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Continuing Resolutions: Latest Action and Brief Overview of Recent Practices

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Summary

Most routine operations of federal departments and agencies are funded each year through the enactment of several regular appropriations acts. Since these bills are annual, expiring at the end of the fiscal year (September 30), regular appropriations bills for the subsequent fiscal year must be enacted by October 1. Final action on most regular appropriations bills, however, are frequently delayed beyond the start of the fiscal year. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions become law. Because continuing appropriations acts are generally enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or CRs).

CRs may be divided into two categories based on duration — those that provide interim (or temporary) funding and those that provide funds through the end of the fiscal year. *Interim continuing resolutions* provide funding until a specific date or until the enactment of the applicable regular appropriations acts, if earlier. *Full-year continuing resolutions* provide funding in lieu of one or more regular appropriations bills *through the end of the fiscal year*.

Over the past 35 years, the nature, scope, and duration of continuing resolutions gradually expanded. From the early 1970s through 1987, CRs gradually expanded from being used to provide interim funding measures of comparatively brief duration and length to measures providing funding through the end of the fiscal year. The full-year measures included, in some cases, the full text of one or more regular appropriations bills and contained substantive legislation (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees). Since 1988, continuing resolutions have primarily been interim funding measures, and included major legislation less frequently.

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

Since Congress had not completed action on any of the 12 FY2009 regular appropriations bills, the House and Senate passed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (FY2009 consolidated act, H.R. 2638), on September 24 and 27, 2008, respectively, clearing the measure for the President's signature on September 30 (P.L. 110-329). This act, in part, extends funding for nine regular appropriations bills through March 6, 2009, at last year's funding levels, and it provides full-year funding for and completes action on the remaining three FY2009 regular appropriations acts. These acts are (1) Department of Defense Appropriations Act, 2009; (2) Department of Homeland Security Appropriations Act, 2009; and (3) Military Construction and Veterans Affairs Appropriations Act, 2009. Congress passed the FY2009 consolidated act in the form of an "amendment between the houses" to H.R. 2638, Department of Homeland Security Appropriations Act, 2009, replacing that text, with the FY2009 omnibus act.

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Introduction

Most routine operations of federal departments and agencies are funded each year through enactment of several regular appropriations acts, recently ranging from 11 to 13 regular acts.[1] For FY2009, there are 12 regular appropriations acts. Since these bills are annual, expiring at the end of the fiscal year,[2] regular appropriations bills for the subsequent fiscal year must be enacted by October 1. Final action on most regular appropriations bills, however, is frequently delayed beyond the start of the fiscal year. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the regular appropriations bills become law. Because continuing appropriations acts are, for the most part, enacted in the form of joint resolutions, such acts are referred to as *continuing resolutions* (or *CRs*).

This report is divided into two segments. The first segment provides the most recent developments on, and selected provisions of, the Continuing Appropriations Resolution, 2009. The second segment focuses on the (1) history and recent trends, including the nature, scope, and duration of CRs during the past 35 years; (2) continuing resolution types by duration; (3) major substantive legislative provisions included in some CRs; and (4) funding gaps.[3]

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[1] For almost 35 years (1971-2004), Congress generally considered 13 regular appropriations bills each year. As a result of two reorganizations of the House and Senate Committees on Appropriations in 2005 and, again, in 2007, the total number of bills changed twice. Congress considered 11 regular bills for FY2006 and FY2007 and there have been 12 regular bills for FY2008 and FY2009. (For more information, CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by James V. Saturno.)

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

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

FY2009 Continuing Resolution

Most Recent Developments

Since Congress had not completed action on any of the 12 FY2009 regular appropriations bills, the House and Senate passed the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (FY2009 consolidated act) on September 24 and 27, respectively, clearing the measure for the President's signature on September 30 (P.L. 110-329). This act, in part, extends funding for nine regular appropriations bills through March 6, 2009,[4] at last year's funding levels, and it provides full-year funding for and completes action on the remaining three FY2009 regular appropriations acts. These acts are (1) Department of Defense Appropriations Act, 2009; (2) Department of Homeland Security Appropriations Act, 2009; and (3) Military Construction and Veterans Affairs Appropriations Act, 2009.[5]

