Congressional Research Service

Federal Funding Gaps: A Brief Overview

Jessica Tollestrup
Analyst on Congress and the Legislative Process

January 19, 2012

Congressional Research Service
7-5700
www.crs.gov
RS20348

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

The Antideficiency Act (31 U.S.C. 1341-1342, 1511-1519) generally bars the obligation of funds in the absence of appropriations. Exceptions are made under the act, including for activities involving "the safety of human life or the protection of property." The interval during the fiscal year when appropriations for a particular project or activity are not enacted into law, either in the form of a regular appropriations act or a continuing resolution (CR), is referred to as a *funding gap*. Although funding gaps may occur at the start of the fiscal year, they also may occur any time a CR expires and another CR (or the regular appropriations bill) is not enacted immediately thereafter. Multiple funding gaps may occur within a fiscal year.

When a funding gap occurs, federal agencies begin a *shutdown* of the affected projects and activities, which includes the prompt furlough of non-excepted personnel. The general practice of the federal government after the shutdown has ended has been to pay furloughed employees for time missed, even when no work was performed.

Although a shutdown may be the result of a funding gap, the two events should be distinguished. This is because a funding gap may result in a total shutdown of all affected projects or activities in some instances, but not others. For example, when funding gaps are of a short duration, agencies may not have enough time to complete a shutdown of affected projects and activities before funding is restored. In addition, the Office of Management and Budget has previously indicated that a shutdown of agency operations within the first day of the funding gap may be postponed if a resolution appears to be imminent.

Since FY1977, 17 funding gaps occurred, ranging in duration from one day to 21 full days. About half of these funding gaps were brief (i.e., three days or less in duration). Of these, most occurred over a weekend, and the disruption in federal operations was minimal.

Almost all of the funding gaps occurred between FY1977 and FY1995. During this 19-fiscal-year period, 15 funding gaps occurred.

The most controversial funding gaps, however, since FY1977 occurred in FY1996, when President Bill Clinton and the Republican-controlled Congress engaged in difficult and protracted negotiations over budget policy, resulting in the veto of a continuing resolution and several regular appropriations acts for FY1996. Two funding gaps, amounting to five days and 21 days, ensued leading to the initial furlough of about 800,000 federal employees.

As of the date of this report, there have been no funding gaps since the two that occurred during FY1996.

This report will be updated as events warrant.

Contents

Background 1
Funding Gaps since FY1977 2

Tables

Table 1. Appropriations Funding Gaps Since FY1977 3

Contacts

Author Contact Information 5
Acknowledgments 5

Background

The routine activities of most federal agencies are funded annually by one or more of the regular appropriations acts. When action on the regular appropriations acts is delayed, a continuing appropriations act, also sometimes referred to as a *continuing resolution* or CR, is used to provide interim budget authority. Measures providing continuing appropriations usually take the form of a joint resolution, rather than a bill.[1]

Since FY1952, all of the regular appropriations acts were enacted on time in only four instances (FY1977, FY1989, FY1995, and FY1997). No CRs were enacted for three of these fiscal years, but CRs were enacted for FY1977 to fund certain unauthorized programs whose funding had been dropped from the regular appropriations acts.[2] Further, no CRs were enacted for FY1953, even though all but one of the regular appropriations were enacted late.[3]

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.[4] Exceptions are made under the act, including for activities involving "the safety of human life or the protection of property."[5] The interval during the fiscal year when appropriations for a particular project or activity are not enacted into law, either in the form of a regular appropriations act or a CR, is referred to as a *funding gap*.[6] Although funding gaps may occur at the start of the fiscal year, they also may occur any time a CR expires, and another CR (or the relevant regular appropriations bill) is not enacted immediately thereafter. Multiple funding gaps may occur within a fiscal year.

In 1980 and 1981, Attorney General Benjamin Civiletti issued opinions clarifying the need for the federal government to begin terminating regular activities upon the occurrence of a funding gap.[7] Consequently, when a funding gap occurs, federal agencies begin a *shutdown* of the affected projects and activities, which includes the prompt furlough of non-excepted personnel. The general practice of the federal government after the shutdown has ended has been to pay furloughed employees for time missed, even when no work was performed. [8]

---

[1] For a discussion of continuing resolutions generally, see CRS Report RL30343, *Continuing Resolutions: Latest Action and Brief Overview of Recent Practices*, by Sandy Streeter.

