Congressional Research Service
Informing the legislative debate since 1914

Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations

Updated July 25, 2012

Congressional Research Service
https://crsreports.congress.gov
RL34700

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Continuing appropriations acts, often known as continuing resolutions (CRs), have been a component of the annual appropriations process for decades. When Congress and the President do not reach final decisions about one or more regular appropriations acts by the beginning of the federal fiscal year, October 1, they often enact a CR. Two general types of CRs are used. An "interim" CR provides agencies with stopgap funding for a period of time until final appropriations decisions are made, or until enactment of another interim CR. A "full-year" CR provides final funding amounts for the remainder of a fiscal year in lieu of one or more regular appropriations acts. "Anomalies" may be included in an interim CR to prevent what parties to CR negotiations perceive as major problems that would be caused if an otherwise uniform approach were used to provide funding and impose related restrictions. The President, Office of Management and Budget (OMB), and agencies often are involved with Congress in the process of formulating, negotiating, and implementing interim CRs. An implication of their involvement is that they may influence the potential impacts of interim CRs.

Interim CRs typically are intended to both (1) preserve congressional prerogatives to make final decisions on full-year funding levels and (2) prevent a funding gap and corresponding government shutdown. Consequently, interim CRs provide relatively restrictive funding levels for agencies and usually prohibit projects or activities that were not funded in the previous year (sometimes called "new starts"). Interim CRs also impose some paperwork burden on federal agencies. Two other potential impacts might be identified. First, the restrictive funding level of an interim CR may impact upon an agency's activities, compared to the situation of receiving full-year appropriations. For example, agency personnel may reduce or delay a variety of actions, including hiring, award of contracts, and travel. Second, an agency funded by an interim CR may experience some uncertainty about what its final funding level will be. Uncertainty may cause an agency to alter its operations, rates of spending, and spending patterns over time, with potential ripple effects for internal management of the agency and its programmatic activities. Whether any potential impacts manifest themselves in actual cases would depend on specific circumstances, including how the interim CR is crafted, the time of year, and an agency's or program's particular operations. OMB and agency documents, as well as Government Accountability Office (GAO) reports, provide additional perspectives on potential impacts of interim CRs.

Related issues for Congress may include use of anomalies to manage impacts, congressional access to information and views from agencies and their employees, and the assumptions that are used when assessing potential impacts.

More extensive analysis on this subject is available in CRS Congressional Distribution Memorandum, *Potential Impacts of Interim Continuing Resolutions (CRs) on Agency Operations and the Functioning of the Federal Government*, coordinated by Clinton T. Brass (available to congressional clients on request). This report will be updated annually or more frequently as events warrant.

Contents

Introduction 1
Interim CRs and Their Requirements 2
Contexts and Purposes of Stopgap Funding 3
Provisions and Agency Requirements 4
"Rate for Operations" Formula 4
Apportionment 4
Restrictions on "New Starts" and Other Activities 5
Anomalies 5
Substantive Legislative Provisions 6
"Clean" CRs 6
Types of Potential Impacts 6
Avoidance of Government Shutdowns 6
Compliance with Administrative Requirements 6
Funding Level 7
Restrictions on New Projects and Activities 7
Funding Uncertainty 7
Additional Perspectives on Potential Impacts 8
OMB and Agency Documents 8
OMB Documents 8
Agency Documents 9
GAO Reports 10
GAO Case Study 10
Evidence From Other GAO Reports 11
Potential Issues for Congress 12
Managing Potential Impacts of CRs with Anomalies 12
Congressional Access to Agency Information and Employee Views 13
Role of Assumptions in Assessing Potential Impacts 14

Contacts

Author Information 14

Introduction

Continuing appropriations acts, commonly known as continuing resolutions (CRs), have been an integral component of the annual appropriations process for decades.[1] When Congress and the President do not reach final decisions about one or more regular appropriations acts, they often negotiate and enact a CR. Two general types of CRs are used. An "interim" CR provides agencies with stopgap funding for a period of time until final appropriations decisions are made, or until enactment of another interim CR. A "full-year" CR, by contrast, provides final funding amounts for the remainder of a fiscal year in lieu of one or more regular appropriations acts. If interim or full-year appropriations are not enacted, a funding gap and government shutdown occur for affected agencies and programs.[2]

This report analyzes potential impacts that interim CRs might have on agency operations.[3] CRs have become commonplace in the federal budget process, with CRs occurring in some form in all but four years out of a 61-year period from FY1952 to FY2012.[4] However, studies of the impacts of interim CRs are quite limited aside from mostly anecdotal accounts. Furthermore, interim CRs are formulated differently from time to time, and may affect highly diverse agencies and programs in varying ways. Without in-depth analysis of specific circumstances, therefore, it may be difficult, or in many cases impossible, to make generalizable statements about the impacts of interim CRs on particular agencies at particular times.

It is possible, however, to identify some *potential* impacts of interim CRs prospectively, utilizing several approaches.[5] This report uses three. First, the report discusses how an interim CR's provisions and requirements may impact directly upon an agency, based on what an interim CR explicitly is formulated to do. Second, the report analyzes Office of Management and Budget (OMB) and agency documents that have provided guidance or requirements for how an agency should navigate through periods of interim CRs. The existence and emphases of such documents may suggest the occurrence, or at least the risk of occurrence, of interim CR-related impacts on the operations of agencies. Third, the report analyzes brief mentions of claims of impact contained in Government Accountability Office (GAO) reports from a 20-year span, typically

[1] CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup. See also CRS Report RL30343, *Continuing Resolutions: Latest Action and Brief Overview of Recent Practices*, by Sandy Streeter. These measures have been called CRs, because they usually provide continuing appropriations in a joint resolution rather than a bill. Occasionally, continuing appropriations are provided in bill form. Therefore, "continuing appropriations act" may be the more general term compared to "CR."