Instead of passing a standalone CR, both chambers passed a FY2009 omnibus act, which included the continuing appropriations. The act was in the form of a House amendment to a previously passed regular appropriations bill. This was done, in part, to expedite congressional action on the measure. Such amendments are typically used by the House and Senate to exchange proposed final language in order to reach the final stage of congressional action on a measure. In this instance, however, the amendment would effectively replace the text of H.R. 2638, Department of Homeland Security Appropriations Act, 2008, with the FY2009 omnibus act.[6]

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[4] The nine regular appropriations bills are (1) Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act; (2) Commerce, Justice, Science, and Related Agencies Appropriations Act; (3) Energy and Water Development and Related Agencies Appropriations Act; (4) Financial Services and General Government Appropriations Act; (5) Department of the Interior, Environment, and Related Agencies Appropriations Act; (6) Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act; (7) Legislative Branch Appropriations Act; (8) Department of State, Foreign Operations, and Related Programs Appropriations Act; and (9) Transportation, Housing and Urban Development, and Related Agencies Appropriations Act.

[5] The FY2009 consolidated act also includes emergency supplemental appropriations for relief and recovery from hurricanes, floods, and other natural disasters.

[6] An exchange of "amendments between the houses" is a method for resolving differences between the House- and Senate-passed versions of the same bill and is sometimes used in lieu of a conference committee. In this instance, Congress used a regular appropriations bill both chambers passed last year, as the legislative vehicle for the omnibus, since neither the House nor Senate had passed an FY2009 regular appropriations bill. Last year, the House and Senate passed their respective versions of H.R. 2638, Department of Homeland Security Appropriations Act, 2008, and the Senate sent their version of the bill back to the House in the form of a Senate amendment to the House-passed version of the bill; no further action was taken on the measure and the Department of Homeland Security was funded in the Consolidated Appropriations Act for FY2008 (P.L. 110-161). On September 24, 2009, the House revived the measure and adopted a House amendment to the Senate amendment passed in 2007, that replaced that text with the text of the FY2009 omnibus act. The Senate

(continued...)

Division A of the omnibus act provides the Continuing Appropriations Resolution, 2009 (FY2009 continuing resolution).[7] For congressional and presidential action on the FY2009 continuing resolution, see **Table 1**. This report focuses on selected provisions in the CR, such as the expiration date, funding levels, and conditions under which the funds would be available.

Table 1. Action on FY2009 Continuing Appropriations

Measure	House Passage	Senate Passage	Conference Report Filed	Conference Report		Amendments Between the Houses		Public Law
				House	Senate	House	Senate	
H.R. 2638[a]	—	—	—	—	—	370-58 09/24/09	78-12 09/27/08	P.L. 110-329 09/30/08

a. The Department of Homeland Security Appropriations Act, 2008; under the House amendment it would become the Consolidated Security, Disaster Assistance, Continuing Appropriations Act, 2009.

Selected Provisions

The Continuing Appropriations Resolution, 2009, generally extends appropriations[8] for accounts[9] funded in nine FY2008 regular appropriations acts,[10] through March 6, 2009, or until enactment of FY2009 regular measure(s), if earlier.

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[6] (...continued)
agreed to the House amendment on September 27, 2008, thereby completing congressional action.

[7] For the final text of the CR, see Division A of H.R. 2638, enrolled version, available at [http://www.congress.gov/], visited October 1, 2008. The text of the accompanying explanatory statement regarding the CR is located at Rep. Obey, remarks in the House, *Congressional Record*, daily edition, vol. 154, September 24, 2009, p. H9427; and, for the entire statement, see pp. H9427-H9870.

[8] *Appropriations* do not represent cash provided to or reserved for agencies, instead the term generally refers to authority provided by federal law to (1) enter into contracts or other financial obligations that will result in immediate or future expenditures involving federal government funds, and (2) make payments from the Treasury for specified purposes. A second type of appropriation only provides the statutory authority to make payments from the Treasury for specified purposes, not the authority to make financial obligations. Most appropriations provided in annual appropriations measures, including continuing resolutions, are the first type.

[9] The basic unit of a regular or supplemental appropriations act is the *account*. Under these acts, funding for each department and large independent agency is distributed among several accounts. Each account, generally, includes similar programs, projects, or items, such as a "research and development" account or "salaries and expenses" account. For small agencies, a single account may fund all of the agency's activities. These acts typically provide a lump-sum amount for each account. A few accounts include a single program, project, or item, which the appropriations acts fund individually.