[2] P.L. 94-473 made continuing appropriations through March 31, 1977. P.L. 95-16 extended the date of the budget authority contained within P.L. 94-473 through April 30, 1977.

[3] Section 1414 of P.L. 82-547 (66 Stat. 661) made regular appropriations enacted late available as of July 1, 1952 (the first day of FY1953) and ratified any obligations incurred before their enactment.

[4] 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.

[5] See 31 U.S.C. §1342.

[6] In most cases, funding provided in regular appropriations acts is available to be obligated only in a single fiscal year, so that in the event that no subsequent budget authority is provided, agencies may not enter into further obligations. In these instances, budget authority that had previously been enacted and available for obligation for longer periods (e.g., multi-year or "no-year" appropriations) would generally remain available. For further information on multi-year and no-year appropriations, see CRS Report RS20441, *Advance Appropriations, Forward Funding, and Advance Funding*, by Sandy Streeter.

[7] The text of the opinions is included in Appendix VIII to the then General Accounting Office (now Government Accountability Office) report PAD-81-31, *Funding Gaps Jeopardize Federal Government Operations*, March 3, 1981.

[8] For a discussion of federal government shutdowns, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, by Clinton T. Brass.

Although a shutdown may be the result of a funding gap, the two events should be distinguished. This is because a funding gap may result in a total shutdown of all affected projects or activities in some instances, but not in others. For example, when a funding gap is of a short duration, agencies may not have enough time to complete a shutdown of affected projects and activities before funding is restored. In addition, the Office of Management and Budget has previously indicated that a shutdown of agency operations within the first day of a funding gap may be postponed if it appears that an additional CR or regular appropriations is likely to be enacted that same day.[9]

To avoid funding gaps and their unwanted consequences, proposals have previously been offered to establish an "automatic continuing resolution" (ACR) that would provide a fallback source of funding for activities, at a specified formula or level, in the event the timely enactment of appropriations is disrupted.[10] The funding would become available automatically and remain available as long as needed so that a funding gap would not occur. Although the House and Senate have considered ACR proposals in the past, none have been enacted into law.

Funding Gaps since FY1977

As illustrated in **Table 1**, there were 17 funding gaps since FY1977.[11] The enactment of a CR on the day after the budget authority in the previous CR expired, which has occurred often, is not counted as involving a funding gap. Between FY2000-FY2011, for example, "next-day" CRs were enacted 17 times.

Almost all of the funding gaps occurred between FY1977 and FY1995. During this 19-fiscal-year period, 15 funding gaps occurred.

Multiple funding gaps during a single fiscal year occurred in four instances: (1) three gaps covering a total of 28 days in FY1978; (2) two gaps covering a total of four days in FY1983; (3) two gaps covering a total of three days in FY1985; and (4) two gaps covering a total of 26 days in FY1996.

Six of the funding gaps commenced with the beginning of the fiscal year on October 1. The remaining 11 funding gaps occurred at least several days after the fiscal year had begun. Nine of the funding gaps ended in October, four ended in November, three ended in December, and one ended in January.[12]

---

[9] See, for example, Executive Office of the President, Office of Management and Budget, "Planning for Agency Operations During a Lapse in Government Funding," memorandum from Jacob J. Lew, director of Office of Management and Budget, M-11-13, April 7, 2011, p. 3 and Executive Office of the President, Office of Management and Budget, "Anticipated Enactment of a Continuing Resolution," memorandum from Jacob J. Lew, director of Office of Management and Budget, M-11-14, April 8, 2011.

[10] For more information on this topic, see CRS Report R41948, *Automatic Continuing Resolutions: Background and Overview of Recent Proposals*, by Jessica Tollestrup.

[11] FY1977 marked the first full implementation of the congressional budget process established by the Congressional Budget Act of 1974, which moved the beginning of the fiscal year to October 1.

[12] The enactment of a series of continuing resolutions for a fiscal year is discussed in CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup.

