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Automatic Continuing Resolutions: Background and Overview of Recent Proposals

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Summary

Currently, 12 regular appropriations acts fund the activities of most federal government agencies. When these acts are not completed prior to the beginning of the fiscal year, Congress uses a continuing appropriations act, also known as a "continuing resolution" (CR), to provide interim funding until the annual appropriations process is complete.

Some Members of Congress have proposed legislation to establish an automatic continuing resolution (ACR) mechanism that would ensure a source of funding for discretionary spending activities at a specified level in the event that the timely enactment of appropriations was disrupted. The funding would become available automatically at any point during the fiscal year when a funding gap occurred without any further congressional action being needed, and it would remain available for the duration that the ACR mechanism was in effect.

The framework employed by ACR proposals since the early 1980s has varied along four major dimensions: whether or not the measure sunsets, the level of funding that would automatically be provided, the activities for which the funding could be used, and the duration for which the funding would be available.

Proponents of ACRs have argued that the mechanism is needed to prevent the possibility of government shutdowns and their related effects and to promote a more deliberative and less time-pressured decisionmaking process. Further, proponents have also argued that adopting an ACR mechanism would make CRs a less attractive vehicle for unrelated legislative measures. In contrast, opponents of an ACR mechanism have posited that it would create an advantage for the current level of federal spending relative to other proposed levels during subsequent budget negotiations. Opponents have also claimed that the threat of a government shutdown causes serious negotiations and compromise to occur and that, by lessening or eliminating this threat, the enactment of regular appropriations would become more difficult. A further critique has been that an ACR mechanism would create procedural challenges under the current budget process because it would effectively establish a permanent appropriation for covered activities.

Congressional action on an ACR proposal first occurred in 1991 with hearings on H.R. 298, the Budget Process Reform Act (102nd Congress). Action also occurred with respect to ACR proposals during five subsequent Congresses, including floor votes in the House in the 105th and 106th Congresses and floor votes in the Senate in the 110th and 113th Congresses. During the 112th, 113th, and 114th Congresses, a number of proposals have been introduced that would provide ACRs under a variety of frameworks.

As of the date of this report, the only ACR mechanism to have been enacted into law was the Pay our Military Act (P.L. 113-39), which was signed by the President on September 30, 2013. P.L. 113-39 provided an ACR mechanism to cover FY2014 pay and allowances for (1) certain members of the Armed Forces, (2) certain Department of Defense (DOD) civilian personnel, and (3) other specified DOD and Department of Homeland Security contractors. The funding level was indefinite (e.g., "such sums as are necessary"). There were a number of ambiguities, however, related to the mechanism's possible operation during FY2014 and the first quarter of FY2015. For example, it was not clear whether the automatic funding could have been in effect for any funding gap that might have occurred in FY2014, the maximum period of availability for those funds (assuming they were not terminated through the enactment of regular or continuing appropriations), and the sunset date of the mechanism. Because the enactment of continuing appropriations on October 17, 2013 (P.L. 113-46), terminated the funding under this ACR mechanism and no further funding gaps occurred during FY2014, there was no occasion to resolve these ambiguities.

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Introduction

The activities of most federal government agencies are funded by discretionary spending, which is provided annually in regular appropriations acts.[1] When these acts are not completed by the beginning of the fiscal year, Congress typically uses a continuing appropriations act, also known as a "continuing resolution" or CR, to provide interim funding until the annual appropriations process is complete.[2]

CRs often provide funding for projects and activities initiated or conducted in the previous fiscal year based on a rate for operations.[3] Generally, CRs do not allow the initiation of any new projects or activities, and existing conditions or limitations on spending remain in place. CRs often include "anomalies," however, that adjust the purposes for which funds are provided or the rate of funding up or down from the CR's general rate to account for changing circumstances or special concerns, particularly when budget authority[4] is provided for the remainder of the fiscal year.[5]

Historically, the completion of the annual appropriations process has often been delayed beyond the start of the fiscal year. Between FY1952 and FY1976, at least one CR was required in each fiscal year to provide funding until full-year appropriations were enacted. In response to this trend, the Congressional Budget Act of 1974 (P.L. 93-344; 2 U.S.C. 621) moved the beginning of the federal government fiscal year from July 1 to October 1 to allow three additional months for the annual appropriations process to be concluded during the calendar year.[6] Despite this change, all of the regular appropriations bills were enacted on time in only FY1977, FY1989, FY1995, and FY1997. In other years during this period, one or more CRs were necessary to provide interim budget authority.[7]

The Antideficiency Act (31 U.S.C. 1341-1342, 1511-1519) generally bars the obligation or expenditure of federal funds in the absence of appropriations.[8] Exceptions are made under the act,

[1] The congressional budget process distinguishes between direct (or mandatory) spending, which is controlled through permanent law, and discretionary spending, which is controlled through appropriations acts. For general information on the types of spending within the congressional budget process, see CRS Report 98-721, *Introduction to the Federal Budget Process*, coordinated by Bill Heniff Jr.

[2] For general information on the annual appropriations process, CRS Report R42388, *The Congressional Appropriations Process: An Introduction*, by Jessica Tollestrup.

[3] The "rate for operations" is the annualized level of budget authority for a project or activity divided by the number of days in the previous or current fiscal year, depending on the how the formula for the rate is provided. For further information, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by Jessica Tollestrup, and CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[4] "Budget authority" is "authority provided by federal law to enter into financial obligations that will result in immediate or future outlays involving federal government funds." U.S. Government Accountability Office (GAO), *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP, September 2005, p. 20.

[5] For further information on CRs, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by Jessica Tollestrup.

[6] This change was effective in FY1977.

[7] For further information on the completion of annual appropriations acts and the use of CRs, see Table 1 in CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by Jessica Tollestrup.

[8] The Antideficiency Act is discussed in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al. In addition, the Government Accountability Office provides information about the act online at http://www.gao.gov/ada/antideficiency.htm.

including for activities involving "the safety of human life or the protection of property."[9] When appropriations for a particular project or activity are not provided in laws, either in the form of regular appropriations or a CR, a funding gap occurs.[10] Since the issuance of two Attorney General opinions in the early 1980s,[11] in the event of a funding gap, agencies are required to begin a shutdown of all activities not essential to the protection of property or the safety of human life and furlough all non-excepted[12] employees. Concern regarding the effects of shutdowns on the federal government, the economy, and private individuals has led some to advocate for the enactment of an automatic continuing resolution (ACR). An ACR would establish a mechanism to ensure a source of funding for discretionary spending activities, with some limitations, in the event that timely enactment of appropriations does not occur. The funding would become available automatically at any point during the fiscal year when a funding gap occurred without any further congressional action being needed, and it would remain available for the duration specified in the ACR. If an ACR mechanism were enacted, the possibility that the government would need to shut down due to a funding gap might be lessened or eliminated. Such an automatic funding mechanism could also have a significant effect on the dynamics of the appropriations process by effectively removing October 1 as the deadline for annual action to be completed. These, as well as other potential effects, are discussed below.