[10] The nine FY2008 regular acts were funded in the Consolidated Appropriations Act, 2008, P.L. 110-161, 121 Stat. 1844, see Divisions A, B, C, D, F, G, H, J, and K.

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

The FY2009 continuing resolution provides separate funding rates for discretionary and mandatory spending.[11] It continues entitlements and other mandatory payments that were funded in the FY2008 appropriations acts as well as the Supplemental Nutrition Assistance Program (formerly the Food Stamp Program) at spending levels that would maintain existing program levels under current law. Such a provision is designed to provide additional funding, if needed, to continue benefits for eligible beneficiaries. Spending levels could accommodate, for example, increased costs due to an unexpected increase in the number of beneficiaries.

Regarding discretionary spending, the CR generally extends funding for accounts across-the-board at the amounts provided in the applicable FY2008 regular appropriations acts. The continuing resolution provides funding adjustments for selected accounts and activities and excludes, with a few exceptions, funding included in the FY2008 regular acts that was designated as emergency spending.[12] The few emergency-designated amounts funded in the CR include (1) $144 million for the salaries and expenses account, Federal Bureau of Investigation, Department of Justice; and (2) $207 million for worldwide security protection under the Diplomatic and Consular Programs account, Department of State.

Under the CR, funding adjustments to the spending rate for several accounts are also provided, such as (1) $6.658 billion for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) account, U.S. Department of Agriculture; (2) $2.906 billion for Periodic Censuses and Programs account, Department of Commerce; and (3) $5.100 billion for Low-Income Home Energy Assistance account, Department of Health and Human Services.

Funds are generally available under terms and conditions provided in the applicable FY2008 regular appropriations acts. For example, a provision prohibiting the use of funds in an account for a specified activity or project remains in effect.

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

[12] Under section 204 of the FY2008 budget resolution, S.Con.Res. 21, spending designated as emergency funds was exempt from congressional budget process points of order that enforce spending ceilings. For more information on emergency spending and the points of order, see CRS Report RS21035, *Emergency Spending: Statutory and Congressional Rules*, by James V. Saturno.

One notable exception is that the CR does not extend the annual congressional prohibition against leasing and development of oil and natural gas in the Outer Continental Shelf (OCS).

Recent Practices Regarding Continuing Resolutions

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

Background

Under the U.S. Constitution, no funds may be drawn from the U.S. Treasury unless appropriated by law, giving Congress the "power of the purse."[13] The so-called Antideficiency Act strengthened the application of this section by, in part, explicitly prohibiting federal government employees and officers from making contracts or other obligations in advance of an appropriation, unless authorized by law; and providing administrative and criminal sanctions for those who violate the act.[14]

As mentioned previously, most routine operations of federal departments and agencies are funded each year through the enactment of several annual regular appropriations acts. There are 12 regular appropriations bills for FY2009.[15] Since these bills expire at the end of the fiscal year, regular bills for the subsequent fiscal year must be enacted by October 1. If new funds are not provided, the affected departments and agencies can not make contracts or other obligations, and must promptly begin an orderly shutdown. Certain agency activities, however, are exempt, such as those involving the safety of human life or protection of property. Final action on most regular appropriations bills is usually delayed beyond the start of the new fiscal year (for data on the past 32 years, FY1977 through FY2008, see **Table 2**). To address this problem, Congress typically enacts temporary continuing resolutions, extending funding for affected departments and agencies until the regular bills become law.

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[13] Article I, Section 9, clause 7 of the U.S. Constitution.

[14] 31 U.S.C. §§ 1341(a)-1342 and 1349-1350.

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

Table 2. Regular Appropriations Bills Enacted by or on the Start of New Fiscal Year and Continuing Resolutions, FY1977-FY2008

