



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

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

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

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

Since none of the 12 FY2012 regular appropriations acts were enacted by October 1, 2011, Congress provided more time to resolve differences within Congress and between Congress and the President by enacting five acts that sequentially provided FY2012 continuing appropriations from October 1, 2011, through December 23, 2011 (P.L. 112-33, P.L. 112-36, P.L. 112-55, P.L. 112-67, and P.L. 112-68).

On December 23, 2011, President Barack H. Obama completed action on the remaining FY2012 regular appropriations bills, by signing the Consolidated Appropriations Act, 2012 (P.L. 112-74). This act included nine FY2012 regular appropriations acts. On November 18, 2011, the President signed the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55), which included three FY2012 regular appropriations acts.

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Introduction

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

This report is divided into two segments. The first section provides the most recent information on the FY2012 continuing resolutions, including the status, funding levels as well as descriptions of selected provisions. The second segment focuses on the (1) history and recent trends, including the nature, scope, and duration of CRs during the past 35 years; (2) CR types by duration; (3) major substantive legislative provisions included in some CRs; and (4) funding gaps.²

FY2012 Continuing Resolutions

Recent Developments

Since none of the 12 FY2012 regular appropriations acts were enacted by October 1, 2011, Congress provided more time to resolve differences within Congress and between Congress and the President by enacting five acts that sequentially provided FY2012 continuing appropriations from October 1, 2011, through December 23, 2011 (P.L. 112-33,³ P.L. 112-36,⁴ P.L. 112-55,⁵ P.L. 112-67,⁶ and P.L. 112-68⁷). The last three acts extended funding levels established by P.L. 112-36.

On December 23, 2011, President Barack H. Obama completed action on the remaining FY2012 regular appropriations bills, by signing the Consolidated Appropriations Act, 2012 (P.L. 112-74).⁸ This act included nine FY2012 regular appropriations acts.⁹ On November 18, 2011, the President

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

² “The term ‘funding gap’ refers to a period of time between the expiration of an appropriation and the enactment of a new one.” U.S. Government Accountability Office, *Principles of Federal Appropriations Law: Vol. II*, 3rd ed., GAO-06-382SP (Washington: February 2006), p. 6-146. For more information, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

³ 125 Stat. 363.

⁴ 125 Stat. 386.

⁵ 125 Stat. 552.

⁶ 125 Stat. 769.

⁷ 125 Stat. 770.

⁸ 125 Stat. 786.

⁹ The nine FY2012 regular bills are the Department of Defense Appropriations Act, 2012; Energy and Water Development Appropriations Act, 2012; Financial Services and General Government Appropriations Act, 2012; Department of Homeland Security Appropriations Act, 2012; Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012; Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2012; Legislative Branch Appropriations Act, 2012; Military Construction and Veterans (continued...)

signed the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55) which included three FY2012 regular appropriations.¹⁰

Congress and the President completed action on the last two FY2012 CRs in mid-December, since the continuing appropriations provision in P.L. 112-55 was scheduled to expire at midnight on December 16, 2011, and they needed more time to complete action on the Consolidated Appropriations Act 2012. On December 16, 2011, the House adopted the conference report to H.R. 2055 (112th Congress), Consolidated Appropriations Act, 2012, and two FY2012 continuing resolutions. H.J.Res. 94 (112th Congress) extended funding for one day through December 17, 2011, providing an extra day for the Senate to consider and adopt the conference report. H.J.Res. 95 (112th Congress) is a one-week spending extension, from December 18, 2011, through December 23, 2011, giving Congress more time to prepare the Consolidated Appropriations Act, 2012, for the President's consideration.¹¹

On December 16, 2011, the Senate adopted H.J.Res. 94 (112th Congress) and President Obama signed it (P.L. 112-67). On December 17, 2011, the Senate adopted H.J.Res. 95 (112th Congress) and the President approved it (P.L. 112-68).

The Senate also adopted the conference report to H.R. 2055 (112th Congress), Consolidated Appropriations Act, 2012, on December 17, 2011.

