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Continuing Resolutions: FY2008 Action and Brief Overview of Recent Practices

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Sandy Streeter
Analyst in American National Government
Government and Finance Division

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Summary

Most of the 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, regular bills for the subsequent fiscal year must be enacted by October 1. Final action on some of the regular appropriations bills, however, are typically delayed beyond the deadline. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions 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).

CRs may be divided into two categories — those that provide interim (or temporary) funding and those that provide funds through the end of the fiscal year. *Interim continuing resolutions* provide funding until a specific date or until the enactment of the applicable regular appropriations acts, 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 and, then, contracted. From the early 1970s through 1987, CRs gradually expanded from 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 1987, continuing resolutions have generally been interim funding measures with little substantive legislation.

Over the years, delay in the enactment of regular appropriations measures and CRs 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*.

Because congressional and presidential action on all 12 of the FY2008 regular appropriations measures were not completed until almost three months after the start of the fiscal year, Congress adopted and the President signed four CRs that sequentially extended funding for the outstanding bills from October 1, 2007, through December 31, 2007. The four laws follow: P.L. 110-92; P.L. 110-116, Division B; P.L. 110-137, and P.L. 110-149. All except one CR were separate acts, the second CR was included in the Department of Defense Appropriations Act, 2008.

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Most of the operations of federal departments and agencies are funded each year through the enactment of several regular appropriations acts, recently ranging from 11 to 13 regular acts. For FY2008, there are 12 regular appropriations acts. Since these bills are annual, expiring at the end of the fiscal year,[1] regular bills for the subsequent fiscal year must be enacted by October 1. However, final action on several regular appropriations bills is typically delayed beyond the deadline. When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final spending decisions 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 FY2008 CRs. The second segment provides information on the history of CRs; the nature, scope, and duration of CRs during the past 35 years; the types of CRs that have been enacted; and an overview of those instances when spending has lapsed and a funding gap has resulted.

FY2008 Continuing Resolutions

Most Recent Developments

Because congressional and presidential action on all 12 of the FY2008 regular appropriations measures were not completed until almost three months after the start of the fiscal year, Congress adopted and the President signed four CRs that sequentially extended funding for the outstanding bills from October 1, 2007, through December 31, 2007. The initial FY2008 CR (P.L. 110-92)[2] continued funding from October 1, 2007, through November 16, 2007. Congress added the next funding extension, through December 14, 2007, to the Department of Defense Appropriations Act, 2008, in conference (P.L. 110-116, Division B).[3] The last two FY2008

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

[2] 121 Stat. 989.

[3] 121 Stat. 1295, 1341.

continuing resolutions (P.L. 110-137[4] and P.L. 110-149[5]) sequentially extended funding through December 21 and 31, respectively. For congressional and presidential action on FY2008 continuing appropriations, see **Table 1**.

Action on the FY2008 regular appropriations bills was completed on December 26, 2007, when the President George W. Bush signed the Consolidated Appropriations Act, 2008 (P.L. 110-161).[6] This act funds 11 of the 12 FY2008 regular appropriations bills. Previously, on November 13, 2007, the President signed the Department of Defense Appropriations Act, 2008 (P.L. 110-116).

Table 1. Action on FY2008 Continuing Appropriations

Measure	Committee Approval		House Passage	Senate Passage	Conference Report Filed	Conference Report Approval		Public Law
	House	Senate				House	Senate	
H.J.Res. 52	—	—	09/26/07 404-14	09/27/07 94-1	—	—	—	09/29/07 P.L. 110-92
H.R. 3222, FY2008 Defense Appropriations Act	—	—	—	—	11/06/07 H.Rept. 110-434[a]	11/08/07 400-15	11/08/07 Voice Vote	11/13/07 P.L. 110-116
H.J.Res. 69	—	—	12/13/07 385-27	12/13/07 UC[b]	—	—	—	12/14/07 P.L. 110-137
H.J.Res. 72	—	—	12/19/07 Voice Vote	12/19/07 UC[b]	—	—	—	12/21/07 P.L. 110-149

a. The continuing resolution was not included in H.R. 3222 as approved by the House or Senate Committees on Appropriations or as passed by either chamber. The conference committee added it to the conference report, see Division B.

b. The Senate adopted the continuing resolution, without amendment, by unanimous consent. That is, a unanimous consent request was proposed to adopt the measure and since no Senator objected, the resolution was adopted.