The one ACR approach to have been adopted, the Pay our Military Act (P.L. 113-39), was in the context of concern over an impending funding gap in the FY2014 appropriations process. This ACR mechanism was applicable to certain FY2014 project and activities in three different categories relating to the pay and allowances for (1) members of the armed forces, (2) Department of Defense (DOD) civilian personnel, and (3) other specified DOD and Department of Homeland Security contractors. The automatic funding provided by this ACR took effect on October 1, 2013, due to the absence of enacted regular or interim continuing appropriations, and terminated on October 17, 2013, due to the enactment of interim continuing appropriations (P.L. 113-46). This ACR is discussed in the report section entitled "P.L. 113-39 (113th Congress)."

This report begins by providing background on the historical frequency of federal funding gaps. Next, four major features of ACR proposals since the 1980s—time frame, funding level, activities, and duration—are explained. This is followed by a summary of the major arguments for and against the enactment of an ACR. Finally, the last three sections of the report review congressional action that has taken place on ACR proposals, describe ACR proposals that have been introduced but not enacted during the 112th and 113th Congresses, and provide brief analysis of P.L. 113-39.

Funding Gaps and Shutdowns

Article I, Section 9, of the Constitution prohibits the payment of money out of the Treasury that has not been provided by law. The Antideficiency Act (31 U.S.C. 1341-1342, 1511-1519), which

[9] See 31 U.S.C. §1342.

[10] For further information on the historical frequency of funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup. For further information on the effects of funding gaps, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[11] 43 Op. Att'y Gen. 224 (April 25, 1980); 43 Op. Att'y Gen. 293 (January 16, 1981).

[12] Non-excepted employees are those subject to furlough during a government shutdown. For further information, see U.S. Office of Management and Budget, *Circular No. A-11: Preparation, Submission, and Execution of the Budget*, July 2010, §124, http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc, as cited in CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

was initially enacted in 1870,[13] additionally forbids agencies from obligating or expending federal funds in the absence (or in excess) of an appropriation, except as authorized by law or under certain conditions. The absence of appropriations results in a funding gap.

Before the 1980s, federal agencies postponed nonessential obligations during a funding gap but otherwise continued regular program operations until funding was restored.[14] However, at the end of 1980 and beginning of 1981, Attorney General Benjamin R. Civiletti issued two opinions (hereafter referred to as the "Civiletti opinions") effectively restricting agencies' actions under such conditions by clarifying that in the event of a funding gap, executive branch agencies must immediately begin to terminate regular activities.[15] Under the opinions, obligations without budget authority are allowed only in situations where there is a "reasonable likelihood" that the protection of property or the safety of human life might be compromised without such spending.[16] Under current practice, when a funding gap occurs, the federal government promptly furloughs all non-excepted personnel and curtails many related agency activities until funding has been restored.[17]

Between FY1977 and FY2013, a total of 17 funding gaps occurred. In three instances (FY1983, FY1985, and FY1996), there were two funding gaps for one fiscal year, and in one instance (FY1978), there were three funding gaps. These gaps ranged in duration from one to 21 days. Six of the seven lengthiest gaps were before FY1981; generally, the duration and frequency of gaps lessened considerably after 1981, perhaps, in part, due to the greater consequences of funding gaps for agency operations that resulted from the Civiletti opinions. In six of the cases, the funding gap was due to a failure to enact annual appropriations or a CR by the start of the fiscal year. In the other 11 cases, the funding gaps occurred between CRs (as the fiscal year was already underway). Nine of the funding gaps occurred at the start of the fiscal year or during October; the other eight occurred in November or December.[18]

Most recently, a funding gap for FY2014 appropriations commenced on October 1, 2013.

Features of Automatic Continuing Resolutions

Concern over the disruptive effects of shutdowns on the federal government, the economy, and individuals has led some to advocate for the enactment of an ACR. The objective of such a budget process change is to ensure that, in the event regular or continuing appropriations are not enacted, a funding gap would not occur. An ACR would establish a source of funding for discretionary spending activities at a specified level in the event that the timely enactment of appropriations is

[13] For further information on the Antideficiency Act, see CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al.

[14] GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, p. 2.

[15] 43 Op. Att'y Gen. 224 (April 25, 1980); 43 Op. Att'y Gen. 293 (January 16, 1981). For additional information on the Civiletti opinions, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[16] Attorney General opinions are binding on executive branch agencies for the Administration during which they are issued. While the continued observance of the guidance provided by prior Attorney General opinions is at the discretion of future Administrations, the executive branch in the 30 years since the Civiletti opinions were issued has largely continued to follow them.

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

[18] For further information on funding gaps and a legislative history of the two FY1996 shutdowns, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

disrupted. The funding would be automatically available upon the occurrence of a funding gap and remain available for a specified duration without the need for any further congressional action.

In addition to preventing federal government shutdowns, ACR proponents aim to provide additional time beyond the start of the fiscal year for appropriations decisions to be made. With these objectives in mind, a variety of ACR frameworks have been proposed since the 1980s that vary along four major dimensions: the extent to which the mechanism would sunset or be indefinitely available, the level of funding that would automatically be provided, the activities for which the funding could be used, and the duration for which the funding would be effective.

Sunset

An ACR mechanism can include a *sunset* provision or be applicable on a *permanent* basis. ACR mechanisms containing a sunset provision are applicable during a specified fiscal year or range of fiscal years but expire thereafter.[19] The alternative type of mechanism permanently establishes an ACR that does not expire.[20] These permanent ACR mechanisms are either effective *indefinitely* or (most commonly) effective only if certain *conditions* have been met. For example, an ACR mechanism might be effective only for fiscal years in which there is a general election for federal office and Congress has not completed annual appropriations or enacted a CR by the date that the election occurs, thereby reducing the need for appropriations to be enacted during a lame-duck session.[21] Alternatively, a permanent ACR mechanism might apply only if full-year appropriations had been enacted the prior year, either through regular appropriations measures or a CR.[22] In this latter instance, the ACR could not be effective for more than two fiscal years in succession.