Fiscal Year	Presidential Administration	Majority Party		Regular Appropriations Bills		CRs Enacted
		Senate	House	Approved by or on October 1	Enacted in CRs	
1977	Gerald Ford	Democrats	Democrats	13	0	(2[a])
1978	Jimmy Carter	Democrats	Democrats	9	1	3
1979				5	1	1
1980				3	3	2
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				0	13	5
1988		Democrats		0	13	5
1989				13	0	0
1990	George H.W. Bush	Democrats	Democrats	1	0	3
1991				0	0	5
1992				3	1	4
1993				1	0	1
1994	William Clinton	Democrats	Democrats	2	0	3
1995				13	0	0
1996		Republicans	Republicans	0	0[b]	13
1997				(13)[c]	0	0
1998				1	0	6
1999				1	0	6
2000				4	0	7
2001				2	0	21
2002	George W. Bush	Democrats[d]	Republicans	0	0	8
2003		Republicans[e]		0	0[f]	8
2004				3	0	5
2005				1	0	3
2006				2	0	3
2007				1	9	4
2008		Democrats	Democrats	0	0	4

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

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

b. An FY1996 continuing resolution (P.L. 104-99) provided full-year funding for the FY1996 foreign operations regular bill; however, the continuing resolution provided that the foreign operations measure be enacted separately (P.L. 104-107).

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

d. On June 6, 2001, the Democrats became the majority in the Senate. By that time, the Senate Appropriations Committee had not reported any FY2002 regular appropriations measures.

e. The Democrats were the majority in the Senate in 2002, during initial consideration of the 13 FY2003 regular appropriations bills and final action on two of the regular bills. The Republicans were the majority in 2003, during which final action on the remaining 11 FY2003 regular bills occurred.

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

History and Recent Trends

CRs date from at least the late 1870s, and have been a regular part of the annual appropriations process for over 50 years. In fact, with the exception of three fiscal years (FY1989, FY1995, and FY1997),[16] at least one continuing resolution has been enacted for each fiscal year since FY1955. (It is important to note that while Congress enacted two FY1977 CRs, these acts did not temporarily fund any FY1977 regular appropriations bills since all the bills became law on or by the start of the new fiscal year.)[17]

During the past 35 years, the nature, scope, and duration of CRs expanded. From the early 1970s through 1987, CRs gradually expanded from interim funding measures of comparatively brief duration and length to measures providing funding in lieu of one or more regular appropriations bills through the end of the fiscal year. These measures included, in some cases, the full text of one or more regular appropriations bills, and sometimes contained substantive legislation as well (i.e., provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees). Since 1988, continuing resolutions have tended to be interim funding measures with less substantive legislation.[18]

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

Beginning in the early 1970s, conflicts between the President and Congress over major budget priorities, triggered in part by rapidly increasing deficits, greatly increased the difficulty of reaching final agreements on regular appropriations acts, even after the start of the fiscal year was shifted from July 1 to October 1,[19] these conflicts often led to protracted delay in their enactment. The view of continuing resolutions as "must-pass" measures because of the constitutional and statutory imperatives was given increased urgency due to the 1980 Department of Justice opinion prohibiting agencies from continuing all but minimal activities when funds were not available.[20] The result was that continuing resolutions became a major battleground for the resolution of budgetary conflicts and sometimes other policy

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

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

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

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

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

conflicts as well. Consequently, the nature, scope, and duration of CRs began to change.

Continuing resolutions began to be used to provide funds for longer periods, and occasionally for an entire fiscal year, when agreement on one or more regular acts could not be reached. Further, CRs became vehicles for substantive legislative provisions unrelated to interim funding, as it became clear that in some years CRs would be the most effective means to enact such provisions into law. These trends culminated in FY1987 and FY1988, following a period of persistently high deficits and sustained conflict over how to deal with them. For those two years, CRs effectively became omnibus appropriations measures for the federal government, incorporating all of the regular appropriations acts for the entire fiscal year as well as a host of substantive legislation covering a broad range of policy areas.[21]

From FY1989 through FY1995, Congress and the President generally operated under multi-year deficit reduction agreements achieved through budget summits, and beginning with FY1991, separate enforcement of appropriations measures through discretionary spending ceilings.[22] With relative agreement on overall budget priorities, conflicts over appropriations measures were generally narrower. CRs were typically more limited in scope, contained less substantive legislation, and were used mainly to provide interim funding for relatively brief periods. The only exception was FY1992, when Congress provided full-year funding in a CR for one FY1992 regular appropriations act, Foreign Operations.[23]

Significant budgetary conflict resumed in 1995. The conflicts over spending priorities occurred between Congress and the Administration, within Congress, and within the political parties as well. Due, in part, to these differences, there were two partial government shutdowns in the winter of 1995-1996, the first lasted for 5 days