[4] 121 Stat. 1454.

[5] 121 Stat. 1819.

[6] 121 Stat. 1844.

Initial FY2008 Continuing Resolution (P.L. 110-92)

This CR extended budget authority[7] for accounts[8] associated with the FY2008 regular appropriations bills generally through November 16, 2007, or until enactment of FY2008 regular measure(s), if earlier.

Under the resolution, separate funding rates were provided for discretionary and mandatory spending.[9] It continued entitlements and other mandatory payments that were funded in the FY2007 appropriations acts as well as the Food Stamp program at spending levels that maintained existing program levels under current law. This was generally designed to provide additional funding, if needed, to continue current services for eligible beneficiaries. Spending levels could have been increased to accommodate, for example, increased costs due to an unexpected increase in beneficiaries.

This act continued discretionary spending for accounts associated with all the FY2007 regular appropriations bills (11 bills)[10] at funding levels provided in specific FY2007 appropriations acts: two FY2007 regular appropriations acts and the FY2007

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[7] Congress funds federal activities by providing agencies with *budget authority*, instead of cash. Budget authority refers to authority provided by law to enter into financial obligations requiring either immediate or future expenditures (or outlays) of government funds. Congress may make budget authority for specified activities available for obligation for only a single fiscal year, specified multi-years, or indefinitely. An *appropriation* is a type of budget authority that not only provides authority to make financial obligations for specified activities, but also provides authority to make payments from the Treasury for those activities.

[8] 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.

[9] Congress divides budget authority and the resulting outlays 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.

[10] There were 11 FY2007 regular appropriations bills and there are 12 FY2008 regular appropriations bills. In early 2007, the Senate and House Committees on Appropriations reorganized their subcommittee structures, providing 12 appropriations subcommittees. The number of regular appropriations bills generally reflects the number of appropriations subcommittees, since typically each bill is under the jurisdiction of a single House and Senate appropriations subcommittee. An exception in the House occurred, when the full committee had jurisdiction over one FY2006 and FY2007 regular bill.

omnibus full-year CR.[11] Last year, 2 of the 11 FY2007 regular appropriations bills became law individually: Department of Homeland Security Appropriations Act, 2007 (P.L. 109-295[12]) and Department of Defense Appropriations Act, 2007 (FY2007 Defense Appropriations Act, P.L. 109-289[13]). The FY2008 CR continued funding at spending levels provided in these acts and included the additional funds for costs associated with military operations in Iraq and Afghanistan included in the FY2007 Defense Appropriations Act (so-called "bridge funds").

The initial FY2008 CR also continued funding levels provided in the omnibus Revised Continuing Appropriations Resolution, 2007 (FY2007 CR, P.L. 110-5[14]). This act funded accounts associated with the remaining nine FY2007 regular appropriations bills through September 30, 2007. The FY2007 CR continued funding at levels provided in applicable FY2006 regular appropriations acts. Numerous FY2006 funding levels were, however, modified in the FY2007 resolution.

Under the FY2008 CR, funding levels for civilian personnel compensation and benefits in each department and agency could have been increased to levels necessary to avoid a furlough of civilian government employees. Before the funds could be increased, the applicable department or agency must have taken all necessary actions to reduce or defer non-personnel-related administrative expenses.

A separate appropriation of $5.2 billion for FY2008 was provided for Mine Resistant Ambush Protected Vehicles. The funds were to be used to continue technological research and development as well as to procure, sustain, transport, and field such vehicles.

Under this CR, funds were made available under terms and conditions provided in the applicable FY2007 regular appropriations acts. For example, a provision in a FY2007 regular appropriations act prohibiting the use of funds in an account for a specified activity or project may have been in effect. Departments and agencies could not use funds provided in this CR to start or resume any project or activity for which funds or authority were not available during FY2007.

Second FY2008 Continuing Resolution (P.L. 110-116, Division B)

This act amended the initial FY2008 continuing resolution. It extended funding four weeks, from November 17 through December 14, 2007.

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[11] For information on full-year CRs, see "Types of Continuing Resolutions" below.

[12] 120 Stat. 1355.

[13] 120 Stat. 1257.

[14] 121 Stat. 8.

