush              | Democrats                        | Democrats                      |
| 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 <sup>b</sup>                   | 13                             |
| 1997        |                             |                               |             | 8 <sup>c</sup>                | 0                                | 0                              |
| 1998        |                             |                               |             | 1                             | 0                                | 6                              |
| 1999        |                             |                               |             | 1                             | 0                                | 6                              |
| 2000        |                             |                               |             | 4                             | 0                                | 7                              |
| 2001        |                             |                               |             | 2                             | 0                                | 21                             |
| 2002        | George W. Bush              | Democrats <sup>d</sup>        | Republicans | 0                             | 0                                | 8                              |
| 2003        |                             | Republicans <sup>e</sup>      | 0           | 0 <sup>f</sup>                | 8                                |                                |
| 2004        |                             | 3                             | 0           | 5                             |                                  |                                |

**Sources:** U.S. Congress, Senate Committee on Appropriations, *Appropriations, Budget Estimates, Etc.*, 94<sup>th</sup> Congress, 2<sup>nd</sup> session - 104<sup>th</sup> Congress, 1<sup>st</sup> session (Washington: GPO, 1976-1995). U.S. Congress, House, *Calendars of the U.S. House of Representatives and History of Legislation*, 104<sup>th</sup> Congress, 1<sup>st</sup> session - 108<sup>th</sup> Congress, 2<sup>nd</sup> session (Washington: GPO, 1995-2004).

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

Congress enacted on average five continuing resolutions per year (for detailed information, see **Table 2**).

Over the last 30 years, the nature, scope, and duration of continuing resolutions expanded and, then, generally diminished. 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 of continuing resolutions generally diminished into interim funding measures that did not include the full text of the bills or much substantive legislation.

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

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

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

From FY1988 through FY1995, Congress and the President generally operated under multi-year deficit reduction agreements achieved through budget summits. For the FY1991-FY1995 period, an enforcement mechanism (referred to as sequestration<sup>15</sup>) was established. From FY1988 through FY1995, there was a period of relative agreement on overall budget priorities and, therefore, agreements on regular appropriations acts came more readily. Continuing resolutions, when necessary, generally were more limited, contained far less substantive legislation, and were used mainly to provide interim funding for relatively brief periods.

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<sup>15</sup> The Budget Enforcement Act of 1990 (P.L. 101-508) established spending ceilings for each fiscal year (FY1991-FY1995) for funding provided in appropriations measures and controlled by the House and Senate Appropriations Committees (referred to as *discretionary spending*). If appropriations measures were enacted that in total exceeded the spending ceilings, the act provided for an automatic across-the-board reduction in discretionary spending to eliminate the additional spending (referred to as *sequestration*).

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

Instead of resolving these differences in expanded continuing resolutions, Congress and the Administration generally resolved them in omnibus regular appropriations bills (or in separate appropriations bills). During a conference on a regular appropriations bill, other outstanding regular appropriations bills and substantive legislation were 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 full-year continuing resolutions to regular appropriations bills was due, in part, to avoid floor amendments to regular appropriations bills and expedite completion of the regular bills. In the House and Senate, conference reports are not amendable. Some regular bills either were not considered on the House or Senate floors or were pulled before floor action was completed, thereby preventing action on certain floor amendments. By attaching these measures to a conference report on another regular bill, action on the amendments was avoided.

An example of using an omnibus appropriations measure to expedite consideration occurred during consideration of the FY1997 regular appropriations bills. To ensure all the FY1997 regular appropriations bills became law by the October 1 deadline, five FY1997 regular bills were attached to a sixth FY1997 regular bill in conference. This action obviated the need for a continuing resolution.

## Types of Continuing Resolutions

Continuing resolutions generally can be divided into two categories — interim and full-year continuing resolutions.<sup>16</sup>

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

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<sup>16</sup> For more information, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Robert Keith.

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

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

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

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

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

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

**Substantive Legislative Provisions.** Substantive legislative provisions (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees) covering a wide range of subjects also have been included in some continuing resolutions. Continuing resolutions are attractive

vehicles for such provisions because they are considered must-pass legislation on which the President and Congress eventually must reach agreement. Such provisions have been included both in interim and full-year continuing resolutions.

House Rules XXI, Clause 2, and XXII, Clause 5, prohibit the consideration of general appropriations measures containing legislative provisions or unauthorized appropriations,<sup>17</sup> 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 that establish major new policies and amend permanent provisions of law, such as omnibus crime control legislation (in FY1985). They have also included narrower provisions focused on temporary or one-time problems, such as providing a temporary extension of statutory authority to pay for travel and transportation benefits for family members of military personnel injured during operations in Iraq and Afghanistan (in FY2005). These provisions vary in length from less than one page to 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.