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

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

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

and the second, 21 days.[24] Instead of resolving the FY1996 conflicts in the form of one or more continuing resolutions, Congress created an omnibus measure for FY1996.[25]

The change in the type of legislative vehicle from full-year continuing resolutions to omnibus appropriations measures created at the conference stage of the legislative process was based on political and procedural considerations. Combining uncompleted appropriations bills, or even including those that had received no floor consideration in one or both chambers, into a single conference report, for example, made it possible to avoid floor consideration of certain controversial floor amendments to regular appropriations bills.[26] Creating an omnibus appropriations bill at the conference stage could also be used to expedite completion of the outstanding regular bills by reducing the number of votes and the number of opportunities for a presidential veto.[27]

Since FY1997, conflicts over outstanding regular bills have generally been resolved in omnibus appropriations measures, rather than full-year continuing resolutions. The only exception was FY2007, for that year nine of 11 FY2007 regular bills were funded for the entire fiscal year in a continuing resolution.[28] During the FY1997-FY2008 period, omnibus regular appropriations bills were generally developed by attaching the language of outstanding regular appropriations bills, as well as substantive legislation, to the conference report on another regular appropriations bill.

It is important to note that during the FY1996 conflict Congress began using a new type of provision in CRs: *targeted appropriations*. It separated some specific activities from the six outstanding regular bills and distributed them among three FY1996 continuing resolutions.[29] Some of the activities were funded for the full

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[24] During a *partial government shutdown*, departments and agencies funded in outstanding regular appropriations bills must begin to shut down, while those funded in regular bills that have already become law continue their normal operations. During the second partial government shutdown, departments and agencies covered under six FY1996 regular bills shut down and furloughed employees, while those agencies under the seven regular bill continued their activities. It is important to note that there are exceptions to the shutdown requirement for certain activities, such as protecting life or property, as described in CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Robert Keith.

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

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

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

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

[29] See, for example, P.L. 104-91, 110 Stat. 7; P.L. 104-92, 110 Stat. 16; and P.L. 104-94, 110 (continued...)

year, whereas others were temporarily funded. A single continuing resolution traditionally provides funding for all activities in each regular appropriations bill it funds. Although CRs sometimes have provided a separate expiration date for activities funded in one or more regular appropriations bills, each date applied to all activities in the applicable regular appropriations bill.

Types of Continuing Resolutions by Duration

Continuing resolutions may be classified as "interim" or "full-year continuing resolutions."[30] CRs typically include an expiration date and provide that funding shall be extended for each regular appropriations bill covered, until that date, or until enactment of each regular appropriations bill, if earlier. A *full-year continuing resolution* expires at the end of the fiscal year, while an *interim CR* expires earlier.

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

Spending rates have been provided in various forms. For example, they have provided funding across accounts at levels available in the previous fiscal year, providing no increase from the prior year. CRs have also provided spending, by contrast, at levels that maintained the existing program levels under current law. This rate could have the effect, for example, of increasing the spending level from the previous year to pay additional costs due to inflation as well as an increase in the number of beneficiaries.[31] In some cases, the spending rate has been a formula. Some CRs, for example, have provided that the funding level for each account is the lower of the amounts provided in the (1) House-passed version of the applicable regular bill, (2) Senate-passed version, or (3) regular appropriations act for the previous fiscal year. CRs have also provided certain funding exceptions to the spending rate for specific accounts and/or activities, often providing a specific amount.

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

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[29] (...continued)
Stat. 25.

[30] For more information, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Robert Keith.

[31] See FY2009 CR spending rate for mandatory spending in "Selected Provisions" section above.

Recently, the spending rate for entitlements and other mandatory spending (as well as the Supplemental Nutrition Assistance Program)[32] funded in the regular bills covered have generally remained constant. CRs, including the FY2009 CR, have extended funding at spending levels that maintained existing program levels under current law. This spending rate is designed to provide sufficient funding to continue benefits for all eligible beneficiaries. The resulting spending levels could reflect an increase necessary to accommodate, for example, increased costs due to an increase in the number of beneficiaries.

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

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

The initial temporary continuing resolution has language establishing a spending rate and the expiration date, among other provisions. Once it becomes law, further CRs may be sequentially enacted to extend the expiration date. These subsequent continuing resolutions may sometimes change the spending rates as well as other provisions. From FY1978 through FY2008, on average, five CRs became law per fiscal year. (For detailed information, see **Table 2**; these data include full-year as well as interim CRs.)