Under this act, additional spending was provided for specified activities, including $6.4 billion designated as emergency spending.[15] The emergency funds were in addition to spending provided in the initial CR and were distributed as follows:

- $3 billion to the Department of Housing and Urban Development's Community Development Fund for the Road Home program in Louisiana to assist homeowners affected by Hurricanes Katrina and Rita;
- $2.9 billion for the Federal Emergency Management Agency's (Department of Homeland Security) disaster relief fund for continued and anticipated disaster response and relief efforts for FY2008; and
- $500 million to the Forest Service (Department of Agriculture) and Bureau of Land Management (Department of the Interior) for emergency wildland fire suppression, wildfire risk reduction, recovery, and reconstruction activities in response to the 2007 wildfire season.

In lieu of the amount provided in the initial CR, this act provided $1.025 billion in non-emergency funds for the Bureau of the Census to prepare for the 2010 decennial census and the economic censuses. Finally, this act changed funding levels in the initial CR for Department of Veterans Affair's accounts to levels equal to the President's FY2008 budget request.[16]

Third FY2008 Continuing Resolution (P.L. 110-137)

This act simply extended funding through December 21, 2007.

Fourth FY2008 Continuing Resolution (P.L. 110-149)

Under this public law, funding was continued through December 31, 2007.

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

[16] U.S. Congress, Conference Committees, 2007, *Making Appropriations for the Department of Defense for the Fiscal Year Ending September 30, 2008, and for Other Purposes*, conference report to accompany H.R. 3222, H.Rept. 110-434, 110th Cong., 1st sess. (Washington: GPO, 2007), p. 487.

Recent Practices Regarding Continuing Resolutions

Background

Under the U.S. Constitution and federal law, no funds may be drawn from the U.S. Treasury or obligated by federal officials unless appropriated by law.[17] Traditionally, most of the operations of federal departments and agencies are funded each year through separate enactment of several regular, annual appropriations acts.[18] Because these measures expire at the end of the fiscal year, the regular appropriations bills for the subsequent fiscal year must be enacted by October 1. However, final action on one or more regular appropriations bills is typically delayed beyond the deadline (for data on the FY1977-FY2008 period, see **Table 2**). When this occurs, the affected departments and agencies are generally funded under temporary continuing appropriations acts until the final funding decisions are enacted. Because continuing appropriations acts typically are enacted in the form of joint resolutions, such acts are referred to as continuing resolutions (or CRs).

History and Recent Trends

Continuing resolutions date from at least the late 1870s, and have been a regular part of the annual appropriations process for over 50 years. In fact, with the exception of three fiscal years (FY1989, FY1995, and FY1997[19]), at least one continuing resolution has been enacted for each fiscal year since FY1954. (It is important to note that while Congress enacted two FY1977 CRs, these acts did not temporarily fund any FY1977 regular appropriations bills[20] since they became law

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[17] Article I, Section 9 of the U.S. Constitution, and 31 U.S.C. 1341. A major exception to this concept is *contract authority*. Congress enacts legislation providing an agency with authority to make obligations (budget authority). After the obligations are made, Congress provides the appropriations providing the authority to make the payments in another law (typically, an appropriations act). Such appropriations funding is not considered budget authority.

[18] For almost 35 years (1971-2004), Congress considered 13 regular appropriations bills each year. Due to reorganizations of the House and Senate Committees on Appropriations in 2005 (109th Cong.) and, again, in 2007 (110th Cong.), the number of regular bills changed. During the 109th Congress, there were 11 House regular bills and 12 Senate bills. In each session, the Senate combined two regular bills, resulting in 11 regular appropriations acts for each year. At the beginning of the 110th Congress, the number of regular appropriations in both chambers became 12. (For more information, see CRS Report RL31572, *Appropriations Subcommittee Structure: History of Changes from 1920-2007*, by James V. Saturno.)

[19] In the first two instances, all 13 regular appropriations bills were enacted individually on or by the deadline. In the last instance, the deadline was met by adding five regular bills to a sixth bill, forming an omnibus appropriations act, and enacting seven bills individually.

[20] The CRs generally funded specified unauthorized activities that had not been included in the regular appropriations acts.

on or by the deadline.) From FY1978 through FY2008, Congress enacted on average four CRs per year (for detailed information, see **Table 2**).

During the past 35 years, the nature, scope, and duration of CRs expanded and, then, generally contracted. 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* (referred to as *full-year continuing resolutions*). 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 1987, continuing resolutions have generally been interim funding measures with little substantive legislation.

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

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

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

Table 2. Regular Appropriations Bills Enacted by Deadline and Continuing Resolutions, FY1977-FY2008

Fiscal Year	Presidential Administration	Party in Control of Congress		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 by the deadline, two CRs were enacted. These CRs generally provided funding for certain unauthorized activities that had not been included in the regular appropriations acts.
b. An FY1996 continuing resolution (P.L. 104-99) provided full-year funding for the FY1996 foreign operations regular bill; however, the continuing resolution provided that the foreign operations measure be enacted separately (P.L. 104-107). It is excluded from the amount.
c. The deadline was met by adding five regular bills to a sixth regular bill, forming an omnibus appropriations act, and enacting 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.

From FY1988 through FY1995, Congress and the President generally operated under multi-year deficit reduction agreements achieved through budget summits. For the FY1991-FY1995 period, an enforcement mechanism (referred to as sequestration)[22] was established. From FY1988 through FY1995, there was a period of relative agreement on overall budget priorities and, therefore, agreements on regular appropriations acts came more readily. CRs, when necessary, generally were more limited, contained far less substantive legislation, and were used mainly to provide interim funding for relatively brief periods.

Since FY1996, the conflicts have generally resumed. Although the enforcement mechanisms remained in effect from FY1996 through FY2002,[23] conflict within Congress and between Congress and the President on funding and policy issues generally delayed action on regular appropriations bills. Beginning in FY1996 (and continuing through FY2001) there were significant conflicts between the Democratic President and the newly-elected Republican-controlled Congress. From FY2002 through FY2008, there were conflicts within Congress and between Congress and the President (George W. Bush), which delayed action on the regular bills.

Instead of resolving these differences in expanded continuing resolutions, Congress and the Administration generally resolved them in omnibus regular appropriations bills (or in separate appropriations bills). Omnibus regular appropriations bills were generally developed by attaching outstanding regular appropriations bills and substantive legislation to another regular appropriations bill in conference.

The change in the type of legislative vehicle for omnibus appropriations measures from full-year continuing resolutions to conference reports on regular appropriations bills was based, at least in part, on political and procedural considerations. Procedurally, for example, the use of conference reports ensured that floor consideration of certain amendments to regular appropriations bills could be avoided. In both the House and Senate, conference reports are not amendable. Some regular bills either were pulled before floor action was completed or were never considered on the floor. By attaching these measures to a conference report on another regular bill, action on the amendments was avoided. Politically, for example, conference reports have been used limit tardiness complaints. To ensure all the

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[22] The Budget Enforcement Act of 1990 (P.L. 101-508, 104 Stat. 1388-573, 1388-574) established spending ceilings for discretionary spending for each fiscal year (FY1991-FY1995). If appropriations measures were enacted that in total exceeded the spending ceilings, the act provided for an automatic across-the-board reduction in discretionary spending to eliminate the additional spending (referred to as *sequestration*).

[23] Two acts extended the spending ceilings originally established in the Budget Enforcement Act of 1990. The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66, 107 Stat. 312, 683) extending the ceilings through FY1998 and the Balanced Budget Act of 1997 (P.L. 105-33, 111 Stat. 251) extended the limits through FY2002.

FY1997 regular appropriations bills became law by the October 1 deadline, five FY1997 regular bills were attached to a sixth FY1997 regular bill in conference. This action obviated the need for a continuing resolution.

Since FY1996, CRs, when needed, have generally continued to provide interim funding for short periods of time and have included little substantive legislation. A major exception occurred with the final FY2007 continuing resolution,[24] which extended funding for nine FY2007 regular appropriations bills through September 30, 2007.

Types of Continuing Resolutions

Continuing resolutions generally can be divided into two categories — interim and full-year continuing resolutions.[25]

Interim (or *partial*) *continuing resolutions* provide temporary funding until a specific date or until the enactment of the applicable regular appropriations acts, if earlier. Since FY1989, they have remained fairly constant in form and structure. In contrast to regular and supplemental appropriations acts, interim continuing resolutions do not generally provide specific amounts for each account. These CRs provide "such sums as are necessary" to continue funding at specified "rates for operations" for accounts in bills covered by the resolution. The rates may be set in various ways, funding levels for accounts in a covered bill have been based on formulas, such as (1) the lower of the amounts provided in the House-passed version or Senate-passed version of the bill; or (2) the funding levels available for the previous fiscal year. Rates may be based on the status of the covered bill(s). Continuing resolutions frequently provide rates that vary among the bills funded.

In most cases, the rates provided in interim CRs have applied to most activities covered by a particular regular appropriations act. However, such rates have also 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.[26]

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

A form of interim CR is the *long-term continuing resolution*, which extends appropriations for outstanding regular appropriations bills temporarily from one calendar year into the next, but does not extend funding to the end of the fiscal year. In cases in which a long-term CR extends funding into a new Congress, new bills providing funding must be introduced in the new Congress. At the end of a Congress, all measures that have not been enacted die.

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

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

[26] See, P.L. 94-473, section 101; 90 Stat. 2065.

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 through the end of the fiscal year in continuing resolutions.) Full-year funding provisions have generally been of three types: (1) full text of the regular act; (2) language that incorporates regular acts by reference to the latest stage of congressional action (usually the conference agreement, if one has been reached); or (3) rates of operations.

Full-year continuing resolutions effectively become regular appropriations acts for the fiscal year. Further, when continuing resolutions have included the full text of one or more regular appropriations acts, they also have included all the myriad general and administrative provisions typically included in regular acts.[27] Consequently, they may be hundreds of pages in length, whereas interim resolutions typically are a few pages or less (in the case of a simple extension of a previous resolution, perhaps less than half a page).

During consideration of the FY1996 continuing resolutions, Congress also used a another type of continuing resolution: *targeted appropriations*. A single continuing resolution traditionally provides funding for all activities in the outstanding regular appropriations and generally provides the same expiration date for all these bills. In January 1996, Congress separated activities from the six outstanding regular bills and distributed them among three FY1996 continuing resolutions.[28] Some of the activities were full-year funded, while others were temporarily funded.

Since FY1977, Congress has included across-the-board spending reductions in a few full-year and interim continuing resolutions. The continuing resolutions generally provided a specific percentage reduction for activities in the specified regular appropriations bills. The FY1992 full-year continuing resolution,[29] for example, required a 1.5% spending reduction in discretionary spending activities in the only outstanding FY1992 regular appropriations bill. Another example is the FY1982 interim continuing resolution,[30] that included a 4% across-the-board reduction, with certain exceptions, for specified FY1982 regular appropriations bills. A subsequent FY1982 full-year continuing resolution extended this provision through the end of the fiscal year.

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

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

[28] P.L. 104-91, 110 Stat. 7; P.L. 104-92, 110 Stat. 16; and P.L. 104-94, 110 Stat. 25.

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

[30] P.L. 97-92, 95 Stat. 1183.

must reach agreement. Such provisions have been included both in interim and full-year continuing resolutions.

House Standing Rules XXI, Clause 2, and XXII, Clause 5, prohibit legislative provisions or unauthorized appropriations[31] in general appropriations measures, but these restrictions do not apply to continuing resolutions. (The House typically adopts special rules restricting amendments to continuing resolutions, in part for this reason.) Comparable Senate restrictions, in Senate Rule XVI, on legislative provisions and unauthorized appropriations do apply in the case of continuing resolutions.

Substantive provisions in continuing resolutions have included comprehensive measures that establish major new policies and amend permanent provisions of law, such as omnibus crime control legislation (in FY1985). They have also included narrower provisions focused on temporary or one-time problems, such as providing a temporary extension of statutory authority to pay for travel and transportation benefits for family members of military personnel injured during operations in Iraq and Afghanistan (in FY2005). These provisions vary in length from less than one page to more than 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."[32]

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

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

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

that the Justice Department would enforce the criminal sanctions provided for under the act against future violations.[33]

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.[34] 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."[35]

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

On August 16, 1995, Assistant Attorney General Walter Dellinger, in a memorandum for the Director of the Office of Management and Budget (OMB), stated that "the 1981 Opinion continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations."[36] The 1990 amendment, he maintained, basically served to confirm the appropriateness of the 1981 opinion.

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[33] 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.

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

[35] P.L. 101-508 Section 13213(b), 31 U.S.C. 1342.

[36] 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.

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