[2] Funding gaps usually require that affected federal agencies cease some operations and furlough many of their employees. For discussion, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup; and CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass.

[3] For a more extensive analysis, see CRS Congressional Distribution Memorandum, *Potential Impacts of Interim Continuing Resolutions (CRs) on Agency Operations and the Functioning of the Federal Government*, July 8, 2008, coordinated by Clinton T. Brass.

[4] It may be no coincidence that CRs have been pursued with such frequency. In high-stakes negotiations on matters of strong underlying disagreement, a frequently employed technique is to use time as a source of leverage. See, e.g., G. Richard Shell, *Bargaining for Advantage: Negotiation Strategies for Reasonable People* (New York: Penguin, 1999), pp. 89-114. For discussion of how frequently CRs have been used since the 1950s, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup.

[5] In this report, the impacts of interim CRs are addressed as perspectives on *potential*, though not necessarily *actual* or *representative*, impacts. Close study of specific circumstances is typically necessary to have confidence in a claim of impact. This report does not verify or validate specific claims of actual impacts, nor does it assess whether claims of impact in some agencies were representative of other agencies' experiences.

made by agency officials without independent GAO validation.[6] In addition, a GAO report from 2009 provided the results of a case study, in which GAO evaluated the effects of interim CRs on six federal bureau-size agencies.[7]

The possibility that an interim CR might cause impacts may raise corresponding issues for Congress. One issue relates to the fact that the President, OMB, and agencies may play roles in the formulation, negotiation, and implementation of interim CRs. An implication of this involvement is that Congress typically does not solely determine what the impacts of an interim CR will be, because the President, OMB, and agencies may influence the nature and extent of potential impacts. Another issue relates to interim CRs as a product of high-stakes negotiation over major issues of fiscal and substantive policy. Claims about positive or negative impacts of CRs may be used to argue that changes in CR language, budget priorities, or the budget process are necessary. The ways in which such claims are framed, however, typically rest on implicit assumptions about what would have happened in the absence of the interim CR (e.g., a government shutdown, on one hand, or agreement on final appropriations, on the other). Viewing interim CRs as a product of high-stakes negotiation helps explain why differing assumptions sometimes may be plausible. Given the nature of budget deliberations and the potential for changes in the budget process to change power relationships among participants, the ways in which the impact of an interim CR may be framed might be viewed as similarly significant. The report's final section discusses these and other topics.

Full-year CRs occur less frequently than interim CRs. Historically, the term "CR" has been used in different ways in the context of providing full-year appropriations amounts.[8] In any case, full-year CRs effectively become regular appropriations acts for the fiscal year, complete with the certainty of final funding decisions. For this reason, full-year CRs generally are not discussed in this report.

Interim CRs and Their Requirements

Usage of the term "continuing resolution," like other budget terms, has varied sometimes to reflect evolving budget practices. This section of the report discusses several aspects of how interim CRs typically have been formulated and implemented, in order to identify how interim CRs may impact upon the operations of agencies.[9] Some related terms also are highlighted, in

[6] For more extensive discussion of potential impacts of interim CRs, including potential impacts on the federal budget process and a handful of specific agencies and programs, see CRS Congressional Distribution Memorandum, *Potential Impacts of Interim Continuing Resolutions (CRs) on Agency Operations and the Functioning of the Federal Government*, July 8, 2008, coordinated by Clinton T. Brass.

[7] U.S. Government Accountability Office (hereafter GAO), *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879, September 2009.

[8] Some observers might argue that the category of full-year CRs is limited to those measures that include formulaic provisions that provide for a "rate for operations" through the end of a fiscal year. Others sometimes have referred to measures as full-year CRs when they include or refer to full text in a regular appropriations act. For example, see Neal E. Devins, "Appropriations Redux: A Critical Look at the Fiscal Year 1988 Continuing Resolution," *Duke Law Journal*, vol. 1988 (April/June 1998), pp. 389-421. According to such a perspective, full-year CRs have included four types of funding provisions: (1) full text of regular appropriations 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); (3) formulaic provisions that provide for a "rate for operations"; or (4) a combination of the previous three types. When full-year CRs have included the full text of one or more regular appropriations acts, they also have included all the myriad general and administrative provisions that typically are included in regular acts. Consequently, they may be hundreds of pages in length, whereas interim CRs may be a few pages or less.

[9] This section draws in part on CRS Report RL30343, *Continuing Resolutions: Latest Action and Brief Overview of*

order to distinguish between interim CR-related provisions and other provisions that sometimes appear in the context of CRs.

Contexts and Purposes of Stopgap Funding

The federal fiscal year begins October 1. For agencies and programs that are funded through annual appropriations acts, appropriations must be enacted by this date if many governmental activities are to continue operating. These funds pay for most of the routine operations of federal agencies, including salaries, contracts, and grants.[10] Final action on some of the regular appropriations acts is frequently delayed beyond October 1. A delay may occur, for example, when negotiations between Congress and the President have not resulted yet in final decisions. When action on one or more regular appropriations acts is incomplete after the beginning of a fiscal year, Congress often provides temporary funding for affected agencies by using an interim CR. The stopgap funding is available until a date specified in the CR, enactment of a new interim CR, or enactment of full-year appropriations, whichever occurs earliest. In this sense, the term "continuing" has been used to indicate that appropriations will continue at a certain level (and subject to certain conditions), pending further decisions.[11]

Interim CRs usually are enacted in the context of ongoing and high-stakes budget negotiations between Congress and the President and within Congress. In general, interim CRs typically are intended to (1) preserve congressional prerogatives to make final decisions on full-year funding levels and (2) prevent a funding gap and corresponding government shutdown. Consequently, interim CRs provide relatively restrictive funding levels for agencies. In addition, an interim CR may be structured purposefully as less than optimal from the perspective of many stakeholders, in order to retain sufficient incentive for negotiating parties to come to an accord for final decisions.[12] Participants in a negotiation also may find it necessary to compromise, purposefully accepting what they perceive as some undesirable impacts in an interim CR (e.g., temporary constraints on funding) in order to achieve what they perceive as more important, desirable impacts (e.g., achievement of budget policy goals or avoidance of a government shutdown).[13] In other words, some impacts of interim CRs may be a product of intentional concessions in negotiations, in order to achieve other impacts.