Congress and the President considered the first two FY2012 CRs in September 2011. Congress began consideration of the initial FY2012 continuing resolution, resulting in two acts, P.L. 112-33 and P.L. 112-36, both establishing funding levels for the outstanding FY2012 regular appropriations bills. The text of these acts is almost identical.¹² P.L. 112-33 extended funding through October 4, 2011, and P.L. 112-36 continued spending from October 5, 2011, through November 18, 2011.

The Congressional Budget Office (CBO) estimates that each act provides an annualized amount of \$1.043 trillion in discretionary spending budget authority¹³ that is subject to the FY2012

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Affairs and Related Agencies Appropriations Act, 2012; and Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012.

¹⁰ The three FY2012 regular appropriations acts are the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012; Commerce, Justice, and Science, and Related Agencies Appropriations Act, 2012; and Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2012.

¹¹ On December 16, 2011, the House also passed H.R. 3672 (112th Congress), Disaster Relief Appropriations Act, 2012, and H.Con.Res. 94 (112th Congress). H.R. 3672 (112th Congress) would provide an additional \$8.6 billion in budget authority, primarily for the disaster relief fund account under Department of Homeland Security, Federal Emergency Management Agency. H.Con.Res. 94 (112th Congress) would have directed the enrolling clerk to include in the House- and Senate-passed version of H.R. 3672 a 1.83% across-the-board reduction. This reduction would have applied to budget authority for FY2012 for any discretionary spending account in generally any FY2012 appropriations act, except Department of Defense and Military Construction and Veterans Affairs. On December 17, 2011, the Senate passed H.R. 3672 (112th Congress), but rejected H.Con.Res. 94 (112th Congress).

¹² There are only two differences: Section 106, providing the expiration dates of the respective acts, and Section 124, delaying the date by which the U.S. Postal Service is required to make a \$5.5 billion payment to the Postal Service Retiree Health Benefits Fund.

¹³ Congress provides spending to agencies in the form of *budget authority*, which does not represent cash provided to, or reserved for, agencies. Instead, the term refers to authority provided by federal law to enter into contracts or other financial *obligations* that will result in immediate or future expenditures (or *outlays*) involving federal government (continued...)

discretionary spending limits established in the Budget Control Act of 2011 (BCA, P.L. 112-25). This amount equals the total FY2012 discretionary limits agreed to in the BCA. The two CRs provide an additional \$119 billion in discretionary funds designated for overseas contingency operations/global war on terrorism. Under the BCA, funds so designated are exempt from the discretionary spending limits.

Provided below is a description of selected provisions in each CR. For action on the FY2012 CRs, see **Table 1**.

Table 1. Action on FY2012 Continuing Appropriations

Measure	Vote		Conference Report or Amendment Exchange	Vote			Public Law
	House	Senate		House	Senate		
H.R. 2608	a	a	S.Amdt. 665	10/04/11 352-66	09/26/11 79-12		10/05/11 P.L. 112-36
H.R. 2017	b	09/26/11 unanimous consent	—	09/29/11 unanimous consent	—		09/30/11 P.L. 112-33
H.R. 2112	c	11/01/11 69-30	H.Rept. 112- 284	11/17/11 298-121	11/17/11 70-30		11/18/11 P.L. 112-55
H.J.Res. 94	12/16/11 voice vote	12/16/11 unanimous consent	—	—	—		12/16/11 P.L. 112-67
H.J.Res. 95	12/16/11 voice vote	12/17/11 unanimous consent	—	—	—		12/17/11 P.L. 112-68

Source: Congressional Research Service.

- a. On July 26, 2011, the House passed this measure as the Small Business Program Extension and Reform Act of 2011; on July 28, 2011, the Senate adopted a full substitute amendment to the House-passed version on the same subject. Chairman Harold Rogers, House Appropriations Committee, offered a House substitute amendment to the Senate amendment. The House amendment replaced the small business provisions with text of a Continuing Appropriations Act, 2012.
- b. On June 2, 2011, the House passed this bill as the Department of Homeland Security Appropriations Act, 2012; on September 7, 2011, the Senate Appropriations Committee reported a full substitute amendment on the same subject. On September 26, 2011, the Senate adopted a full substitute amendment (Senate amendment 666) converting the measure into a Continuing Appropriations Act, 2012 and passed the bill, as amended.
- c. On June 16, 2011, the House passed this bill as the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (agriculture regular appropriations bill); on September 7, 2011, the Senate Appropriations Committee reported a full substitute amendment on the