Both ACR mechanisms that include sunset provisions and those that are effective only in specified conditions have at least one significant implication: While it would successfully provide interim funding under certain circumstances, it could not indefinitely assure that a funding gap would not occur.

Funding Level

Although ACR proposals have differed widely in terms of the funding level they would provide, most proposals have used a funding level that is the lower of *multiple options*. Such options have included the level of funding for each project or activity (or a percentage of that funding[23]) provided in (1) the relevant regular appropriations act for the previous fiscal year, (2) the most recent CR for the current fiscal year,[24] (3) the relevant House- or Senate-passed appropriations bill for the current fiscal year,[25] and (4) the budget submission of the President for the current

[19] See, for example, S. 99 (106th Cong.), H.R. 142 (106th Cong.), H.R. 29 (107th Cong.).

[20] See, for example, H.R. 298 (102nd Cong.).

[21] See, for example, H.R. 5842 (111th Cong.). For further information on lame-duck sessions and the enactment of regular appropriations, see CRS Report RL34597, *The Enactment of Appropriations Measures During Lame Duck Sessions*, by Jessica Tollestrup.

[22] See, for example, S. 3652 (111th Cong.), S. 2070 (110th Cong.), H.R. 3583 (110th Cong.).

[23] See, for example, H.R. 638 (105th Cong.), H.R. 3744 (107th).

[24] See, for example, H.R. 298 (102nd Cong.).

[25] See, for example, S. 228 (105th Cong.), H.R. 3744 (107th Cong.).

fiscal year.[26] As an alternative, the ACR could provide funding at a specified rate for projects and activities based on the *current fiscal year* or a *prior fiscal year*,[27] or at an *indefinite* rate (e.g., "such sums as are necessary").[28]

Activities Covered

Previous ACR proposals also vary as to the types of activities that would be covered by an automatic source of continuous funding, although most would provide budget authority for *all activities* that received discretionary funding in the previous fiscal year.[29] Some ACRs, however, would limit funding to *selected categories* of discretionary budget authority, such as civilian pay or government activities that, if not performed, would result in a loss of revenue.[30]

Duration

ACR proposals have differed as to how long they would provide funding in the absence of regular appropriations acts or a CR, referred to in this report as the "duration" of an ACR. Under previous proposals, the duration of an ACR mechanism would begin at the time that a funding gap occurred due to the failure to enact full-year appropriations or to provide interim funding through a CR. The funding that most ACR proposals provide would cease once full-year appropriations or a "regular" CR for the current fiscal year were enacted or once the end of the fiscal year was reached.[31] Some ACRs specify, however, that the automatic funds may continue to be provided beyond the end of the fiscal year if regular or continuing appropriations for that fiscal year were never enacted.[32] Alternatively, an ACR's funding could expire on a specified date or after a specified number of days prior to the end of the fiscal year.[33]

Arguments For and Against Automatic Continuing Resolutions

A number of arguments have been made for and against the enactment of an ACR mechanism, some of which are discussed below. These arguments are primarily drawn from congressional hearings and committee reports on ACR proposals made since the Civiletti opinions were issued

[26] See, for example, H.R. 638 (105th Cong.).

[27] This option can be conceived of as the annualized level of budget authority for a project or activity for the last day of the previous fiscal year (see, for example, H.R. 5720, 96th Cong.), the average rate for operations for a project or activity during the entire previous fiscal year (see, for example, H.R. 298, 102nd Cong.), the rate of operations (or an overall percentage of this) contained in the relevant regular appropriations act or CR from the previous fiscal year (see, for example, H.R. 4837, 105th Cong.), the rate of operations contained in the most recent CR for the current fiscal year (see, for example, S. 558, 106th Cong.), or the rate of operations of a specific previous fiscal year (see, for example, S. 104, 106th Cong.).

[28] See, for example, H.R. 3210 (113th Cong.).

[29] See, for example, S. 2070 (110th Cong.), H.R. 3583 (110th Cong.). Some of these types of proposals specifically exclude budget authority that was designated as emergency during the prior fiscal year (see, for example, S. 3779, 111th Cong.).

[30] See, for example, H.R. 2007 (104th Cong.).

[31] See, for example, S. 3779 (111th Cong.), S. 2070 (110th Cong.), H.R. 3583 (110th Cong.).

[32] See, for example, S. 768 (113th Cong.).

[33] For a discussion of this option, see the testimony of Robert Greenstein, U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, 106th Cong. 1st sess., May 20, 1999 (Washington, DC: GPO, 1999).

in the early 1980s. This discussion also draws from media reports of previous government shutdowns, reports by the Government Accountability Office (GAO), Congressional Budget Office (CBO) cost estimates, and reports written by policy institutes analyzing various budget process reform proposals. These arguments are not an exhaustive list of all reasons why ACR proposals have been supported or opposed, and their applicability is heavily dependent upon the type of ACR mechanism being considered. They are representative, however, of the debate that has developed over the past 30 years.

Arguments For

Proponents of ACRs have argued that the mechanism is needed to prevent the possibility of government shutdowns and their related effects and to promote a context for funding decisions in which time pressures are less intense, allowing for a more deliberative decisionmaking process. Further, proponents have also argued that using an ACR mechanism would make CRs a less attractive vehicle for unrelated legislative measures. These arguments are detailed below.

Disruption of Government Services

Some proponents of an ACR have argued that the disruption of government services during a funding gap was never intended by the Antideficiency Act and that a temporary CR is an inadequate remedy.[34] Federal government shutdowns result in disruptions in government services. For example, during the FY1996 shutdown, the processing of benefit claims for many program beneficiaries slowed or halted due to the furlough of non-excepted federal employees. Further, tourist entry at public museums and parks was largely barred, which caused inconvenience to the general public.[35]

Though the provision of interim funding through a CR can mitigate some disruptions to government services, short-term CRs have also had negative effects on agencies. For instance, a 2009 GAO report concluded that interim CRs can lead to inefficiencies due to hiring delays as agencies fail to fill new or existing positions because of uncertainty over the ultimate funding level for the fiscal year.[36] Agencies have also engaged in repetitive work, such as entering into multiple contracts with vendors or contract workers due to a lack of budget authority for the entire fiscal year.[37] These effects, some ACR proponents have argued, ultimately make it difficult for agencies to fulfill their statutory duties and efficiently serve the public. An automatic funding mechanism for discretionary spending, however, would lessen the issues caused by interim CRs by providing agencies with a predictable source of funding until regular appropriations could be completed.

