

# CRS Report for Congress

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## **Continuing Appropriations Acts: Brief Overview of Recent Practices<sup>1</sup>**

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### **Summary**

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.<sup>2</sup> Normally, most of the operations of federal departments and agencies are funded each year through the separate enactment of 13 regular appropriations acts.<sup>3</sup> However, it is not unusual for the enactment of one or more of these acts to be delayed beyond the beginning of the fiscal year on October 1.<sup>4</sup> When this occurs, affected departments and agencies usually are funded under one or more continuing appropriations acts.

Because continuing appropriations acts typically are enacted in the form of a joint resolution, such acts are referred to as continuing resolutions (or CRs).

Beginning in the early 1970s, a sustained period of heightened budgetary conflict, caused in part by persistent deficits and other factors, led to changes in the nature of continuing resolutions. In some years, this conflict greatly complicated their timely enactment. On occasion, such conflict has prevented agreement even on short-term funding extensions. When this occurs, the ensuing period of lapsed appropriations is known as a funding gap. During late 1995 and early 1996, two funding gaps occurred, forcing affected federal departments and agencies to shut down non-essential activities.

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<sup>1</sup> Edward Davis wrote the original report in 1995, and Sandy Streeter updated it in 1997.

<sup>2</sup> See Article I, Section 9 of the Constitution, and 31 *U.S.C.* 1341.

<sup>3</sup> For information the types of appropriations measures and the appropriations process, see U.S. Library of Congress, Congressional Research Service, *The Congressional Appropriations Process: An Introduction*, by Sandy Streeter, CRS Report 97-684 GOV (Washington: 1997).

<sup>4</sup> Fiscal years begin on October 1 and end the following September 30. For example, the fiscal year 1997 began on October 1, 1996.

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## 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 FY1989, FY1995, and FY1997, at least one continuing resolution has been enacted for each fiscal year since 1954.<sup>5</sup> (However, the two FY1977 continuing resolutions did not provide funding for an entire regular appropriations bill. Instead, they provided funding for only selected activities.)

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 temporary 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.<sup>6</sup> 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.<sup>7</sup>

From FY1988 through FY1995, Congress and the President achieved a series of multi-year deficit reduction agreements. Starting in 1990, these agreements have included

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<sup>5</sup> For a listing of recent continuing resolutions, see U.S. Library of Congress, Congressional Research Service, *Continuing Appropriations Acts: Summary Data for Fiscal Years 1977-1995*, by Edward Davis and Robert Keith, CRS Report 95-78 GOV (Washington: December 30, 1994). For a brief discussion of earlier periods see U.S. Library of Congress, Congressional Research Service, *Budget Concepts and Terminology: The Appropriations Phase*, by Louis Fisher, CRS Report 74-210 GGR (Washington: November 21, 1974).

<sup>6</sup> For a discussion of these and other trends involving the use of continuing resolutions through the mid-1980's, see U.S. Congress, House Committee on the Budget, *The Whole and the Parts: Piecemeal and Integrated Approaches to Congressional Budgeting*, committee print No. CP-3, prepared for the Task Force on the Budget Process by Allen Schick, 100<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 1987).

<sup>7</sup> See P.L. 99-591 and P.L. 100-202.

enforceable limits on spending controlled in annual appropriations acts (so-called *discretionary spending*).<sup>8</sup> During this period of relative agreement on overall budget priorities, agreement 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.

During consideration of the FY1996 regular appropriations bills and continuing resolutions, the President and Congress were in conflict over the 1995 balanced budget plan and spending priorities in the fiscal year 1996 appropriations measures. As a result, two funding gaps occurred, 14 continuing resolutions were enacted (including one providing funding for six regular appropriations bills to the end of the fiscal year) and action was not completed until almost seven months into the fiscal year.

## **Types of Continuing Resolutions**

Continuing resolutions generally can be divided into two categories—those that provide temporary funding and those that provide funds for the entire fiscal year.

Temporary continuing resolutions provide interim funding until a specific date or until the enactment of the applicable regular appropriations acts. They have remained fairly constant in form and structure in recent years. Typically, they establish formulas that provide funding for programs and activities under the affected appropriations act(s) at a level which is the lowest of one of the following: (1) the current rate (*i.e.*, the previous year's appropriation); (2) the rate provided for in the applicable regular act as reported to or passed by the House (if any); or (3) the rate provided in the applicable regular act as reported to or passed by the Senate (if any). (See, for example, Section 101 of P.L. 103-88, approved September 30, 1993.) In earlier years, this funding formula sometimes included the rate of appropriations as provided for in the President's budget as an another option. (See, for example, Section 101(b) of P.L. 94-41, approved June 27, 1975.)

Virtually all of the temporary continuing resolutions in recent years have used some variation of the formula that provides funds at the lower of the House or Senate passed (reported) levels, or the current rate. In most cases, the formula has applied to all programs or activities covered by a particular regular appropriations act. However, such formulas 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, approved October 11, 1976). Once a temporary continuing resolution is enacted, additional temporary resolutions, if necessary, may simply extend the deadline in the initial resolution without changing the funding formula, or they may include an updated formula that represents, for example, a later stage of congressional action on one or more of the covered regular acts than had been reached earlier.