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funds. Budget authority and the resulting outlays are divided into two categories: *discretionary* and *direct* (or *mandatory*) spending. Discretionary spending is controlled by annual appropriations acts, which are under the jurisdiction of the House and Senate Committees on Appropriations. Direct spending is controlled by legislative acts under the jurisdiction of the authorizing committees. Funds for all discretionary spending (and some direct 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.

same subject. On October 17, 2011, the Senate began consideration of a different full-substitute amendment (Senate amendment 738) to the House-passed bill that included three FY2012 regular appropriations bills: agriculture; Commerce, Justice, Science, and Related Appropriations Act, 2012, and Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2012. On October 20, 2011, the Senate adopted the full substitute amendment, as amended; and, on November 1, 2011, passed the bill, as amended.

Continuing Appropriations Act, 2012, P.L. 112-33 and P.L. 112-36

These acts are almost identical, except for two provisions: Section 106, providing the expiration dates of the respective acts, and Section 124, delaying the date by which the U.S. Postal Service is required to make a payment to the Postal Service Retiree Health Benefits Fund.¹⁴ P.L. 112-33 expired at midnight on October 4, 2011, whereas P.L. 112-36 continues funding through November 18, 2011. The discussion below will refer to P.L. 112-36 since it is still in effect.

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

P.L. 112-36 provides separate funding rates for discretionary and direct (or mandatory) spending. It continues entitlements and other mandatory payments that were funded in the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. 112-10),¹⁵ as well as payments for activities under the Food and Nutrition Act of 2008¹⁶ at spending levels that maintain existing program levels under current law.¹⁷ Such a provision is designed to provide additional funding, if needed, to continue benefits for eligible beneficiaries. The spending levels could accommodate, for example, increased costs due to an unexpected increase in the number of beneficiaries.

CBO estimates that the act provides an annualized amount of \$1.043 trillion in discretionary spending that is subject to the FY2012 discretionary spending limits established in the BCA. This amount equals the total FY2012 discretionary limits agreed to in the BCA. The CR provides an additional \$119 billion in discretionary funds designated for overseas contingency operations/global war on terrorism. Under the BCA, funds so designated are exempt from the discretionary spending limits.

Regarding discretionary spending subject to the BCA discretionary spending limits, the CR continues FY2011 funding provided in the Department of Defense and Full-Year Continuing

¹⁴ Section 124 of both P.L. 112-33 and P.L. 112-36 would have the effect of delaying until the expiration of the CR (October 4, 2011, and November 18, 2011, respectively), the date by which the U.S. Postal Service must make a \$5.5 billion payment to the Postal Service Retiree Health Benefits Fund. The date had been September 30, 2011. P.L. 112-33 amended the applicable section of the *U.S. Code* (5 U.S.C. §8909a), while P.L. 112-36 did not, instead it provided that the section would be applied by substituting the applicable date. Both chambers adopted an enrollment correction, H.Con.Res. 83 (112th Congress), which replaced the text of Section 124 in H.R. 2608 (112th Congress). On October 3, 2011, the House adopted this measure by a voice vote and the following day the Senate adopted it by unanimous consent.

¹⁵ 125 Stat. 38.

¹⁶ 7 U.S.C. §2011 et seq.

¹⁷ P.L. 112-36, §111.

Appropriations Act, 2011,¹⁸ for most accounts, but with a 1.503% across-the-board rescission for each of these accounts.¹⁹ Separate funding levels are provided for selected entities or accounts that are not subject to the across-the-board reductions, such as the Defense Nuclear Facilities Safety Board, salaries and expenses account,²⁰ the Recovery Accountability and Transparency Board,²¹ and the Federal Mine Safety and Health Review Commission, salaries and expenses account.²²

In addition, the CR continues for FY2012 the funding level provided in P.L. 112-10 for FEMA's disaster relief account, \$2.650 billion at an annualized rate, and provides that this amount is not subject to the across-the-board cuts.²³

The funds designated for overseas contingency operations/global war on terrorism (OCO/GWOT) are generally provided for Defense Department military operations in Iraq and Afghanistan as well as similar activities by the U.S. Coast Guard, under the Homeland Security Department. The CR continues previously designated Defense Department funds provided in the Department of Defense and Full-Year Continuing Appropriations Act, 2011,²⁴ but provides that the spending levels for each account cannot exceed the levels permitted in the House-passed Department of Defense Appropriations Act, 2012 (H.R. 2219, 112th Congress).²⁵ The CR also provides that any funds Congress designated as OCO/GWOT would only be available if the President subsequently designated the funds as well.