Table 1. Appropriations Funding Gaps Since FY1977

Fiscal Year	Final Date of Budget Authority[a]	Full Day(s) of Gaps[b]	Date Gap Terminated[c]
1977	Thursday, 09/30/76	10	Monday, 10/11/76
	Friday, 09/30/77	12	Thursday, 10/13/77
1978	Monday, 10/31/77	8	Wednesday, 11/09/77
	Wednesday, 11/30/77	8	Friday, 12/09/77
1979	Saturday, 09/30/78	17	Wednesday, 10/18/78
1980	Sunday, 09/30/79	11	Friday, 10/12/79
1982	Friday, 11/20/81	2	Monday, 11/23/81
1983	Thursday, 09/30/82	1	Saturday, 10/02/82
	Friday, 12/17/82	3	Tuesday, 12/21/82
1984	Thursday, 11/10/83	3	Monday, 11/14/83
1985	Sunday, 09/30/84	2	Wednesday, 10/03/84
	Wednesday, 10/03/84	1	Friday, 10/05/84
1987	Thursday, 10/16/86	1	Saturday, 10/18/86
1988	Friday, 12/18/87	1	Sunday, 12/20/87
1991	Friday, 10/05/90	3	Tuesday, 10/09/90
1996	Monday, 11/13/95	5	Sunday, 11/19/95
	Friday, 12/15/95	21	Saturday, 01/06/96

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

a. Budget authority expired at the end of the date indicated. For example, for the first FY1996 funding gap, budget authority expired at the end of the day on Monday, November 13, 1995, and the funding gap of five full days commenced on Tuesday, November 14, 1995. The enactment of a CR on the day after the previous CR expired, which has occurred often, is not counted as involving a funding gap.

b. Full days are counted as beginning after the final day on which budget authority was available, and ending the day before the gap terminated. For example, for the first FY1996 funding gap, the full days of the gap were from November 14, 1995, through November 18,1995, for a total of five full days.

c. Gap terminated due to the enactment of a continuing resolution, or one or more regular appropriations acts.

Funding gaps ranged in duration from one to 21 full days. Six of the seven lengthiest funding gaps, lasting between 8 and 17 days, occurred between FY1977 and FY1980, before the Civiletti opinions were issued. After the issuance of these opinions, the duration of funding gaps in general shortened considerably, typically ranging from one to three days. Of these, most occurred over a weekend and the disruption in federal operations was minimal.

An important exception to this trend was in late 1995 and early 1996, during the two most recent funding gaps that occurred between November 13-19, 1995, and December 15, 1995, through January 6, 1996. In the lead-up to the first funding gap, only three out of the 13 yearly appropriations acts had been signed into law[13] and budget authority, which had been provided by

[13] The Military Construction Appropriations Act, H.R. 1817 (P.L. 104-32), was enacted on October 3, 1995. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, H.R. 1976 (continued...)

a CR[14] since the start of the fiscal year, expired at the end of the day on November 13. On this same day, President Clinton vetoed a CR[15] that would have extended budget authority through December 1, 1995, because of the Medicare premium increases contained within the measure.[16] The ensuing funding gap resulted in the furlough of an estimated 800,000 federal workers. After five days, a deal was reached to end the shutdown and extend funding via two CRs through December 15.[17] Agencies that had been zeroed out in pending appropriations bills were funded at a rate of 75% of FY1995 budget authority. All other agencies were funded at the lower of the House- or Senate-passed level of funding contained in the FY1996 full-year appropriations bills. The CR additionally contained an agreement between President Clinton and Congress regarding future negotiations to lower the budget deficit within seven years.[18]

During the first and prior to the second FY1996 funding gap, an additional four annual appropriations measures were enacted, and three others were vetoed.[19] The negotiations on the six remaining bills were unsuccessful before the budget authority contained within the CR expired at the end of the day on December 15, 1995.[20] Reportedly, roughly 280,000 executive branch employees were furloughed during the funding gap between December 15, 1995, and January 6,

---

(...continued)

(P.L. 104-37), was enacted on October 21, 1995. The Energy and Water Development Appropriations Act, H.R. 1905 (P.L. 104-46), was enacted on November 13, 1995. The Legislative Branch Appropriations Act, H.R. 1854 (104th Cong.) was vetoed on October 12, 1995. As of the end of the day on November 13, 1995, the ten regular appropriations bills that had yet to be enacted were the (1) Department of Transportation and Related Agencies Appropriations Act, (2) Treasury, Postal Service, and General Government Appropriations Act, (3) Legislative Branch Appropriations Act, (4) Department of Defense Appropriations Act, (5) Department of Interior and Related Agencies Appropriations Act, (6) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, (7) Department of Commerce and Related Agencies Appropriations Act, (8) Foreign Operations, Export Financing, and Related Programs Appropriations Act, (9) Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, and (10) District of Columbia Appropriations Act.