Cost of Shutdowns

Some proponents of an ACR mechanism have argued that the high costs of a shutdown for the government and the private sector warrant the provision of an automatic interim funding process.

[34] GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, pp. 3, 45. At that time, the GAO officially supported the enactment of an ACR.

[35] For further information on the effects of the FY1996 shutdown, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[36] GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879, September 2009. See also CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[37] Ibid.

Within the federal government, a variety of program inefficiencies may arise from funding gaps. Initially, government agencies expend work hours in preparation for the shutdown. Further, during the shutdown, work and official travel is interrupted. Finally, once the shutdown is concluded, additional work hours are needed to restart and complete government activities that should have occurred during the shutdown.[38]

Funding gaps may be costly for the private sector as well, particularly for businesses that are dependent upon federal government activities. A 1999 Senate Committee on Governmental Affairs report noted that shutdowns "cause ripple effects in the economy. For instance, during a shutdown not only are federal employees furloughed, but government contractors may be forced to lay off their employees until funding is resumed."[39] These types of effects reportedly occurred during the December 15, 1995, through January 6, 1996, federal government shutdown, when more than 500,000 companies faced a delay in receiving government payments, and programs operated by government contractors were at risk of layoffs.[40] The committee report concluded, "Clearly it is more desirable for the economy as a whole for the operations of government to continue without interruption when action on appropriations bills cannot be completed."[41]

Public Perception of Congress

Some supporters of an ACR mechanism have argued that government shutdowns result in a negative public perception of Congress's ability to govern effectively. For example, while the House Committee on Appropriations adversely reported[42] the ACR proposal in H.R. 853 (106th Congress), it stated in the accompanying written report, "As a political tool for leveraging an issue with the President, the CR has been a dismal failure for the Congress. Aside from not achieving the desired political results, Congress also has received criticism for allowing the government to shut down, not the President."[43] By removing the possibility of a funding gap due to the inability to enact annual or continuing appropriations, some ACR proponents have argued that Congress will be able to avoid any public backlash that may occur when government shuts down.[44]

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[38] For further information on the mechanics of federal government shutdowns, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

[39] U.S. Congress, Senate Committee on Governmental Affairs, *Government Shutdown Prevention Act*, report to accompany S. 558, 106th Cong., 1st sess., S.Rept. 106-15 (Washington, DC: GPO 1999), p. 3.

[40] Dan Moran and Stephen Barr, "When Shutdown Hit Home Ports, GOP Cutters Trimmed Their Sails," *Washington Post*, January 8, 1996.

[41] S.Rept. 106-15, p. 3.

[42] The provisions in H.R. 853 (106th Cong.) containing an ACR mechanism were jointly referred to the Committee on Budget and the Committee on Appropriations on February 25, 1999. The Committee on Appropriations reported those provisions *adversely* on June 24, 1999, and recommended that the ACR mechanism be stricken from H.R. 853 (see H.Rept. 106-198, Part 1).

[43] U.S. Congress, House Committee on Appropriations, *The Comprehensive Budget Process Reform Act of 1999*, committee report to accompany H.R. 853, 106th Cong, 1st sess., H.Rept. 106-198, Part 1 (Washington, DC: GPO 1999), p. 3.

[44] See, for example, U.S. Congress, Senate Committee on the Budget and Committee on Governmental Affairs, *To Consider Budget Process Reform*, joint hearing, 106th Cong., 1st sess., S.Hrg. 106-24 (Washington, DC: GPO 1999), p. 30.

Constructive Decisionmaking Atmosphere

Some who have supported an ACR mechanism have perceived the tenor of the appropriations process as being less than ideal for producing an agreement on spending priorities. For example, the House Appropriations Committee report on H.R. 853 (106th Congress) noted:

> Both Congress and the President have used the threat of a government shutdown to extort concessions from the other side. During the 104th Congress, the Congress used the threat of a shutdown to try to force the President to agree to tax cuts and significant reductions in discretionary spending. Last year, the President used the threat of a shutdown to win higher levels of discretionary spending—but not without the Congress wrangling large increases in defense spending.[45]

The remedy for this, according to some previous proponents of an ACR mechanism, would be to eliminate the threat of a government shutdown so that the tone of the negotiations would be less combative. This, some have argued, would serve to "encourage more bipartisan discussions on appropriations bills and discourage the past practices of holding appropriations bills hostage to last-minute negotiations."[46]

Avoiding Crisis Appropriations

Some have argued for the enactment of an ACR mechanism because it might reduce the need for Members to make funding decisions in a rushed atmosphere in order to conclude the appropriations process or avoid a government shutdown. For example, during a 1999 joint hearing held by the Senate Committees on the Budget and Governmental Affairs to address budget process reform, then-CBO Director Daniel L. Crippen stated, "Enacting automatic continuing appropriations would end the crisis atmosphere that surrounds the appropriation process at the end of each session."[47] Echoing this sentiment, Senator John McCain asserted that, if an ACR mechanism were enacted, "Congress would be able to resist the pressure to throw everything but the kitchen sink into a last-minute spending bill just to get a deal and prevent a shutdown."[48] Ultimately, these individuals argued, by easing the time pressures on annual spending negotiations and eliminating the possibility of a government shutdown, a more coherent outcome could be achieved.[49]

Continuing Resolutions as Vehicles for Legislative Measures

Some proponents of an ACR mechanism also argue that the elimination of the need for CRs to prevent a government shutdown would lessen their attractiveness as vehicles for legislative

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[45] U.S. Congress, House Committee on Appropriations, *The Comprehensive Budget Process Reform Act of 1999*, committee report to accompany (adversely reported) H.R. 853, 106th Cong., 1st sess., H.Rept. 106-198, Part 1 (Washington, DC: GPO 1999), pp. 78-79.

[46] U.S. Congress, Senate Committee on Governmental Affairs, *Government Shutdown Prevention Act*, committee report to accompany S. 558, 106th Cong., 1st sess., S.Rept. 106-15 (Washington, DC: GPO 1999), p. 3.

[47] U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, hearing, 106th Cong., 1st sess., H.Hrg 106-4 (Washington, DC: GPO 1999), p. 69.

[48] U.S. Congress, Senate Committee on the Budget and Committee on Governmental Affairs, *To Consider Budget Process Reform*, joint hearing, 106th Cong., 1st sess., S.Hrg. 106-24 (Washington, DC: GPO 1999), p. 14.

[49] For more on this perspective, see the testimony of Martha Phillips, Concord Coalition, U.S. Congress, Senate Committee on the Budget and Committee on Governmental Affairs, *To Consider Budget Process Reform*, joint hearing, 106th Cong., 1st sess., S.Hrg. 106-24 (Washington, DC: GPO 1999), p. 63; Brian M. Riedl, "10 Elements of Comprehensive Budget Process Reform," Heritage Foundation, June 15, 2006, p. 7.

provisions that are unrelated to federal government spending decisions (sometimes referred to as "riders"). A 1981 GAO study concluded that appropriations riders were the predominant cause of the delays in the annual appropriations process that resulted in funding gaps.[50] In addition, in their report on H.R. 853 (106th Congress), the House Committee on Appropriations identified the inclusion of extraneous matter within CRs during the 1980s and 1990s as the primary reason for their subsequent presidential veto.[51] By mitigating the incentive to add policy issues to government spending measures, these proponents have argued that an ACR mechanism would further buttress the separation between money and policy decisions already encouraged by the congressional budget process.[52]

Arguments Against

Those who oppose an ACR mechanism have posited that its adoption would create an advantage for the current level of federal spending relative to other proposed levels during subsequent budget negotiations. Opponents have also claimed that the threat of a government shutdown causes serious negotiations and compromise to occur, and by lessening or eliminating this threat, the enactment of regular appropriations would be more difficult. A further criticism has been that an ACR mechanism would create procedural issues under the current budget process with the establishment of permanent appropriations and would fail to comprehensively solve the issue of funding gaps. These arguments are detailed below.

Status Quo Bias

Some have argued against the enactment of an ACR mechanism because it might provide a built-in advantage for some participants in spending negotiations. If a permanent ACR were to be enacted, individuals who prefer the level of spending provided by the ACR to any new proposed level might have an incentive to block such measures. For example, if an ACR mechanism provided a level of spending that would freeze or reduce the previous fiscal year's level, and a congressional majority preferred that amount to a higher level being proposed by the President, those Members would hold a negotiating advantage over the President because inaction would cause the ACR to become effective. If the congressional majority, however, wanted to make even greater spending cuts than what the ACR would provide, a President who was opposed to those cuts would likewise hold a negotiating advantage.[53]

Those who have expressed concern that an ACR mechanism would create bias favoring the status quo also argue that this could affect the budget process in Congress itself. For example, the House Committee on Appropriations report on H.R. 853 (106th Congress) predicted that under an ACR,

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[50] GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981.

[51] U.S. Congress, House Committee on Appropriations, *The Comprehensive Budget Process Reform Act of 1999*, adverse report to accompany H.R. 853, 106th Cong., 1st sess., H.Rept. 106-198, Part 1 (Washington, DC: GPO 1999), p. 2.

[52] For more on this perspective, see the testimony of Daniel L. Crippen, Director, CBO, U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, hearing, 106th Cong., 1st sess., H.Hrg 106-4 (Washington, DC: GPO 1999), p. 69.

[53] For a further explanation of this view, see U.S. Congress, House Committee on Government Operations, *Reform of the Federal Budget Process: An Analysis of Major Proposals*, committee print, 100th Cong., 1st sess., H402-3 (Washington, DC: GPO 1987), p. 70; and Jacob Lew, Director, Office of Management and the Budget, U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, 106th Cong. 1st sess., May 20, 1999 (Washington, DC: GPO, 1999).

coalitions in Congress that want to prevent changes in spending would be able to do so without forcing a government shutdown:

> Inaction would favor the status quo. The option of doing nothing or stonewalling appropriations bills would become a legitimate strategy. Those who would want to avoid a funding cut or avoid a funding increase for a program or a bill would be strengthened by the existence of an ACR. Their goals would not be accomplished through the legislative process, as they should be, but through a strategy of placing the government on automatic pilot.[54]

This is particularly possible in the Senate, where a minority of Members may be able to effectively freeze spending for certain programs by refusing to end debate on appropriations measures.[55]

Delays in the Appropriations Process

Some who have opposed an ACR mechanism have argued that it might create a disincentive to enact regular appropriations bills in a timely manner. For an ACR mechanism that was permanent, the existence of automatic fall-back funding could cause the regular appropriations process to slow—or not occur at all—because the completion of regular appropriations or the provision of temporary funding would no longer be necessary to prevent a funding gap from occurring.[56] This is because, under an ACR, the cost of failing to come to an agreement would no longer be a government shutdown; this situation might prompt participants in negotiations who prefer the ACR-provided level to hold out for their preferences or simply not come to an agreement. During the 1999 House Committee on the Budget hearing on H.R. 853 (106th Congress), a number of individuals expressed this concern. For example, Robert Greenstein, executive director of the Center for Budget and Policy Priorities stated that "a 12-month automatic, CR makes it too easy to have automatic CRs that maintain the status quo supplant regular appropriations bills."[57] In a similar vein, Representative John Spratt posited that an ACR "would take away some of the urgency and compulsion for us to make compromises and get the work for the year done and put it behind us. Instead, we would always have this to fall back upon."[58]

Individual Funding Decisions

Some observers have opposed an ACR mechanism because it might make it more difficult for Members to make funding decisions that reflect new priorities for individual budget accounts. The enactment of annual appropriations legislation allows Members to collectively make

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[54] U.S. Congress, House Committee on Appropriations, *The Comprehensive Budget Process Reform Act of 1999*, adverse report to accompany H.R. 853, 106th Cong., 1st sess., H.Rept. 106-198, Part 1 (Washington, DC: GPO 1999), p. 2.

[55] Lew, p. 41. See also GAO, *Continuing Resolutions and an Assessment of Automatic Funding Approaches*, GAO/AFMD-86-16, January 1986; Richard Kogan, "Proposal for *Automatic* Continuing Resolutions Would Likely Make It Harder to Pass Regular Appropriations Bills," Center on Budget and Policy Priorities, June 24, 2004.

[56] Andrew J. Taylor, "The Congressional Budget Process in an Era of Surpluses," *PS: Political Science and Politics*, vol. 33, no. 3 (September, 2000), pp. 575-580.

[57] U.S. Congress, House Committee on the Budget, *H.R. 853, The Comprehensive Budget Process Reform Act of 1999*, hearing, 106th Cong., 1st sess., H.Hrg 106-4 (Washington, DC: GPO 1999), p. 78.

[58] Ibid, p. 23. For a more expansive treatment of these concerns, see U.S. Congress, House Committee on the Budget, *Government Shutdown Prevention Act*, report to accompany S. 558, 106th Cong., 1st sess., S.Rept. 106-15 (Washington, DC: GPO 1999), p. 13.

decisions that raise or lower the funding for each program individually. ACRs, however, typically provide funding for all budget accounts at a level based on the same rate. If an ACR were used, Members would have the opportunity to influence only the funding of individual programs if additional legislation were passed. During the 106th Congress, testifying in opposition to an ACR mechanism before the House Committee on the Budget, then-Director of the Office of Management and Budget (OMB) Jacob Lew stated:

> An automatic CR is not a workable policy. It would effectively set the default position for discretionary spending at a freeze level, resulting in: (1) the underfunding of programs which require increases to cover growing costs and populations; and (2) the overfunding of projects which are already near or at completion.[59]

Agency Oversight

Some have opposed an ACR mechanism out of concern that it might undermine agency accountability to Congress. The appropriations process is a significant avenue for congressional oversight and influence over executive agencies. For instance, appropriations accounts typically specify the purposes for which the funds may be used and often the purposes for which they cannot be used. In addition, because the executive branch is dependent upon congressional action to provide budget authority for each fiscal year, agencies have an incentive to regularly comply with congressional directives.[60] If agencies, however, are assured some level of funding in the event of an impasse, without any requirement for congressional action, they may have less incentive to cooperate with congressional wishes, at least in the short term.[61]

Procedural Issues

Some critics argue that an ACR is not feasible under current CBO scoring practices. When the CBO analyzed the ACR proposals contained in S. 558 and H.R. 853 (106th Congress), it scored the measures as an increase in direct spending.[62] Under House and Senate rules, new direct spending must be offset so that it does not increase the on-budget deficit over a six-fiscal-year and an 11-fiscal-year period.[63] In addition, under the statutory PAYGO (P.L. 111-139) budget enforcement mechanism, at the end of a legislative session, any changes that cause a net increase in direct spending over five- and 10-year windows that have not been offset trigger a presidential sequester order that would implement, with some exceptions, across-the-board spending cuts in

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[59] U.S. Congress, House Committee on the Budget, *Government Shutdown Prevention Act*, report to accompany S. 558, 106th Cong., 1st sess., S.Rept. 106-15 (Washington, DC: GPO 1999), pp. 14-15.

[60] For more information on appropriations oversight, see CRS Report RL30240, *Congressional Oversight Manual*, by Todd Garvey et al.

[61] A similar argument is made in opposition to biennial budgeting. See, for example, Robert Greenstein and James Horney, "Biennial Budgeting: Do the Drawbacks Outweigh the Advantages?," Center on Budget and Policy Priorities, June 16, 2006.

[62] CBO explained the rationale for its score of H.R. 853 thus: "By providing an automatic funding source for 2000 that would take effect without further legislative action, H.R. 853 would provide direct spending authority, and pay-as-you-go procedures would apply to the bill." Congressional Budget Office Cost Estimate, H.R. 853, *Comprehensive Budget Process Reform Act of 1999*, as ordered reported by the House Committee on Rules on June 23, 1999, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/13xx/doc1378/hr853rls.pdf. A similar rationale was provided for its score of S. 558.

[63] Section 201(a) of S.Con.Res. 21, 110th Congress and House Rule XXI, clause 10. For further information on the Senate PAYGO rule, see CRS Report RL31943, *Budget Enforcement Procedures: Senate Pay-As-You-Go (PAYGO) Rule*, by Bill Heniff Jr. For further information on the House CUTGO rule, see CRS Report R41926, *House Rules Changes Affecting the Congressional Budget Process Made at the Beginning of the 112th Congress*, by Bill Heniff Jr.

non-exempt direct spending programs.[64] It is unclear at this time how the OMB would score an ACR structured like S. 558 or H.R. 853 if it were to be enacted. Under current CBO scoring practices, however, the total amount of budget authority that was guaranteed by the rate provided in such ACR proposals would need to be offset as new direct spending under House and Senate rules.

Inadequate Funding

Some who have opposed an ACR mechanism believe it might inadequately provide for an agency's spending needs. Currently, CRs that provide initial funding for a fiscal year often contain special provisions that adjust the rate up or down or provide budget authority for some new programs (sometimes referred to as "anomalies").[65] Congress often judges these anomalies to be necessary because of new issues that arise from year to year that cannot be predicted, and CRs do not otherwise provide funding for new activities or initiatives.[66] ACR proposals, however, typically do not contain anomalies and thus do not anticipate the year-to-year changes in agency needs that often occur. Moreover, budget authority for entitlement programs that is provided through the annual appropriations process, such as veterans compensation and pensions and the supplemental nutrition and assistance program, might also be inadequate if the funding provided by the ACR formula were insufficient to meet the adjustment required in current law due to factors such as inflation or population growth.[67] Although an ACR might be able to keep government running in the short term, opponents of an ACR argue that at least one long-term regular or supplemental appropriations act would be necessary to make adjustments for new programs and other funding changes. Enacting an additional appropriations measure could be as contentious and as difficult as passing a CR in the first place, but without it, new programs could not be initiated and agencies would be unable to adjust to the new circumstances occurring during the current fiscal year.[68]

Congressional Action on Automatic Continuing Resolution Proposals

After the release of the Civiletti opinions in 1980 and 1981, interest in providing an automatic funding mechanism for discretionary spending gradually increased. In a 1981 report to Congress, the Comptroller General suggested that an ACR mechanism be enacted to prevent the possibility of future government shutdowns.[69] During the 1980s, a number of proposals were introduced in the House and Senate that would have provided some sort of automatic funding mechanism in the

[64] For further information on statutory PAYGO, see CRS Report R41157, *The Statutory Pay-As-You-Go Act of 2010: Summary and Legislative History*, by Bill Heniff Jr.

[65] See, for example, H.R. 3081 (P.L. 111-242, 111th Cong.), which provided continuing appropriations from the beginning of FY2011 through December 3, 2010.

[66] For further information on anomalies, see CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass.

[67] Kogan, "Proposal for *Automatic* Continuing Resolutions." See also U.S. Congress, Senate Committee on Governmental Affairs, *Government Shutdown Prevention Act*, report to accompany S. 558, 106th Cong., 1st sess., S.Rept. 106-15 (Washington, DC: GPO 1999), p. 11.

[68] For a full explanation of this argument, see U.S. Congress, House Committee on Appropriations, *The Comprehensive Budget Process Reform Act of 1999*, adverse report to accompany H.R. 853, 106th Cong., 1st sess., H.Rept. 106-198, Part 1 (Washington, DC: GPO 1999), p. 4.

[69] Comptroller General, GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981.

event that action on appropriations was not completed at the start of the fiscal year.[70] None of these received any legislative action. In 1987, the House Committee on Government Operations released a report on budget process reform that, in part, evaluated the potential advantages and drawbacks of implementing an ACR.[71] During subsequent hearings on H.R. 3929, the Budget Process Reform Act of 1990 (101st Congress), however, the possibility of an ACR was not discussed.[72]

Congressional action on ACR proposals first occurred in 1991 with hearings on H.R. 298, the Budget Process Reform Act (102nd Congress). Committee action also occurred with respect to ACR proposals during the 104th, 105th, 106th, 108th, and 110th Congresses. None of these proposals, however, were enacted.

Five pieces of legislation containing an ACR mechanism received committee action after referral between the 102nd and 113th Congresses (see **Table 1**). Two of these bills (H.R. 298, 102nd Congress; H.R. 853, 106th Congress) received action in at least one House committee, whereas the three others (S. 672, 105th Congress; S. 93 and S. 558, 106th Congress) received action in at least one Senate committee. A total of four days of hearings were held on such legislation during this period. Legislation containing an ACR mechanism was reported by committee on three different occasions, most recently in the 106th Congress.

Table 1. Committee Action on ACR Proposals: 102nd-114th Congresses

Congress	Bill No.	Introduced	Committees (Subcommittees)	Hearings	Reported
102nd	H.R. 298	01-03-1991	Rules (Legislative Process)	09-18-1991, 09-25-1991 (Legislative Process)	—
			Appropriations	—	—
			Government Operations	—	—
105th	S. 672[a]	04-30-1997	Appropriations	—	S.Rept. 105-16
106th	S. 93	01-19-1999	Budget	01-27-1999[b]	—
			Governmental Affairs	01-27-1999[b]	—
	S. 558	—	Governmental Affairs	—	S.Rept. 106-15
	H.R. 853	02-25-1999	Appropriations	—	H.Rept. 106-98 (Part 1)
			Budget	05-20-1999	H.R. 98 (Part 2)

Source: Compiled by CRS with data from the Legislative Information System of the U.S. Congress.

Notes:

a. The companion bill to S. 672, H.R. 1469, did not contain an ACR provision when reported out of committee.

[70] See, for example, H.R. 3847 and S. 823 (100th Cong.).

[71] U.S. Congress, House Committee on Government Operations, *Reform of the Federal Budget Process: An Analysis of Major Proposals*, committee print, 100th Cong., 1st sess., H402-3 (Washington, DC: GPO 1987), pp. 4-7.

[72] U.S. Congress, House Committee on Rules, Subcommittee on the Legislative Process, *The Budget Process Reform Act of 1990*, hearing on H.R. 3929, 101st Cong., 2nd sess., H681-1, March 20, 21, April 19, May 9, 1990 (Washington, DC: GPO, 1990).

b. Committees on Budget and Governmental Affairs joint hearing.

Although reported measures containing ACR mechanisms were not considered on the House or Senate floor between the 102nd and 114th Congresses, action occurred on seven floor amendments and one unreported measure (see **Table 2**). For four of these amendments (to H.R. 3756, 104th Congress; H.R. 853, 106th Congress; and H.R. 4663, 108th Congress), action occurred on the House floor only. For two of these amendments (to S. 1, 110th Congress; H.R. 325, 113th Congress), action occurred on the Senate floor only. In the case of H.R. 4663 (105th Congress), the ACR mechanism was incorporated by adoption of a floor amendment in the House (H.Amdt. 99). The Senate substitute amendment for H.R. 4663 also contained provisions providing for an ACR. After resolving differences, the conference report passed by the House and Senate still included an ACR mechanism, but the bill was subsequently vetoed.

H.R. 3210, making continuing appropriations for military pay in the event of a government shutdown, was introduced on September 28, 2013, and referred to the House Committee on Appropriations. The same day that the bill was introduced, the House adopted a special rule that allowed for its immediate consideration, H.Res. 366.[73] Early the following morning, the House passed H.R. 3210 by a vote of 423-0. On September 30, H.R. 3210 was considered in the Senate and passed by unanimous consent. The bill was signed into law by the President later that same day (P.L. 113-39).

Table 2. Floor Action on ACR Proposals: 102nd-114th Congresses

Congress	Amdt. no.	Bill No.	Date First Considered	House Floor Action	Senate Floor Action	Resolving Differences	Presidential Action
104th	H.Amdt. 1298	H.R. 3756	07-17-1996	Point of order sustained	—	—	—
105th	H.Amdt. 99	H.R. 1469	05-15-1997	Passed, 227-197	Substituted text of S. 672 by U.C.	H.Rept. 105-119	Vetoed
106th	H.Amdt. 709	H.R. 853	05-16-2000	Failed, 173-236	—	—	—
108th	H.Amdt. 613	H.R. 4663	06-24-2004	Failed, 111-304	—	—	—
	H.Amdt. 621	H.R. 4663	06-24-2004	Failed, 88-326	—	—	—
110th	S.Amdt. 13	S. 1	01-10-2007	—	Motion to waive Budget Act failed, 25-72; amendment fell	—	—
113th	S.Amdt. 7	H.R. 325	01-31-2013	—	Tabled, 52-46	—	—

[73] A "special rule" is a simple resolution reported by House Rules Committee that set the terms for considering a measure. It is effective when adopted by a majority of the House. For further information on how special rules may provide for consideration of a measure or matter, see CRS Report 98-354, *How Special Rules Regulate Calling up Measures for Consideration in the House*, by Richard S. Beth.

Congress	Amdt. no.	Bill No.	Date First Considered	House Floor Action	Senate Floor Action	Resolving Differences	Presidential Action
	—	H.R. 3210	09-28-2013	Passed, 423-0	Passed, unanimous consent	—	Signed into law, September 30, 2013 (P.L. 113-39)

Source: Compiled by CRS with data from the Legislative Information System of the U.S. Congress.

Recent Proposals: 112th, 113th, and 114th Congresses

A number of ACR proposals have been introduced in the House and Senate during the 112th, 113th, and 114th Congresses.

112th Congress

In the 112th Congress, the potential for funding gaps due to delays in the annual appropriations process was of early congressional concern, as appropriations for FY2011 were not completed until more than halfway through the fiscal year. During that time and throughout the rest of the Congress, a number of pieces of legislation were introduced in the House and Senate to provide ACR mechanisms. All but a few of these mechanisms would have been effective on a permanent basis;[74] the others would have been effective only for FY2011.[75] About half of these bills would have provided automatic funding for all projects and activities funded in the previous fiscal year's appropriations measures,[76] whereas the other half would have provided funding for only specified projects and activities,[77] such as for "military pay and allowances"[78] or for "defense, veterans and homeland security spending."[79] The funding level in these proposals varied considerably. For some, the funding would have been at the previous year's level or a percentage of that level;[80] for others, different levels of funding were applicable depending on the activity;[81] for still others, the funding level for all covered projects and activities was indefinite (e.g., "such sums as are necessary").[82] The duration of the ACR for most of these proposals would have begun at the start of a funding gap and lasted until the applicable regular appropriations act for that fiscal year became law, a CR providing funds for all or part of the fiscal year became law, or the fiscal year ended.[83] A few proposals, however, would have allowed the ACR mechanism to continue

[74] See, for example, H.R. 1494, H.R. 2319, H.R. 3583, S. 439, S. 784, and S. 3434.

[75] See, for example, H.R. 1442.

[76] See, for example, H.R. 339 and H.R. 1471.

[77] See, for example, S. 1679.

[78] H.R. 1442.

[79] S. 1679.

[80] See, for example, H.R. 2319 and H.R. 1471.

[81] See, for example, S. 768 and H.R. 339.

[82] See, for example, H.R. 1494.

[83] See, for example, H.R. 1471 and H.R. 339.

providing funds into the next fiscal year if regular or continuing appropriations were not enacted.[84]

113th and 114th Congresses

In general, the ACR legislative proposals in the 113th and 114th Congresses have had similar characteristics to those in the 112th Congress discussed in the previous section.[85] One of these received floor action but was not enacted into law, S.Amdt. 7 to H.R. 325. The other was enacted into law, H.R. 3210, and is discussed in the next subsection of this report.

S.Amdt. 7 to H.R. 325[86] would have provided a permanent ACR mechanism to cover all projects and activities funded in the previous fiscal year in the applicable regular appropriations bill or full-year CR. The funding level was a rate for operations based on the lower of the preceding fiscal year's regular appropriations act or full-year CR, or the rate for operations in the most recently enacted CR for the current fiscal year. After 120 days, and each 90-day period thereafter, that rate for operations was to be reduced by 1%. The duration of the funds would have begun at the start of a funding gap and lasted until the applicable regular appropriations act for the current fiscal year, or a CR providing funds for all or part of the fiscal year, became law. The amendment explicitly allowed the funds to continue to be provided by the ACR mechanism during the following fiscal year, subject to additional 1% reductions every 90 days, if regular or continuing appropriations had not yet been enacted. In the 114th Congress, a virtually identical proposal was introduced in the Senate (S. 334).

P.L. 113-39 (113th Congress)

The one ACR approach to have been adopted, the Pay Our Military Act (P.L. 113-39), was in the context of the FY2014 appropriations process. In the weeks before the beginning of the fiscal year, no regular appropriations had been enacted into law, and many observers expressed concern as to the possibility of a federal government shutdown if an agreement to provide interim appropriations was not reached.[87] In particular, some of these concerns related to the effect that a funding gap would have on the military and certain associated civilian federal workers and contractors.[88] In response, the House and Senate passed H.R. 3210, and the bill was signed into law by the President on September 30, 2013. The automatic funding provided by this mechanism took effect on October 1, 2013, due to the absence of enacted regular or continuing appropriations, and terminated on October 17, 2013, with the enactment of the Continuing Appropriations Act of 2014 (P.L. 113-46).

This ACR provided a mechanism to cover FY2014 projects and activities in three different categories:

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[84] See, for example, S. 768 and S. 3434.

[85] The 113th Congress proposals included H.R. 1164, H.R. 3152, H.R. 3166, H.R. 3175, S. 29, S. 83, S. 171, and S. 280. The 114th Congress proposals includeH.R. 1776, S. 103, S. 334, and S. 545.

[86] For the text of this amendment, see "Amendments Submitted and Proposed," Senate, *Congressional Record*, daily edition, vol. 159, part 14 (January 31, 2013), pp. S446-S447.

[87] See, for example, Manu Raju and John Bresnahan, "Is a Grand Bargain Out of Reach," *Politico*, July 29, 2013; Annie Lowrey, "Budget Battles Keep Agencies Guessing," *New York Times*, September 3, 2013; Daniel Newhauser and Emily Ethridge, "Shutdown Showdown," *CQ Weekly*, September 23, 2013.

[88] See, for example, Niels Lesniewski, "Senators Float Proposal to Exempt Military from Shutdown," *CQ News*, September 24, 2013.

> (1) Pay and allowances to members of the Armed Forces (as defined in section 101(a)(4) of title 10, United States Code), including reserve components thereof, who perform active service during such period;
>
> (2) Pay and allowances to the civilian personnel of the Department of Defense (and the Department of Homeland Security in the case of the Coast Guard) whom the Secretary concerned determines are providing support to members of the Armed Forces described in paragraph (1); and
>
> (3) Pay and allowances to contractors of the Department of Defense (and the Department of Homeland Security in the case of the Coast Guard) whom the Secretary concerned determines are providing support to members of the Armed Forces described in paragraph (1).[89]

The funding level for all covered projects and activities was indefinite.

There were a number of ambiguities, however, related to the mechanism's potential operation during FY2014 and the first quarter of FY2015. First, the automatic funding might have been limited to the initial FY2014 funding gap, after which the mechanism would not have been available. Alternatively, the mechanism as enacted could have been interpreted to apply to any funding gap that occurred during the fiscal year. Second, while P.L. 113-39 would have provided new funds only during FY2014, the maximum period of availability for those funds (assuming they were not terminated through the enactment of regular or continuing appropriations) could have been the end of FY2014 under Section 2. On the other hand, the mechanism could have been interpreted to provide a period of availability for the FY2014 funds of up to the date in Section 3 (January 1, 2015). In light of these questions the sunset date of the mechanism could have been the date in Section 3 (January 1, 2015), the end of FY2014 (October 1, 2014), or the end of the initial FY2014 funding gap (October 17, 2013, P.L. 113-46). However, because no further funding gaps occurred during FY2014, there was no occasion to resolve these ambiguities.

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This report builds, in part, on the analysis contained in a previous report written by Robert Keith, formerly of CRS.

[89] Section 2(a) of P.L. 113-39. Section 2(b) provides that "Secretary concerned" is defined as "(1) the Secretary of Defense with respect to matters concerning the Department of Defense; and (2) the Secretary of Homeland Security with respect to matters concerning the Coast Guard."

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