Recent Practices, by Sandy Streeter; and CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup. For legal analysis of CRs, see U.S. GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. II, GAO-06-382SP, February 2006, ch. 8.

[10] Funds subject to annual appropriations constitute a substantial part, though only a portion, of federal spending. See CRS Report RL33074, *Mandatory Spending Since 1962*, by D. Andrew Austin and Mindy R. Levit, and CRS Report RL34424, *Trends in Discretionary Spending*, by D. Andrew Austin and Mindy R. Levit.

[11] A form of interim CR is the "long-term" CR, 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.

[12] According to one observer, interim CRs might be seen as devices that set "spending levels ... high enough to let agencies function but not so high that they removed the incentive for Congress and the president to agree on regular authorization and appropriations bills." Joe White, "The Continuing Resolution: A Crazy Way to Govern?," *Brookings Review*, vol. 6 (summer 1988), p. 30. GAO also has discussed how incentives for policymakers "to negotiate seriously and reach agreement" may be affected by proposals for budget process changes like an automatic continuing resolution. See U.S. GAO, *Budget Process: Considerations for Updating the Budget Enforcement Act*, GAO-01-991T, July 19, 2001, p. 12, and CRS Report R41948, *Automatic Continuing Resolutions: Background and Overview of Recent Proposals*, by Jessica Tollestrup.

[13] For related discussion, see G. Richard Shell, *Bargaining for Advantage*, pp. 156-175.

Provisions and Agency Requirements

"Rate for Operations" Formula

Interim CRs have remained fairly constant in form and structure in recent years. In contrast to regular and supplemental appropriations acts, an interim CR generally does not provide a specific amount of budget authority for an appropriations account for a specific time period of availability. Rather, an interim CR provides authority to obligate and spend funds at a statutorily prescribed pace, or "rate," over time, for an appropriations account. More technically, an interim CR typically provides funding at a specified "rate for operations" for accounts covered by the CR. An agency may continue to obligate and spend funds at this rate for the duration of the interim CR—that is, until the CR expires or is superseded.[14] The interim CR uses a formula to calculate this rate. These formulas, which are based on annual amounts or levels of spending, may be set in various ways. For example, funding has 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 (assuming both houses have acted); (2) the amounts provided in a particular committee-reported bill; or (3) the funding levels available for the previous fiscal year. Interim CRs frequently provide rates that vary among the regular appropriations bills funded. Under an interim CR's formula, an agency that ultimately expects to receive a substantial increase in its full-year funding level compared to the previous year typically would be subject to rate restrictions and would not receive the increased level of funding for the duration of the interim CR, unless special exceptions were made.

Apportionment

After enactment of an interim CR, OMB provides detailed directions to executive agencies on the availability of funds and how to proceed with budget execution, typically in a bulletin.[15] The bulletin includes announcement of an "automatic apportionment" of funds that will be made available for obligation, as a percentage of the annualized amount provided by the CR.[16] Under a

[14] When an interim CR is superseded by full-year appropriations, an appropriations account may receive a full-year amount of budget authority. At that point in time, the interim CR's rate for operations is no longer relevant. For purposes of accounting, any spending that previously occurred under the interim CR's rate would be treated as if the spending had occurred under the full-year amount. To illustrate, suppose an agency's appropriations account received $365 million for the prior fiscal year. Further suppose that an interim CR provides the prior-year level as the current year's rate for operations. Therefore, the rate for operations for the account would be $365 million. Further suppose that the interim CR has a 30-day duration. If the interim CR continued to be in effect until its expiration, the agency generally would be expected to obligate up to a total of around $30 million over the 30-day duration of the CR, because the interim CR authorized the agency to obligate funds at that pace. Further suppose the interim CR is superseded immediately upon its expiration with a full-year appropriation of $350 million. In that case, the agency's total obligations under the interim CR would be applied to the full-year amount. For example, if the agency obligated $30 million during the 30-day interim CR, the agency would have $320 million available for obligation going forward, after the expiration of the CR (i.e., $350 million full-year appropriation minus $30 million obligated under the CR equals $320 million available for obligation from that point forward).

[15] For example, see U.S. Executive Office of the President, Office of Management and Budget (hereafter "OMB"), OMB Bulletin No. 07-05, "Apportionment of the Continuing Resolution(s) for Fiscal Year 2008," September 28, 2007, at http://www.whitehouse.gov/omb/bulletins/fy2007/b07-05.pdf. This bulletin directed agencies how to operate during the interim CR for the period October 1, 2007, through November 16, 2007, as provided for by P.L. 110-92 (110th Cong.; 121 Stat. 989). These bulletins generally may be found at http://www.whitehouse.gov/omb/bulletins_default/.

[16] The Antideficiency Act (31 U.S.C. §§ 1341-1342, 1511-1519) requires the President to "apportion," in writing, an executive agency's appropriation by specific time periods, activity, or a combination of time periods and activities, in order to prevent the agency from spending at a rate that would exhaust the appropriated funds before the end of the fiscal year. OMB implements the requirement on the President's behalf. During an interim CR, Congress may provide

typical OMB bulletin, part of the annualized amount is apportioned and made available for obligation. Funds usually are apportioned either in proportion to the time period of the fiscal year covered by the CR, or according to the historical, seasonal rate of obligations for the period of the year covered by the CR, whichever is lower. A 30-day CR might, therefore, provide 30 days worth of funding, derived either from a certain annualized amount that is set by formula or from a historical spending pattern. In an interim CR, Congress also may provide authority for OMB to mitigate furloughs of federal employees by apportioning funds for personnel compensation and benefits at a higher rate for operations, albeit with some restrictions.[17] Interim CRs impose some paperwork burden on agencies as a result of these procedures.