Full-year continuing resolutions provide funding in lieu of one or more regular appropriations bills *through the end of the fiscal year*. (**Table 2** provides the number of regular bills funded in each of the 13 full-year CRs enacted during the FY1978-FY2008 period.) Full-year funding rates have generally been provided in three forms, they have included (1) full text of the regular act; (2) language that incorporates regular acts by cross reference to the latest stage of congressional action (such as the conference agreement, if one has been reached); or (3) spending rates. Full-year CRs have also included various combinations of the three types.

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

Full-year continuing resolutions effectively replace regular appropriations acts for the fiscal year. Further, when continuing resolutions have included the full text

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

of one or more regular appropriations acts, they also have included all the myriad general and administrative provisions typically included in regular acts.[33] Consequently, they may be hundreds of pages in length, whereas interim resolutions have recently ranged from less than half a page (in the case of a simple extension of a previous resolution, for example) to 11 pages.

Some CRs have provided both interim and full-year funding. In these cases, typically, one regular bill was funded through the end of the fiscal year (September 30), while the other outstanding regular bills were provided temporary funding.[34]

Substantive Legislative Provisions

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

House Rules XXI, Clause 2, and XXII, Clause 5, prohibit legislative provisions or unauthorized appropriations[35] in general appropriations measures (including amendments or conference report to such measures),[36] but these restrictions do not apply to continuing resolutions. Comparable Senate restrictions, in Senate Rule XVI, prohibit amendments, either on the Senate floor or amendments between the houses, that include legislative provisions or unauthorized appropriations. This rule does apply in the case of CRs.

Substantive provisions in continuing resolutions have included language that establish major new policies and amend permanent provisions of law, such as the Comprehensive Crime Control Act of 1984.[37] 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.[38]

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

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

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

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

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

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

These provisions vary in length from a small paragraph to more than 200 pages (in the case, for example, of the Comprehensive Crime Control Act of 1984). With the advent of omnibus appropriations acts, their have been fewer examples of major policy initiatives in CRs.

Funding Gaps

Over the years, delay in the enactment of regular appropriations measures by the start of a new fiscal year, and continuing resolutions at the start, or during, that fiscal year has led to periods during which agency appropriations authority has lapsed. Such periods are referred to as *funding gaps*.[39] Depending on the number of regular appropriations that have yet to be enacted, a funding gap can affect either a few departments or agencies or most of the federal government.

From FY1977 through FY2008, there have been 17 funding gaps.[40] Most funding gaps occurred during the first half of this period, 15 funding gaps occurred between FY1977 and FY1992. During the latter half, there were only two funding gaps, the two partial government shutdowns in the winter of 1995-1996.

Prior to 1980, most federal managers continued to operate during periods of funding gaps while minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down while waiting for the applicable regular appropriations bill or a CR to become law.[41] On April 25, 1980, however, Attorney General Benjamin Civiletti issued a formal opinion clarifying that maintaining nonessential operations in the absence of appropriations was not permitted under the Antideficiency Act,[42] and that the Justice Department would enforce the criminal sanctions provided for under the act against future violations.[43]

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

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

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

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

[42] 31 U.S.C. § 1341(a).

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

termination of agency functions; (2) emergencies involving the safety of human life or the protection of property; or (3) activities authorized by law.[44] 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."[45]

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."[46] The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.[47]

Since 1981, whenever delay in the appropriations process has led to periods of lapsed appropriations, affected federal agencies and departments lacking appropriations have begun to shut down their agencies. A shutdown involves the curtailment of non-excepted activities and immediate furlough of employees performing such activities (although provisions of law have been enacted to ratify obligations and pay employees retroactively).[48] From 1981 through 1994, there were nine funding gaps, varying in duration from only one to three days, some of which occurred over weekends. Most of these gaps occurred after the beginning of the fiscal year, meaning they were not caused because of a failure to enact initial continuing resolutions, but because of delay in enacting a further extension. As mentioned previously, during the winter of 1995-1996, there were two funding gaps — one lasting 5 days and the other lasting 21 days. No funding gaps have occurred since 1996.

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

[45] 31 U.S.C. 1342.

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

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

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