Table 2 includes CBO's annualized FY2012 discretionary spending cost estimates, in budget authority and outlays, for P.L. 112-33,²⁶ by House appropriations subcommittee. The "regular appropriations" columns refer to discretionary spending budget authority subject to BCA's discretionary spending limits and the resulting outlays.

¹⁸ The FY2012 CR specifically continues funding provided in two of the three divisions included in the act: Division A, Department of Defense Appropriations, 2011; and Division B, Full-Year Continuing Appropriations, 2011. Division C is not an appropriations act, it is the Scholarships for Opportunity and Results Act.

¹⁹ The across-the-board reductions would also apply to advance appropriations for FY2012 that were provided in previous appropriations acts.

²⁰ P.L. 112-36, §120.

²¹ P.L. 112-36, §122.

²² P.L. 112-36, §134.

²³ P.L. 112-36, §125.

²⁴ P.L. 112-10, title IX.

²⁵ P.L. 112-36, §117.

²⁶ FY2012 discretionary spending levels provided in P.L. 112-33 are identical to those provided in P.L. 112-36.

**Table 2. Congressional Budget Office Cost Estimate: Continuing Appropriations Act, 2012 (P.L. 112-33)
As Sent to the President**

(annualized discretionary spending; in billions of dollars)

House Subcommittee	Regular Appropriations		Designated for Overseas Contingency Operations/Global War on Terrorism ^b		Total	
	Budget Authority ^a	Outlays	Budget Authority	Outlays	Budget Authority	Outlays
Agriculture	20.497	23.588			20.497	23.588
Commerce, Justice, and Science	52.076	63.185			52.076	63.185
Defense	506.295	579.304	118.669	59.733	624.964	639.037
Energy and Water Development	31.765	44.979			31.765	44.979
Financial services	21.389	25.118			21.389	25.118
Homeland Security	41.388	44.080	0.254	0.203	41.642	44.283
Interior	29.551	30.888			29.551	30.888
Labor, Health and Human Services, and Education	158.120	179.741			158.120	179.741
Legislative Branch	4.481	4.487			4.481	4.487
Military Construction and Veterans Affairs	75.869	79.800			75.869	79.800
State and Foreign Operations	47.862	49.285			47.862	49.285
Transportation and Housing and Urban Development	53.707	122.640			53.707	122.640
Total	1,043.000	1,247.095	118.923	59.936	1,161.923	1,307.031

Source: E-mail from Janet Airis, Chief, Scorekeeping Unit, Congressional Budget Office, September 15, 2011.

- a. These funds are subject to the Budget Control Act of 2011 discretionary spending limits.
- b. P.L. 112-33 and P.L. 112-36, Section 114, designates these funds as for overseas contingency operations/global war on terrorism pursuant to Section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. §900 et seq.). The Budget Control Act of 2011 amended this act establishing both the discretionary spending limits and exemptions.

P.L. 112-36 expired at midnight on November 18, 2011. As noted above, the amounts provided in this report are annualized amounts. Therefore, the agencies will not generally receive the full amount during the period from October 1 through November 19, 2011 (the period covered sequentially by P.L. 112-33 and P.L. 112-36). After funds are appropriated in an appropriations act, the Office of Management and Budget (OMB) apportions the annual amount by fiscal quarter or by activity as appropriate, instead of immediately providing the entire amount. After a temporary CR is enacted, OMB generally automatically apportions part of the annualized amount to the agencies for each account based on past apportionment practices.

Under the CR, funds are generally available under terms and conditions provided in P.L. 112-10. For example, a provision prohibiting the use of funds in an account for a specified activity or project remains in effect.