Restrictions on "New Starts" and Other Activities

Congress has used interim CRs to protect its prerogative to set full-year funding levels by restricting and guiding agency activities in other ways, as well. For example, an interim CR may prohibit an agency from initiating or resuming any project or activity for which funds were not available in the previous fiscal year (i.e., prohibit "new starts").[18] In addition, Congress has included provisions like the following in interim CRs, concerning programs that have high initial rates or distributions of funds (see Sec. 109, below) and concerning projects and activities generally (see Sec. 110).

> Sec. 109. Notwithstanding any other provision of this joint resolution, except section 106, for those programs that would otherwise have high initial rates of operation or complete distribution of appropriations at the beginning of fiscal year 2008 because of distributions of funding to States, foreign countries, grantees, or others, such high initial rates of operation or complete distribution shall not be made, and no grants shall be awarded for such programs funded by this joint resolution that would impinge on final funding prerogatives.
>
> Sec. 110. This joint resolution shall be implemented so that only the most limited funding action of that permitted in the joint resolution shall be taken in order to provide for continuation of projects and activities.[19]

Anomalies

Congress, the President, and agencies sometimes negotiate for the inclusion of "anomalies" to the formulas and restrictions in a CR, to accommodate what they perceive as exceptional circumstances for an agency, program, or policy. Anomalies typically are included to prevent what some or all stakeholders and parties to CR negotiations perceive as major programmatic, operational, or management problems that would be caused if an otherwise "cookie cutter"

---

some flexibility on the timing requirements in apportioning funds. For example, see Section 108 of P.L. 110-92 (121 Stat. 990).

[17] For example, see Section 112 of P.L. 110-92 (121 Stat. 991) and OMB Bulletin No. 07-05, p. 4 (attachment, Section 6). OMB might apportion funds at, essentially, greater than a daily rate, as the period of time covered by an interim CR elapses. However, Congress may require that the "authority provided under this section shall not be used until after the department or agency has taken all necessary actions to reduce or defer non-personnel-related administrative expenses" (Section 112 of P.L. 110-92).

[18] For example, see Section 104 of P.L. 110-92 (121 Stat. 990).

[19] Sections 109 and 110 of P.L. 110-92 (121 Stat. 990). GAO previously reported that provisions like these had been included in CRs ever since FY1996. See U.S. GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. II, GAO-06-382SP, pp. 8-16 - 8-17.

approach were used to provide funding at a uniform rate and with uniform restrictions. However, when measured against the typical coverage of interim CRs, anomalies tend to be rare.

Substantive Legislative Provisions

CRs do not necessarily provide only stopgap or final funding. Some interim and full-year CRs have included "substantive" legislative provisions—that is, provisions under the jurisdiction of committees other than the House and Senate Appropriations Committees—covering a wide range of subjects. CRs are attractive vehicles for such provisions because they are considered must-pass legislation on which Congress and the President eventually must reach agreement.[20]

"Clean" CRs

A CR that contains a rate for operations but does not contain any anomalies or substantive legislative provisions is sometimes referred to as a "clean" CR. However, a CR has at times been described as clean if it includes a limited number of such provisions that an observer views as acceptable. The level of cleanliness of a CR is typically in the eye of the beholder, therefore.

Types of Potential Impacts

As discussed above, provisions and requirements of interim CRs may impact upon the operations of agencies in many ways. If impacts were viewed in more general categories, an interim CR might be characterized as having several types of potential impacts on the operations of agencies.

Avoidance of Government Shutdowns

In the absence of agreement about full-year appropriations among the House, Senate, and President, an interim CR may have the impact of preventing funding gaps and shutdowns of government agencies. Historically, shutdowns prior to FY1996 generally were of short duration and were seen as having relatively modest effects, especially when they occurred over a weekend. Partial shutdowns of the federal government in FY1996, however, were more far-reaching in their effects. A five-day shutdown in November 1995 resulted in the furlough of an estimated 800,000 federal employees. A second, 21-day shutdown occurred a month later, resulting in the furlough of nearly 300,000 federal employees. A large but unspecified number of federal contractor employees were also furloughed or laid off as a result of suspended contracts.[21] The shutdowns also had pervasive effects on the delivery of services.

Compliance with Administrative Requirements

Because an interim CR imposes tight restrictions on the obligation of funds for its entire duration, an interim CR may impact upon an agency's administrative work. As one study of the potential

[20] House Standing Rules XXI, clause 2, and XXII, clause 5, prohibit legislative provisions or unauthorized appropriations 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 on legislative provisions and unauthorized appropriations, located in Senate Rule XVI, do apply in the case of continuing resolutions. See CRS Report RL30343, *Continuing Resolutions: Latest Action and Brief Overview of Recent Practices*, by Sandy Streeter.

[21] For discussion, see CRS Report 95-906, *Shutdown of the Federal Government: Effects on the Federal Workforce and Other Sectors*, by James P. McGrath (archived and available to congressional clients upon request).

impacts of interim CRs on DOD summarized, "[t]he most visible effect" of a short-term CR is its impact on the time and paperwork necessary to manage the distribution of funds.[22] As a consequence, comments from agency budget officials about the impacts of interim CRs might focus on, or be colored by, this experience.