Funding gaps are not a recent phenomenon. In fact, by the 1960s and 1970s, delay in the enactment of appropriation acts, including continuing resolutions, beyond the beginning of the fiscal year had become almost routine. Notably, according to a 1981 GAO report, “most Federal managers continued to operate during periods of funding gaps while minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down while the appropriations measures were being passed.”<sup>18</sup>

On April 25, 1980, Attorney General Benjamin Civiletti issued a formal opinion which stated in general that maintaining nonessential operations in the absence of appropriations was not permitted under the Antideficiency Act (31 U.S.C. 1341), and

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<sup>17</sup> *Unauthorized appropriations* are funds in an appropriations measure for agencies or programs whose authorization has expired or was never granted, or whose budget authority exceeds the ceiling authorized (for more information, see CRS Report 97-684, *The Congressional Appropriations Process: An Introduction*).

<sup>18</sup> U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31, Mar. 3, 1981, p. i.

that the Justice Department would enforce the criminal sanctions provided for under the act against future violations.<sup>19</sup>

In another opinion issued on January 16, 1981, the Attorney General outlined the activities that could be continued by federal agencies during a funding gap. Under that opinion, the only excepted activities include: (1) those involving the orderly termination of agency functions; (2) emergencies involving the safety of human life or the protection of property; or (3) activities authorized by law.<sup>20</sup> Activities authorized by law, for example, include funding for entitlement programs, such as Social Security and Medicare, that are permanently appropriated. In 1990, the Antideficiency Act was amended to clarify that “the term ‘emergencies involving the safety of human life or the protection of property’ does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”<sup>21</sup>

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

On August 16, 1995, Assistant Attorney General Walter Dellinger, in a memorandum for the Director of the Office of Management and Budget (OMB), stated that “the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations.”<sup>22</sup> The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

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<sup>19</sup> U.S. Dept. of Justice, Office of the Attorney General, Memorandum to the President, April 25, 1980, reprinted in *Funding Gaps Jeopardize Federal Government Operations*, App. IV, pp. 63-67.

<sup>20</sup> For additional information on the 1981 opinion of the Attorney General, and on the excepted activities outlined in that opinion, see U.S. General Accounting Office, *Principles of Federal Appropriations Law: Vol. II*, GAO/OGC-92-13, Dec. 1992, pp. 6-92 — 6-99.

<sup>21</sup> P.L. 101-508 Section 13213(b), 31 U.S.C. 1342.

<sup>22</sup> U.S. Department of Justice, Office of Legal Counsel, *Government Operations in the Event of a Lapse in Appropriations*, Memorandum for Alice Rivlin, Director, Office of Management and Budget, Aug. 16, 1995.

## For Additional Reading

### Congressional Document

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

### CRS Reports

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

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

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

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

CRS Report RL32614. *Duration of Continuing Resolutions in Recent Years*, by Robert Keith.

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.

CRS Report 98-844, *Shutdown of the Federal Government: Causes, Effects, and Process*, by Kevin R. Kosar.

#### **FY2005 Regular Appropriations Bills.**

CRS Report RL32309, *Appropriations for FY2005: Commerce, Justice, State, the Judiciary, and Related Agencies*, by Ian F. Fergusson and Susan B. Epstein, Coordinators.

CRS Report RL32302, *Appropriations for FY2005: Department of Homeland Security*, by Jennifer E. Lake and Blas Nuñez-Neto.

CRS Report RL32313, *Appropriations for FY2005: District of Columbia*, by Eugene Boyd, Coordinator.

CRS Report RL32307, *Appropriations for FY2005: Energy and Water Development*, by Carl Behrens, Coordinator.

CRS Report RL32311, *Appropriations for FY2005: Foreign Operations, Export Financing, and Related Programs*, by Larry Nowels.

CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, by Carol Hardy Vincent and Susan Boren, Coordinators.

CRS Report RL32303, *Appropriations for FY2005: Labor, Health and Human Services, and Education*, by Paul M. Irwin.

CRS Report RL32312, *Appropriations for FY2005: Legislative Branch*, by Paul E. Dwyer.

CRS Report RL32310, *Appropriations for FY2005: Military Construction*, by Daniel H. Else.

CRS Report RL32308, *Appropriations for FY2005: Transportation, Treasury, Postal Service, Executive Office of the President, General Government, and Related Agencies*, by David Randall Peterman and John Frittelli, Coordinators.

CRS Report RL32301, *Appropriations for FY2005: U.S. Department of Agriculture and Related Agencies*, by Ralph M. Chite, Coordinator.

CRS Report RL32304, *Appropriations for FY2005: VA, HUD, and Independent Agencies*, by Richard Bourdon and Paul Graney, Coordinators.

CRS Report RL32305, *Authorization and Appropriations for FY2005: 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*, 2<sup>nd</sup> ed. GAO/OGC-92-13. December 1992, chap. 8, “Continuing Resolutions.”