P.L. 112-36 also extends authorizations or agency authority for certain programs (referred to as *extenders*), such as the Small Business Technology Transfer Program and a small business pilot program.²⁷

Consolidated and Further Continuing Appropriations Act, 2012, P.L. 112-55

This act extended funding provided in P.L. 112-36 for one month, through December 16, 2011. It did not change the funding levels provided by P.L. 112-36.

Making Further Continuing Appropriations for FY2012, P.L. 112-67

Under this act, funding in P.L. 112-36 was extended for one day, through December 17, 2011. It did not change the funding levels.

Making Further Continuing Appropriations for FY2012, P.L. 112-68

This act is a one-week spending extension of P.L. 112-36, through December 23, 2011. It too does not change the funding levels.

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.

²⁷ P.L. 112-36, §123.

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.”²⁸ 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.²⁹

As mentioned previously, most routine operations of federal departments and agencies are funded each year through the enactment of 12 regular annual appropriations acts.³⁰ Since regular bills expire at the end of the fiscal year, regular bills for the subsequent fiscal year must be enacted by October 1. If new funds are not provided, the affected departments and agencies can not make contracts or other obligations, and must promptly begin an orderly shutdown. Certain agency activities, however, are exempt, such as those involving the safety of human life or protection of property. Final action on most regular appropriations bills is usually delayed beyond the start of the new fiscal year (for data on the past 35 years, FY1977 through FY2011, see **Table 3**). To address this problem, Congress typically enacts temporary continuing resolutions, extending funding for affected departments and agencies until the regular bills become law.

Table 3. Regular Appropriations Bills Enacted by or on the Start of New Fiscal Year and Continuing Resolutions, FY1977-FY2011

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	3	
1982	Ronald Reagan	Republicans	Democrats	0	4	4	
1983				1	7	2	
1984				4	3	2	
1985				4	8	5	
1986				0	7	5	
1987				0	13	5	
1988		Democrats		0	13	5	
1989				13	0	0	

²⁸ Article I, Section 9, clause 7 of the U.S. Constitution.

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

³⁰ Regular bills may become law as separate acts, or two or more regular bills may be combined in a single act. A package of several regular bills is referred to as an *omnibus* (or *consolidated*) *appropriations act*.

Fiscal Year	Presidential Administration	Majority Party		Regular Appropriations Bills		CRs Enacted
		Senate	House	Approved by or on October 1	Enacted in CRs	
1990	George H. W. Bush	Democrats	Democrats	1	0	3
1991				0	0	5
1992				3	1	4
1993				1	0	1
1994	William Clinton	Democrats	Democrats	2	0	3
1995				13	0	0
1996		Republicans	Republicans	0	0 ^b	13
1997				(13) ^c	0	0
1998				1	0	6
1999				1	0	6
2000				4	0	7
2001				2	0	21
2002	George W. Bush	Democrats ^d	Republicans	0	0	8
2003		Republicans ^e		0	0 ^f	8
2004				3	0	5
2005				1	0	3
2006				2	0	3
2007				1	9	4
2008		Democrats	Democrats	0	0	4
2009				(3) ^g	0 ^g	2
2010	Barack H. Obama			1	0	2
2011		Republicans ^h	Democrats	0	11	8

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

- a. Although all 13 FY1977 regular appropriations bills became law on or before the start of the fiscal year, two CRs were enacted. These CRs generally provided funding for certain unauthorized activities that had not been included in the regular appropriations acts.
- b. An FY1996 continuing resolution (P.L. 104-99) provided full-year funding for the FY1996 foreign operations regular bill; however, the continuing resolution provided that the foreign operations measure be enacted separately (P.L. 104-107).
- c. This number reflects six regular acts being combined to form an omnibus appropriations act, and enacting the other seven bills individually.
- d. On June 6, 2001, the Democrats became the majority in the Senate. By that time, the Senate Appropriations Committee had not reported any FY2002 regular appropriations measures.
- e. The Democrats were the majority in the Senate in 2002, during initial consideration of the 13 FY2003 regular appropriations bills and final action on two of the regular bills. The Republicans were the majority in 2003, during which final action on the remaining 11 FY2003 regular bills occurred.