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<sup>8</sup> For background on these and other budget enforcement procedures, see U.S. Library of Congress, Congressional Research Service, *Manual on the Federal Budget Process*, by Allen Schick, Robert Keith, and Edward Davis, CRS Report 91-902 GOV (Washington: December 24, 1991); *Budget Process Changes Made in the 102nd-103rd Congresses (1991-1994)*, by Robert Keith and Edward Davis, CRS Report 95-457 GOV (Washington: March 31, 1995); and *Budget Process Changes Made in the 104<sup>th</sup> Congress (1995-1996)*, by Robert Keith, CRS Report 97-44 GOV, (Washington: December 27, 1996).

Full-year continuing resolutions provide continuing appropriations for the entire fiscal year or for that portion of the fiscal year remaining after the expiration of previous temporary continuing resolutions. Typically, full-year funding provisions are one of two types: (1) provisions that incorporate regular appropriations acts by reference to the latest stage of congressional action (usually the conference agreement, if one has been reached); or (2) the full text of the regular act.

Full-year continuing resolutions effectively become regular appropriation 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, approved December 22, 1987, and Section 101 of P.L. 99-591, approved October 30, 1986.) Consequently, they may be hundreds of pages in length, whereas temporary resolutions typically are a few pages or less (in the case of a simple extension of a previous resolution, perhaps only one page).

During consideration of the FY1996 continuing resolutions, Congress also used *targeted appropriations*. Traditionally, continuing resolutions provide funding for all activities in the outstanding regular appropriations bills. However, Congress separated activities from the outstanding regular bills and distributed them among three FY1996 continuing resolutions. Congress distributed funding for activities in four of the six outstanding regular bills among the three continuing resolutions. Funding for most of the activities in the fifth regular bill (Foreign Operations) was provided in one of these continuing resolutions and funding for the most of the activities in the sixth bill (District of Columbia) in another.

**Substantive Legislative Provisions.** Substantive legislative provisions (*i.e.*, provisions in 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 over which the President and Congress eventually must reach agreement. Such provisions have been included both in temporary and full-year continuing resolutions.

House rules that prohibit the consideration of general appropriations measures containing legislative provisions or unauthorized appropriations do not apply to continuing resolutions<sup>9</sup> (though the House typically adopts special rules restricting amendments to continuing resolutions, in part for this reason). Comparable Senate restrictions on legislative provisions and unauthorized appropriations do apply in the case of continuing resolutions, but these restrictions generally do not bar such provisions if the provisions are germane modifications to a House-passed measure.<sup>10</sup>

Substantive provisions in continuing resolutions have included comprehensive measures, such as omnibus crime control legislation (in FY1985) and foreign assistance

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<sup>9</sup> U.S. Congress, House, *Deschler's Precedents of the U.S. House of Representatives*, H. Doc. 94-661, 94<sup>th</sup> Cong., 2d sess., (Washington: GPO, 1989), Chapter 26, §1.2.

<sup>10</sup> Currently, the prohibition against legislative provisions in most appropriations measures is not in effect in the Senate.

reauthorizations (in FY1984), that establish major new policies and amend permanent provisions of law. They have also included narrower provisions focused on temporary or one-time problems, such as special House and Senate procedures for considering certain presidential requests for funding, temporary increases in the statutory limit on the public debt, and provisions canceling or modifying a sequester order under the 1985 Balanced Budget and Emergency Deficit Control Act (or *Gramm-Rudman-Hollings*). These provisions vary in length from 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>11</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 that the Justice Department would enforce the criminal sanctions provided for under the Act against future violations.<sup>12</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>13</sup> Activities authorized by law, for

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<sup>11</sup> U.S. General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO report PAD-81-31 (Washington: March 3, 1981), page i.

<sup>12</sup> U.S. Dept. of Justice, Office of the Attorney General, Memorandum to the President. April 25, 1980. As reprinted in *Funding Gaps Jeopardize Federal Government Operations*, ops., Appendix IV, pages 63-67.

<sup>13</sup> For additional information on funding gaps, 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 report GAO/OGC-92-13 (Washington: December 1992), pages 6-92 - 6-99; and U.S. Library of Congress, Congressional Research Service, *Shutdown of the Federal Government: Effects on the Federal Workforce and Other Sectors*, James P. McGrath, CRS Report 95-906 GOV (Washington: August 15, 1997).

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>14</sup>

Accordingly, 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 6 (including weekends).<sup>15</sup> In contrast, from 1981 through 1994, there were nine funding gaps, varying in duration from only one to three days, some of which occurred over weekends. Most of these gaps occurred after the beginning of the fiscal year, meaning that they were not caused because of a failure to enact an initial continuing resolution, but because of delay in enacting a further extension.<sup>16</sup>

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>17</sup> The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 Opinion.<sup>18</sup>

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<sup>14</sup> P.L. 101-508 §13213(b), 31 U.S.C. 1342.

<sup>15</sup> *Shutdown of the Federal Government: Effects on the Federal Workforce and Other Sectors*, ops., pp. 4-5.

<sup>16</sup> See U.S. Library of Congress, Congressional Research Service, *Continuing Resolutions and Funding Gaps: Fiscal Years 1981-1995*, by Robert Keith and Edward Davis, CRS Report 95-77 GOV (Washington: December 30, 1994).

<sup>17</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 (Washington: August 16, 1995).

<sup>18</sup> For information on proposals to provide a fallback funding source (*automatic continuing resolution*) to avoid funding gaps, see U.S. Library of Congress, Congressional Research Service, *Proposals for an Automatic Continuing Resolution*, by Robert Keith, CRS Report 97-611 GOV (Washington: September 8, 1997).



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