



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

September 30, 2008

OMB BULLETIN NO. 08-02

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Apportionment of the Continuing Resolution(s) for Fiscal Year 2009

1. Purpose and Background. Division A of H.R. 2638 will provide continuing appropriations for the period October 1, 2008 through March 6, 2009. I am automatically apportioning amounts provided by this continuing resolution (CR) as specified in section 2. This Bulletin supplements instructions for apportionment of CRs in OMB Circular No. A-11, section 123, and applies to this CR and any extensions of this CR.

2. Automatic Apportionments. The attachment to this Bulletin contains more detailed instructions on calculating the annualized amount provided by the CR. In order to calculate the amount automatically apportioned through the period ending March 6, 2009 (and any extensions of that period) multiply the annualized amount provided by the CR by the lower of:

- the percentage of the year covered by the CR (e.g., for H.R. 2638 use 43.01 percent), or
- the historical seasonal rate of obligations for the period of the year covered by the CR.

No supplemental or emergency amounts will be included in the CR calculations except for those provided by section 102 of the CR. Section 102 specifies which emergency amounts funded in P.L. 110-161, Consolidated Appropriations Act, 2008 and P.L. 110-252, Supplemental Appropriations Act, 2008 will be included in the CR calculation.

Under an automatic apportionment, all of the footnotes and conditions placed on the prior year apportionment remain in effect. The CR provides that FY 2008 terms and conditions apply.

3. Written Apportionments. If an agency seeks an amount for a program which is different from the total amount automatically apportioned, you must request a written apportionment from OMB. Only a very limited number of written apportionment requests are expected to be granted. Every request must be accompanied by a written justification that includes the legal basis for the exception apportionment. Once a written apportionment is approved, the terms and conditions of the automatic apportionment bulletin cease to apply to the extent changed by the written apportionment.

4. Spending Plans. For accounts for which OMB required spending plans -- or clearance of spending plans requested by the Congress -- in 2008, agencies should work with their RMO to determine which accounts will require updated spending plans under the 2009 CR apportionment. For those accounts, the automatic apportionment will make funds available ten days after submission of those spending plans to OMB.



Jim Nussle

Attachment

**Calculating the Amount Made Available by the Continuing Resolution (CR) and the Automatic Apportionment**

**1. What is the annualized, full-year amount provided by the continuing resolution (CR)?**

The FY 2008 level:

- take the full year amount enacted in the appropriations acts making funds available for FY 2008 (i.e., full-year appropriations net of any reductions, including across-the-board reductions);
- add only the emergency FY 2008 appropriations amounts from P.L. 110-161 and P.L. 110-252 that are specifically provided in section 102 of the CR; and
- add or subtract transfers mandated by law (only "shall transfer", not "may transfer").

**2. What is the amount of the automatic apportionment under a CR?**

Calculate the amount automatically apportioned (whole dollars) through the period ending March 6, 2009 (and any extensions of that period) by multiplying the **annualized amount provided by the CR** by the lower of:

- the **percentage of the year** covered by the CR (rounded to the nearest hundredth for H.R. 2638, use  $157 \text{ days} / 365 \text{ days} = 43.01 \text{ percent}$ ); or
- the **historical seasonal rate** of obligations for the period of the year covered by the CR.

**3. How should the phrase "project or activity" be applied in determining the CR level?**

In the context of determining the rate for operations under the CR, OMB has interpreted the term "project or activity" to refer to the total appropriation, that is, the budget account level. GAO's view has been consistent with OMB's (see page 8-24 of the [Principles of Federal Appropriations Laws, Third Edition, Volume II](#), issued by GAO).

**4. How should mandatory appropriations be treated?**

A continuing resolution is an appropriations bill. As such, it normally does not affect mandatory appropriations provided in substantive or authorizing legislation. Therefore, for accounts with a mix of discretionary and mandatory appropriations, the mandatory budget authority component that is enacted in substantive or authorizing legislation should be taken out before calculating the amount provided by the CR. Changes in and limitations on mandatory programs that were enacted in 2008 appropriations Acts are assumed to continue during the duration of the CR under the terms and conditions provided in such Acts.

**5. Are entitlement and other mandatory payments whose budget authority was provided in Appropriations Acts for fiscal year 2008 continued at the FY 2008 level or FY 2009 program level?**

Section 111 of H.R. 2638 allows entitlements and other mandatory payments whose BA was provided in Appropriations Acts for FY 2008 to continue at the "rate to maintain program levels under current law, under the authority and conditions provided in the applicable appropriations Act for fiscal year 2008...". In other words, these programs can operate at the FY 2009 program level. However, the appropriated administrative expenses associated with these programs must be based on the FY 2008 levels.

**6. How will sections 112 and 142 of H.R. 2638 regarding civilian personnel compensation and benefits be apportioned by OMB?**

Section 112 allows OMB limited authority to mitigate furloughs. It does not provide additional total budget authority for the fiscal year. Rather, it allows OMB to apportion the BA at a greater rate than the daily rate. OMB will be applying this authority in the most restrictive fashion. You must be pre-approved by your OMB representative with budget responsibility for the account before requesting a written apportionment from OMB. OMB will require written documentation that the following pre-condition from section 112 of the CR has been satisfied by the agency: *"except that such authority provided under this section shall not be used until after the department or agency has taken all necessary actions to reduce or defer non-personnel-related administrative expenses."*

Section 142 provides for a 3.9 percent increase in the rates of basic pay for civilian employees effective as of the first applicable pay period beginning on or after January 1, 2009. The adjustment also applies to the civilian employees in the Department of Homeland Security. The additional pay costs are to be absorbed by each applicable department or agency's appropriation under the CR for salaries and expenses for their programs. This is in contrast to the FY 2007 full-year CR, which provided additional funding for the pay increase.