- f. One measure (P.L. 108-7) originated as a continuing resolution, but in conference it was converted into an omnibus appropriations resolution.
- g. Three regular appropriations bills were packaged into a single act that also included the initial FY2010 CR (P.L. 110-329).
- h. Initial consideration of the FY2011 regular appropriations bills and continuing resolutions began in 2010, when the Democrats controlled both chambers. The final funding decisions on all the regular bills were not made until 2011, at that time the Republicans controlled the House.

History and Recent Trends

CRs date from at least the late 1870s, and have been a regular part of the annual appropriations process for more than 50 years. In fact, with the exception of three fiscal years (FY1989, FY1995, and FY1997),³¹ 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.)³²

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.

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;³³ these conflicts often led to protracted delays in their enactment. The view of continuing resolutions as “must-pass” measures because of the constitutional and statutory imperatives was given increased urgency due to the 1980 Department of Justice opinion prohibiting agencies from continuing all but minimal activities when funds were not available.³⁴ The result was that continuing resolutions became a major battleground for

³¹ 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.

³² The FY1977 CRs, instead, generally funded specific unauthorized activities that had been stricken from the applicable regular appropriations bills.

³³ 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.

³⁴ For more information, see “Funding Gaps” section below.

the resolution of budgetary conflicts and sometimes other policy conflicts as well. Consequently, the nature, scope, and duration of CRs began to change.

Continuing resolutions began to be used to provide funds for longer periods, and occasionally for an entire fiscal year, when agreement on one or more regular acts could not be reached. Further, CRs became vehicles for substantive legislative provisions unrelated to interim funding, as it became clear that in some years CRs would be the most effective means to enact such provisions into law. These trends culminated in FY1987 and FY1988, following a period of persistently high deficits and sustained conflict over how to deal with them. For those two years, CRs effectively became omnibus appropriations measures for the federal government, incorporating all of the regular appropriations acts for the entire fiscal year as well as a host of substantive legislation covering a broad range of policy areas.³⁵

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.³⁶ 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.³⁷

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 and the second, 21 days.³⁸ Instead of resolving the FY1996 conflicts in the form of one or more continuing resolutions, Congress created an omnibus measure for FY1996.³⁹

³⁵ P.L. 99-591, 100 Stat. 3341; and P.L. 100-202, 101 Stat. 1329.

³⁶ 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.

³⁷ P.L. 102-266, 106 Stat. 92.

³⁸ 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 bills continued their activities. It is important to note that there are exceptions to the shutdown requirement for certain activities, such as protecting life or property, as described in CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

³⁹ P.L. 104-134, 110 Stat. 1321.

Since FY1997, conflicts over outstanding regular bills have generally been resolved in omnibus appropriations measures, rather than full-year continuing resolutions. There have been, however, two exceptions: an FY2007 continuing resolution provided full-year funding for 11 of the 13 FY2007 regular bills⁴⁰ and an FY2011 CR provided full-year funding for 11 of the 12 FY2011 regular bills.⁴¹ Since FY1997, omnibus regular appropriations bills have generally been developed by attaching the language of outstanding regular appropriations bills, as well as substantive legislation, to the conference report on another regular appropriations bill.

The change in the type of legislative vehicle from full-year continuing resolutions to omnibus appropriations measures created at the conference stage of the legislative process was based on political and procedural considerations. Combining uncompleted appropriations bills, or even including those that had received no floor consideration in one or both chambers, into a single conference report, for example, made it possible to avoid floor consideration of certain controversial floor amendments to regular appropriations bills.⁴² 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.⁴³

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.⁴⁴ Some of the activities were funded for the full year, whereas others were temporarily funded. A single continuing resolution traditionally provides funding for all activities in each regular appropriations bill it funds. Although CRs sometimes have provided a separate expiration date for activities funded in one or more regular appropriations bills, each date applied to all activities in the applicable regular appropriations bill.

Types of Continuing Resolutions by Duration

Continuing resolutions may be classified as “interim” or “full-year continuing resolutions.”⁴⁵ 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

⁴⁰ P.L. 110-5, 121 Stat. 8.