[14] H.J.Res. 108 (P.L. 104-31).

[15] H.J.Res. 115 (104th Cong.).

[16] Message to the House of Representatives Returning Without Approval Continuing Resolution Legislation," November 13, 1995, William J. Clinton, Public Papers of the Presidents of the United States, 1995, Book 2, July 1 to December 31, 1995, p. 1755. See also "Clinton Vetoes Stopgap Bill to Keep Federal Government Open," *CQ Today*, November 14, 1995.

[17] H.J.Res. 123 (P.L. 104-54), H.J.Res. 122 (P.L. 104-56).

[18] For a summary of the first FY1996 funding gap and government shutdown, see "Overview: Government Shuts Down Twice Due to Lack of Funding," *Congressional Quarterly Almanac*, 104th Cong., 1st sess. (1995), vol. LI, pp. 11-3 through 11-6; "Special Report – Budget Showdown: Day by Day," *CQ Weekly*, November 18, 1995.

[19] The Department of Transportation and Related Agencies Appropriations Act, H.R. 2002 (P.L. 104-50), was enacted on November 15, 1995. The Treasury, Postal Service, and General Government Appropriations Act, H.R. 2020 (P.L. 104-52), was enacted on November 19, 1995. The Legislative Branch Appropriations Act, H.R. 2492 (P.L. 104-53) was enacted on November 19, 1995. The Department of Defense Appropriations Act, H.R. 2126 (P.L. 104-61), was enacted on December 1, 1995. The Department of Interior and Related Agencies Appropriations Act, H.R. 1977 (104th Cong.), was vetoed on December 18, 1995. The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, H.R. 2099 (104th Cong.), was vetoed on December 18, 1995. The Department of Commerce and Related Agencies Appropriations Act, H.R. 2076 (104th Cong.), was vetoed on December 19, 1995.

[20] As of the end of the day on December 15, 1995, the six regular appropriations bills that had yet to be enacted were the (1) Department of Interior and Related Agencies Appropriations Act, (2) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, (3) Department of Commerce and Related Agencies Appropriations Act, (4) Foreign Operations, Export Financing, and Related Programs Appropriations Act, (5) Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, and (6) District of Columbia Appropriations Act.

1996, government contractors were laid off, and the delivery of government services to the public was delayed.[21] A CR to provide benefits for veterans and welfare recipients and to keep the District of Columbia government operating was passed and signed into law on December 22, 1995.[22] The shutdown officially ended on January 6, 1996, when the first of a series of CRs to reopen federal government and provide budget authority through January 26, 1996,[23] was enacted.[24]

As of the date of this report, there have been no funding gaps since the two that occurred during FY1996.

Author Contact Information

Jessica Tollestrup
Analyst on Congress and the Legislative Process
jtollestrup@crs.loc.gov, 7-0941

Acknowledgments

The original version of this report was written by Robert Keith, formerly a Specialist in American National Government at CRS. The listed contact has revised and updated this report and is available to respond to inquiries on the subject.

[21] For further information on the effects of the second FY1996 funding gap, see Dan Moran and Stephen Barr, "When Shutdown Hit Home Ports, GOP Cutters Trimmed Their Sails," *Washington Post*, January 8, 1996.

[22] H.J.Res. 136 (P.L. 104-69).

[23] H.J.Res. 134 (P.L. 104-94). H.R. 1358 (P.L. 104-91) and H.R. 1643 (P.L. 104-92) were also enacted on January 6. These two CRs provided budget authority for some federal government activities until the end of FY1996.

[24] For a summary of the second FY1996 funding gap and government shutdown, see "Overview: Government Shuts down Twice Due to Lack of Funding," *Congressional Quarterly Almanac*, 104th Cong., 1st sess. (1995), vol. LI, pp. 11-3 through 11-6; "Funding Expires Again in Budget Stalemate." *CQ Weekly*, December 23, 1995; "Congress Clears Bills to Reopen Government," *CQ Today*, January 8, 1996.