Funding Level

An interim CR determines the funding level that is available for the duration of the CR. At least three funding scenarios appear to be possible for an agency that is funded by an interim CR: (1) less funding than otherwise would have been provided under a full-year appropriation (or, essentially, a lower rate for operations during the CR's duration); (2) more funding; or (3) the same amount. For example, suppose an agency anticipated an increase in its full-year budget because of apparent consensus on a higher prospective funding level among the House, Senate, and President. Further suppose, however, that the agency's budget is included in a legislative vehicle that is the subject of some controversy due to budget or programmatic issues elsewhere in the legislation. If the level of policy conflict among the House, Senate, and President were such that an interim CR were used to provide funding until disagreements were resolved, the agency might receive a considerably lower rate for operations than was anticipated for the duration of the CR. Assuming a final funding decision were made at the anticipated level, an agency might or might not be able to "catch up" with what it had planned to do. By contrast, if an agency expected a lower full-year amount than the rate that was provided by an interim CR, the agency might experience more flexibility than previously had been anticipated for the duration of the CR. Finally, if an agency expected flat funding from one year to another, there might be little or no impact associated with an interim CR's funding amount. In the face of a restrictive funding level, agency personnel may reduce or delay a variety of actions, including hiring, award of contracts, and travel. Whether any potential impacts manifest themselves in actual cases would depend on specific circumstances, including how the interim CR is crafted, the time of year, and an agency's or program's particular operations.

Restrictions on New Projects and Activities

Prohibition on new projects and activities may delay or disrupt an agency's ability to undertake planned activities. For agencies with little need to engage in "new starts," this prohibition may not be significant in its implications. For agencies that typically engage in new projects or change their funding priorities from year to year, however, the prohibition may have more significant impacts on operations.[23]

Funding Uncertainty

Uncertainty related to full-year funding levels may impact upon an agency's ability to follow its plans. Uncertainty may have two dimensions, concerning (1) the *level* of full-year funding that ultimately will be available and (2) the *timing* of when the full-year amount will be available. If one or both kinds of certainty were needed for an agency to make decisions (e.g., when to begin a critical sequence of actions or events), an interim CR might cause an agency to alter its

[22] CRS Report 89-579, *Short-Term Continuing Resolutions: The Department of Defense Experience*, by Alice C. Maroni (archived and available to congressional clients upon request).

[23] For related discussion, see CRS Report RS22774, *Federal Research and Development Funding: Possible Impacts of Operating under a Continuing Resolution*, by Dana A. Shea and Daniel Morgan.

operations, rates of spending, and spending patterns over time, with potential ripple effects for internal management of the agency and its programmatic activities.

Additional Perspectives on Potential Impacts

Other sources of information may suggest more specific ways in which an interim CR prospectively might impact, or retrospectively may have impacted, upon an agency's operations.

OMB and Agency Documents

OMB and agencies have extensive experience operating under interim CRs. It seems plausible that they have learned many related lessons in recent decades. Perhaps as a consequence of such lessons, OMB and agencies have provided to their personnel written guidance and requirements for how to operate under an interim CR and how to avoid undesirable impacts. The existence and emphases of such documents may suggest the occurrence, or at least the risk of occurrence, of interim CR-related challenges for the operations of agencies.[24]

OMB Documents

OMB has issued several documents that provide guidance or requirements to agencies, including its annually issued *Circular No. A-11*,[25] occasionally issued bulletins,[26] and other documents.[27] These documents suggest the following:

- There is some risk that an agency may not correctly calculate the funds available under an interim CR and OMB's automatic apportionments without close OMB supervision and guidance. Both *Circular No. A-11* and OMB's occasional bulletins devote the majority of their attention to CR formulas and apportionment amounts, in compliance with the Antideficiency Act and the CR-imposed direction to "operate at a minimal level until after your regular appropriation is enacted."[28]
- There is some risk that an agency may undertake a new project or activity, contrary to an interim CR's requirements. Both *Circular No. A-11* and OMB's occasional bulletins address this point.[29]
- During a CR of extended duration, there is some risk of "major disruptions to essential government services" if care is not taken to conduct acquisitions using

[24] Even in the face of such potential impacts, however, it is not clear that absence of an interim CR would substantially reduce the need for similar guidance or requirements under a regular appropriations act. Further study would be necessary to make a determination.

[25] OMB, *Circular No. A-11: Preparation, Submission, and Execution of the Budget*, August 2011, Section 123, p. 1, at http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc/.

[26] For example, concerning apportionment under CRs in specific circumstances.

[27] For example, concerning the conduct of acquisitions under a CR. See OMB, "Conducting Acquisitions Under a Continuing Resolution," memorandum from Paul A. Denett, Administrator, Office of Federal Procurement Policy, February 6, 2007, at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/procurement/memo/acquisition_under_cr_2007.pdf.

[28] OMB, *Circular No. A-11*, August 2011, Section 123, p. 1.

[29] For discussion of the two potential meanings of "projects or activities" in this context, see U.S. GAO, *Principles of Federal Appropriations Law*, 3rd ed., vol. II, pp. 8-21 - 8-27.

certain practices and "basic steps."[30] According to OMB, these practices and steps include determining the availability of funding for existing and new contract requirements; modifying existing contracts as required by the "fiscal constraints imposed by the CR"; giving contractors and especially small businesses appropriate notice of funding limitations; following "prudent contracting principles and practices" to ensure available funds are used "as efficiently and effectively as possible" and to "minimize disruption of agency operations"; and funding only ongoing projects and activities, "not new initiatives or projects."

Agency Documents

Agency documents that provide guidance and impose requirements for how to operate under an interim CR appear to range from the highly elaborate to the more ad hoc. For example, the Department of the Army issued extensive "general guidance" concerning "rules for operation" under a CR and during a funding gap.[31] The National Aeronautics and Space Administration (NASA) has integrated CRs and shutdowns into its instructions and process diagrams on budget execution.[32] Smaller entities have created their own guidance memoranda and "instruction" documents.[33] Agencies also may issue documents advising on the status of grant awards under a CR,[34] and providing advice to federal and state officials on how to make timely grant awards under a CR.[35] As with OMB documents, the existence and emphases of agency-level documents suggest the following:

- There is some risk that agency personnel may not properly comply with CR-related statutory requirements and non-statutory congressional directives without detailed guidance on, for example, the execution of new funds for things such as military personnel appropriations, operation and maintenance appropriations, and other categories of spending.[36]
- To ensure compliance with congressional directions, agency personnel need to be instructed that objects of expenditure such as "[t]ravel, training, and other discretionary costs should be limited to essential programmatic requirements,"

[30] OMB, "Conducting Acquisitions Under a Continuing Resolution," memorandum from Paul A. Denett, Administrator, Office of Federal Procurement Policy, February 6, 2007.

[31] U.S. Department of Defense, Department of the Army, Office of the Assistant Secretary of the Army (Financial Management and Comptroller), *Continuing Resolution Authority General Guidance*, August 1998, at http://www.dtic.mil/docs/citations/ADA351724.

[32] U.S. National Aeronautics and Space Administration, Office of the Chief Financial Officer, Office Work Instruction: Budget Execution, March 27, 2002, at http://nodis3.gsfc.nasa.gov/iso_docs/pdf/H_OWI_7410_IA000_002_C_.pdf.

[33] For example, see Los Alamos National Laboratory, "Guidance Memo on Operating Under a Continuing Resolution (CR)," memorandum from Thomas M. Palmieri, September 30, 2002 (available to congressional clients in hard copy on request); and U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, *NWS Guidance for Continuing Resolutions*, Instruction 70-204, April 11, 2005, at http://www.nws.noaa.gov/directives/sym/pd07002004curr.pdf.

[34] For example, see U.S. Department of Health and Human Services, National Institutes of Health, "Non-Competing Grant Awards Under the Current Continuing Resolution," notice no. NOT-OD-08-001, at http://grants.nih.gov/grants/guide/notice-files/NOT-OD-08-001.html.

[35] U.S. Environmental Protection Agency, Office of Congressional and Intergovernmental Relations, *Best Practices Guide for Performance Partnership Grants*, no date, at http://www.epa.gov/ocir/nepps/pp_grants.htm.

[36] See U.S. Department of Defense, Department of the Army, Office of the Assistant Secretary of the Army (Financial Management and Comptroller), *Continuing Resolution Authority General Guidance*, pp. 3-8.

and agency staff need detailed guidance for actions that obligate funds, including procurement requests and other purchases.[37]

- There is some risk that agency spending may exceed congressionally directed minimal amounts in some situations, making it necessary to caution agency personnel to restrain spending even if both Senate and House versions of appropriations bills may provide for an increase.[38]
- Although an agency may have the tools and policies to award grants in a timely way when operating under an interim CR, and even improve the timeliness of awards to states under current policies, it is nevertheless "more difficult ... to make timely awards while the Agency operates under a series of short continuing resolutions, but it is still possible."[39]
- There is some risk that stakeholders and grant recipients will not know that grant awards may not be fully funded until enactment of full-year appropriations. Therefore, stakeholders and grant recipients must be notified or reminded.[40]

GAO Reports

GAO Case Study

A literature review identified a single GAO report that focused primarily on the issue of potential or actual impacts of interim CRs.[41] GAO interviewed officials at six bureau-size agencies about the effects of interim CRs on "program delivery, management support, and revenue collection."[42] GAO noted that interim CRs enabled agencies to continue to carry out their missions until their regular appropriations were enacted, and that "legislative anomalies may alleviate some challenges of operating during the CR period."[43] Nevertheless, although the case study agencies' experiences varied, GAO found that all of the agencies reported administrative inefficiencies like delayed hiring (due to funding uncertainty) and some repetitive work (e.g., entering several short-term contracts or issuing multiple grants instead of annual or quarterly awards). Hiring delays may have affected some agencies' abilities to conduct all planned activities (e.g., food and medical device inspections). Agencies reported also that longer-term interim CRs delayed contracts for nonrecurring projects or compressed the time available for discretionary grants.[44] However, some agencies shifted their contract and grant cycles to later in the fiscal year to reduce the amount of additional work required to modify contracts and award grants in multiple

[37] U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, *NWS Guidance for Continuing Resolutions*, Instruction 70-204, pp. 3-5.

[38] Los Alamos National Laboratory, "Guidance Memo on Operating Under a Continuing Resolution (CR)," memorandum from Thomas M. Palmieri.

[39] U.S. Environmental Protection Agency, Office of Congressional and Intergovernmental Relations, *Best Practices Guide for Performance Partnership Grants*, pp. 26-27. The "Agency" that is referenced in the quotation is the Environmental Protection Agency.

[40] U.S. Department of Health and Human Services, National Institutes of Health, "Non-Competing Grant Awards Under the Current Continuing Resolution," notice no. NOT-OD-08-001.

[41] U.S. GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879, September 2009.

[42] Ibid., p. 2.

[43] Ibid., p. 9.

[44] Ibid., pp. 14-15.

installments.[45] Long-term CRs may allow for better planning in the near term, compared to a series of short-term interim CRs. However, GAO reported that some officials said a prolonged interim CR "limited their decision-making options, making trade-offs more difficult" (e.g., needing to reprioritize funds from other operations to address emergency situations).[46]

Evidence From Other GAO Reports

Apart from the study described above, GAO reports also may be used to suggest basic categories of potential impacts. A full-text search of all GAO reports and testimonies from a 20-year span of time identified a number of items focusing on non-CR topics that also contained brief mentions of claims of impact associated with interim CRs.[47] In most cases, the claims were made by agency officials without independent validation, because potential or actual CR impacts were not the focus of the GAO documents. The claims of impact are analyzed and cited here in two categories, based on their attribution to interim CR-related (1) funding levels or (2) funding uncertainty.

Funding Levels

A number of GAO reports and testimonies cited claims of impact that agency officials attributed to the *funding levels* of interim CRs. The claims cited travel expenses being "held to a minimum";[48] delayed or frozen hiring and cancellation of training;[49] possible limitation of funding available for some construction projects;[50] suspension of the issuance of loan guarantees;[51] delayed contracts;[52] prolonged interagency transfer of funds and differences between estimated and actual costs;[53] impeded use of funds from previous years for a new

[45] Ibid., p. 19.

[46] Ibid., p. 22.

[47] Conducted June 2008 using the GAO website's advanced search function to examine GAO products using CR-related terms from 1998 to 2008, at http://gao.gov/search?q=. Additional items contained brief mentions of claims of impact associated with full-year CRs, as noted below.

[48] U.S. GAO, *VA Travel: Better Budgeting and Stronger Controls Needed*, GAO/GGD-99-137, August 1999, p. 12.

[49] U.S. GAO, *Internal Revenue Service: Assessment of the 2008 Budget Request and an Update of 2007 Performance*, GAO-07-719T, May 9, 2007, p. 18 (full-year CR); *Human Capital: Retirements and Anticipated New Reactor Applications Will Challenge NRC's Workforce*, GAO-07-105, January 2007, pp. 1-2, 45, and 64 (full-year CR); *Securities and Exchange Commission: Preliminary Observations on SEC's Spending and Strategic Planning*, GAO-03-969T, July 23, 2003, p. 2; *Securities and Exchange Commission: Review of Fiscal Year 2003 and 2004 Budget Allocations*, GAO-04-818, July 2004, pp. 2-3, 20; *Social Security Administration: Short Time Frame and Workload Challenges Could Affect Timely Implementation of Income-Based Medicare Part B Premiums*, GAO-07-228R, November 17, 2006, p. 2; and *HHS OIG: Allegations of Misspending Were Unsubstantiated*, GAO-04-618R, April 30, 2004, p. 5.

[50] U.S. GAO, *Military Base Closures: Management Strategy Needed to Mitigate Challenges and Improve Communication to Help Ensure Timely Implementation of Air National Guard Recommendations*, GAO-07-641, May 2007, pp. 20-21.

[51] U.S. GAO, *Housing Finance: Options to Help Prevent Suspensions of FHA and RHS Loan Guarantee Programs*, GAO-05-227, March 2005, pp. 11-12.

[52] U.S. GAO, *Highlights of a GAO Forum: Federal Acquisition Challenges and Opportunities in the 21st Century*, GAO-07-45SP, October 2006, p. 18; and *National Science Foundation: Status of the Business Analysis Plan Contract*, GAO-03-832R, July 10, 2003, pp. 1-2, 14.

[53] U.S. GAO, *Electronic Government: Funding of the Office of Management and Budget's Initiatives*, GAO-05-420, April 2005, p. 37; and *Agricultural Conservation: USDA Should Improve Its Methods for Estimating Technical Assistance Costs*, GAO-05-58, November 2004, pp. 11-12.

agency;[54] and delayed delivery of funds to recipients.[55] In one instance, GAO cited a claim that an interim CR should have no impact on the timeliness of assistance payments.[56]

Funding Uncertainty

In addition, GAO reports and testimonies cited alleged impacts that agency officials attributed to *funding uncertainty* related to interim CRs. These claims cited difficulties in managing a new agency;[57] frozen hiring and overtime pay, as well as reduced numbers of cases that were processed;[58] and delayed start-ups of an office, pilot initiative, and process reengineering.[59]

In the absence of validation studies, it is not clear what conclusions can be drawn about the potential (or actual) impacts of interim CRs. However, the claims of impact contained in the GAO publications may suggest a number of hypotheses, including the following:

- impacts of interim CRs may occur in many or all of the cited activities in some agencies and circumstances;
- some or all of the cited activities may be at risk of impacts from interim CRs unless an agency undertakes focused planning and execution, or requests that relevant anomalies be included in interim CRs; and
- agencies that anticipate large funding increases may be at particular risk of impacts from interim CRs.[60]

Potential Issues for Congress

The possibility of interim CR-related impacts may raise issues for Congress. Notably, claims of impacts may generate arguments that changes in CRs, budget priorities, or the budget process are necessary to avoid or modify some purported impacts. Given the high-stakes nature of budget deliberations and the potential for changes in the budget process to change power relationships among its participants, claims of impact might be viewed as similarly significant.

Managing Potential Impacts of CRs with Anomalies

If Congress considers pursuing an interim CR, the subject of anomalies usually arises. Anomalies may be included among the provisions of an interim CR in order to modify or eliminate potential

---

[54] U.S. GAO, *Transportation Security Administration: Actions and Plans to Build a Results-Oriented Culture*, GAO-03-190, January 2003, p. 8.

[55] U.S. GAO, *Financial and Management Practices of the Great Lakes Fishery Commission*, GAO/NSIAD-98-239R, August 28, 1998, p. 5; and *Project-Based Rental Assistance: HUD Should Update Its Policies and Procedures to Keep Pace with the Changing Housing Market*, GAO-07-290, April 2007, p. 33.

[56] U.S. GAO, *Project-Based Rental Assistance: HUD Should Streamline Its Processes to Ensure Timely Housing Assistance Payments*, GAO-06-57, November 2005, p. 24.

[57] U.S. GAO, *Budget Issues: Reprogramming of Federal Air Marshal Service Funds in Fiscal Year 2003*, GAO-04-577R, March 31, 2004, p. 2.

[58] U.S. GAO, *Social Security Disability: Reviews of Beneficiaries' Disability Status Require Continued Attention to Achieve Timeliness and Cost-Effectiveness*, GAO-03-662, July 2003, p. 11.

[59] U.S. GAO, *Small Business Administration: Progress Made, but Transformation Could Benefit from Practices Emphasizing Transparency and Communication*, GAO-04-76, October 2003, pp. 3, 15; and *Agricultural Conservation: USDA Needs to Better Ensure Protection of Highly Erodible Cropland and Wetlands*, GAO-03-418, April 2003, p. 31.

[60] Some of the claims of impact that were cited in the GAO publication corresponded to situations when agencies were expecting large increases in their budgets. For other examples, see Gregg Carlstrom, "Managers Brace for '09 Budget Delays," *Federal Times*, August 25, 2008, p. 9.

impacts of an interim CR. Depending upon how an anomaly is structured, an anomaly may cause the funding for an agency to behave exactly like it would under a regular appropriations act, at least for the duration of the CR. However, anomalies frequently are not included for many programs in interim CRs. A potential explanation for the rarity of anomalies is that the granting of too many anomalies would reduce incentives to negotiate seriously and come to final agreement on full-year appropriations. Another, related explanation is that an anomaly could, in effect, constitute a concession during negotiations and reduce a stakeholder's leverage, unless there were consensus the anomaly was necessary.

In situations when an agency expects a higher level of funding in an upcoming fiscal year, or if an agency needs authority to undertake new projects or activities in order to achieve a task, the agency could request an anomaly. For executive agencies, such a request can be made through the President and OMB, if the White House elected to propose the anomaly to Congress. Alternatively, an agency might make such a request directly to Congress, either formally or informally. An agency could make a request to the President or OMB but have the request denied. In such a case, an agency might or might not informally make its views or concerns known directly to Congress. The possibility of direct communications between agencies and Congress has sometimes been a contentious issue in congressional-executive relations, both generally and in a budgetary context. In a budgetary context, most executive agencies have operated under statutory requirements since 1921 that require budget-related requests to be submitted through the President, as noted below.

Congressional Access to Agency Information and Employee Views

The President, OMB, and agencies often are involved with Congress in the process of formulating, negotiating, and implementing interim CRs. Therefore, they may influence the potential impacts of interim CRs. Some influence may come from the bargaining power of the President. Another source of influence, however, may stem from the issue of access to information from agencies and views of their employees. Because agencies and their employees are "in the trenches" implementing and formulating public policy, they may have considerable access to information about the potential impacts of an interim CR. Congress may not always have ready access to such information. Under the Budget and Accounting Act, 1921, as amended and recodified,[61] Congress has prohibited most executive branch officers and employees from submitting budget requests to Congress, except through the President and subject to presidential modification.[62] However, Congress has statutorily exempted some agencies from such restrictions through provisions sometimes referred to as "bypass authority."[63] OMB regulations governing the budget process also direct agency officers and employees to "avoid volunteering" opinions to Members and committees of Congress that are inconsistent with Administration policies.[64] Therefore, the extent to which information and views flow from agencies and their personnel to Congress about the potential impacts of interim CRs, both formally and informally, may vary.

[61] P.L. 13, 67th Cong., 42 Stat. 20; now codified in Title 31, *United States Code*.

[62] For the relevant provision, see 31 U.S.C. § 1108(e).

[63] Administrations and OMB have granted other agencies longstanding "customary" or "informal" bypass authority, without statutory exemption. See Clinton T. Brass, "Working in, and Working with, the Executive Branch," in Tobias A. Dorsey, *Legislative Drafter's Deskbook: A Practical Guide* (Alexandria, VA: TheCapitol.Net, 2006), p. 291.

[64] OMB, *Circular No. A-11*, August 2011, Section 22, pp. 1-2. For example, the circular directs employees "when testifying before any congressional committee or communicating with Members of the Congress" to "give frank and complete answers to all questions" but also to "avoid volunteering personal opinions that reflect positions inconsistent with the President's program or appropriation request."

Role of Assumptions in Assessing Potential Impacts

A claim about the impact of an interim CR may rest on implicit assumptions. The term "impact" implies a comparison between the described change that is caused by an interim CR, on one hand, and an assumption about "what otherwise would have happened" without the interim CR, on the other hand.[65] The assumption or estimation of "what otherwise would have happened" is crucial for any claim about the impact of an interim CR.

For example, suppose an observer characterized an interim CR as having caused a high level of uncertainty for an agency's program planning or execution. This statement claims that the CR caused the stated impact (i.e., high level of uncertainty), which otherwise would not have happened, all other things being equal. In this case, the claim of impact implicitly assumes a scenario under which, in the absence of an interim CR, full-year appropriations would have been passed by October 1. Passage of full-year appropriations, in turn, would have eliminated uncertainty about funding. However, it also may be plausible that absence of a CR might instead cause an impasse in negotiations and a government shutdown, rather than enactment of full-year appropriations, rendering the observer's claim contestable. The reverse argument may also be made. Suppose another observer characterized an interim CR as having prevented a government shutdown. However, it may be plausible that absence of a CR might cause negotiators to reach agreement on full-year appropriations, thereby avoiding the shutdown without need for a CR.

Claims of an impact or lack of impact can be debatable, therefore, and become subjects of scrutiny or even controversy. Some observers, for example, might question the validity of an assumption. An observer might be partly motivated to raise such objections, because claims of impacts may generate an argument that a change in budget priorities or the budget process is necessary in order to avoid or modify some purported impact. Viewing interim CRs as a product of negotiation, in which parties may come to the table with different underlying values and assumptions, helps explain why differing perspectives may be plausible. It is conceivable, for example, that participants in a negotiation may hold opposite perspectives about the impact of an interim CR in a particular situation. Each participant's views might be based both on his or her aspirations for the outcome of negotiations and the negotiating leverage the participant believes he or she could wield. In other words, because there typically is some uncertainty about the outcome of any negotiation, contrasting viewpoints may be plausible until decisions are made.

Author Information

Clinton T. Brass
Analyst in Government Organization and Management

[65] The concept "what otherwise would have happened" is called a "counterfactual" in the program evaluation field. For discussion, see CRS Report RL33301, *Congress and Program Evaluation: An Overview of Randomized Controlled Trials (RCTs) and Related Issues*, by Clinton T. Brass, Erin D. Williams, and Blas Nuñez-Neto.

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.