⁴¹ P.L. 112-10, 125 Stat. 38.

⁴² 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.

⁴³ 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.

⁴⁴ See, for example, P.L. 104-91, 110 Stat. 7; P.L. 104-92, 110 Stat. 16; and P.L. 104-94, 110 Stat. 25.

⁴⁵ For more information, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup.

recent years. In contrast to regular and supplemental appropriations acts, interim continuing resolutions do not generally provide specific amounts for each account, although they have done so for selected accounts and activities. Interim CRs generally provide spending (or funding) rates across accounts in regular appropriations bill(s) covered in the CR.

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

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

Recently, the spending rate for entitlements and other mandatory spending (as well as the Supplemental Nutrition Assistance Program)⁴⁶ funded in the regular bills covered have generally remained constant. CRs have extended funding at spending levels that maintained existing program levels under current law. This spending rate is designed to provide sufficient funding to continue benefits for all eligible beneficiaries. The resulting spending levels could reflect an increase necessary to accommodate, for example, increased costs due to an increase in the number of beneficiaries.

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

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

The initial temporary continuing resolution has language establishing a spending rate and the expiration date, among other provisions. Once it becomes law, further CRs may be sequentially enacted to extend the expiration date. These subsequent continuing resolutions may sometimes change the spending rates as well as other provisions. From FY1978 through FY2011, on average, five CRs became law per fiscal year. (For detailed information, see **Table 3** these data include full-year as well as interim CRs.)

⁴⁶ This program was formerly referred to as the Food Stamp Program.

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

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

Full-year continuing resolutions effectively replace regular appropriations acts for the fiscal year. Further, when continuing resolutions have included the full text of one or more regular appropriations acts, they also have included all the myriad general and administrative provisions typically included in regular acts.⁴⁷ 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.⁴⁸

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 appropriations⁴⁹ in general appropriations measures (including amendments or conference report to such measures),⁵⁰ 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.

⁴⁷ See, P.L. 100-202, Section 101, 101 Stat. 1329, and P.L. 99-591, Section 101, 100 Stat. 3341.

⁴⁸ For an example, see P.L. 97-276, 96 Stat. 1186.

⁴⁹ *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).

⁵⁰ 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.

Substantive provisions in continuing resolutions have included language that established major new policies and amended permanent provisions of law, such as the Comprehensive Crime Control Act of 1984.⁵¹ 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.⁵² These provisions vary in length from a small paragraph to more than 200 pages (in the case, for example, of the Comprehensive Crime Control Act of 1984). With the advent of omnibus appropriations acts, there have been fewer examples of major policy initiatives in CRs.

Funding Gaps

Over the years, delay in the enactment of regular appropriations measures by the start of a new fiscal year, and continuing resolutions at the start, or during, that fiscal year has led to periods during which agency appropriations authority has lapsed. Such periods are referred to as *funding gaps*.⁵³ 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.⁵⁴ 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.⁵⁵ 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,⁵⁶ and that the Justice Department would enforce the criminal sanctions provided for under the act against future violations.⁵⁷

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)

⁵¹ FY1985 continuing resolution, P.L. 98-473, 98 Stat. 1837.

⁵² FY2005 continuing resolution, P.L. 108-309, 118 Stat. 1137.

⁵³ “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.

⁵⁴ The source of this data is CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup. The enactment of a CR on the day after appropriations authority had expired is not counted as a funding gap.

⁵⁵ U.S. Government Accountability Office, *Funding Gaps Jeopardize Federal Government Operations*, GAO/PAD-81-31, March 3, 1981, p. 2.

⁵⁶ 31 U.S.C. §1341(a).

⁵⁷ 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.

emergencies involving the safety of human life or the protection of property; or (3) activities authorized by law.⁵⁸ 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.”⁵⁹

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.”⁶⁰ The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.⁶¹

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-exempted activities and immediate furlough of employees performing such activities (although provisions of law have been enacted to ratify obligations and pay employees retroactively).⁶² 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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⁵⁸ 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.

⁵⁹ 31 U.S.C. 1342.

⁶⁰ 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.

⁶¹ Interim CRs may also impact agency operations, see CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

⁶² CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass.